

**OCCUPATIONS CODE**  
**TITLE 1. GENERAL PROVISIONS**  
**CHAPTER 1. GENERAL PROVISIONS**

Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

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

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- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1.003. REFERENCE IN LAW TO STATUTE REVISED BY CODE. A reference in a law to a statute or a part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of that statute.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**TITLE 2. GENERAL PROVISIONS RELATING TO LICENSING**

**CHAPTER 51. TEXAS DEPARTMENT OF LICENSING AND REGULATION**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 51.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means a board, committee, council, or other entity with multiple members that has as its primary function advising the commission or department.

(1-a) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "License" means a license, certificate, registration, title, or permit issued by the department.

(4) "License holder" means a person who holds a license issued by the department.

(5) "Respondent" means a person, regardless of whether the person is a license holder, who is charged with violating a law establishing a regulatory program administered by the department or a rule adopted or order issued by the commission or executive director.

(6) "Sanction" means an action by the executive director against a license holder or another person, including the denial, suspension, or revocation of a license, the reprimand of a license holder, or the placement of a license holder on probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 6, eff. June 14, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. [2310](#)), Sec. 1, eff. September 1, 2009.

Sec. 51.002. APPLICATION OF SUNSET ACT. The Texas Commission of Licensing and Regulation and the Texas Department of Licensing and Regulation are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission and the department are abolished September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 1.001, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. [652](#)), Sec. 4.05, eff. June 17, 2011.

Sec. 51.003. APPLICABILITY. This chapter applies to each regulatory program administered by the department, including any program under which a license is issued by the department.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.002, eff. Sept. 1, 2003.

#### **SUBCHAPTER B. DEPARTMENT AND COMMISSION**

Sec. 51.051. TEXAS DEPARTMENT OF LICENSING AND REGULATION. (a) The Texas Department of Licensing and Regulation is the primary state agency responsible for the oversight of businesses, industries, general trades, and occupations that are regulated by the state and assigned to the department by the legislature.

(b) The department is governed by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 7, eff. June 14, 2001.

Sec. 51.052. APPOINTMENT OF COMMISSION. (a) The commission consists of seven members appointed by the governor with the advice and consent of the senate.

(b) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 1.003, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1170, Sec. 25.01, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 15.001(b), eff. September 1, 2005.

Sec. 51.053. COMMISSION MEMBERSHIP; ELIGIBILITY. (a) Each member of the commission must be a representative of the general public.

(b) A person is not eligible for appointment as a member of the

commission if the person or the person's spouse:

- (1) is regulated by the department;
  - (2) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the department;
  - (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the department;
  - (4) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or
  - (5) is an employee of the department.
- (c) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 1.026.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 8, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.004, 1.026, eff. Sept. 1, 2003.

Sec. 51.0535. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the commission and may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

- (1) the person is an officer, employee, or paid consultant of a Texas trade association in a field regulated by the department; or
- (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in a field regulated by the department.

(c) A person may not be a member of the commission or act as the general counsel to the commission or the department if the person

is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.005, eff. Sept. 1, 2003.

Sec. 51.054. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

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

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

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

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.006, eff. Sept. 1, 2003.

Sec. 51.055. TERMS; VACANCY. (a) Members of the commission serve staggered six-year terms. The terms of one or two members expire on February 1 of each odd-numbered year.

(a) Members of the commission serve staggered six-year terms. The terms of two or three members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 1.007, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1170, Sec. 25.02, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.001, eff. September 1, 2005.

Sec. 51.056. PRESIDING OFFICER. (a) The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

(b) The presiding officer may vote on all matters before the commission as provided by Robert's Rules of Order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 9, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.008, eff. Sept. 1, 2003.

Sec. 51.057. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the commission that a member:

- (1) does not have at the time of taking office the qualifications required by Section 51.053;
- (2) does not maintain during service on the commission the qualifications required by Section 51.053;
- (3) is ineligible for membership under Section 51.0535;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 10, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.009, eff. Sept. 1, 2003.

Sec. 51.058. COMPENSATION; REIMBURSEMENT. (a) A commission member may not receive compensation for service on the commission.

(b) A commission member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a commission member, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 51.059. MEETINGS. (a) The commission shall meet at least once in each quarter of the fiscal year.

(b) The commission may meet at other times at the call of the presiding officer or as provided by commission rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 11, eff. June 14, 2001.

Sec. 51.060. CIVIL LIABILITY. A member of the commission is not liable in a civil action for an act performed in good faith while performing duties as a commission member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER DEPARTMENT PERSONNEL**

Sec. 51.101. EXECUTIVE DIRECTOR. The commission shall appoint the executive director of the department. The executive director serves at the will of the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 13, eff. June 14, 2001.

Sec. 51.103. EXECUTIVE DIRECTOR POWERS AND DUTIES. (a) The executive director shall:

- (1) perform any duties assigned by the commission and other duties specified by law;
- (2) administer and enforce the department's programs; and
- (3) issue licenses authorized by the laws establishing programs regulated by the department.

(b) The executive director may delegate any power or duty assigned to the executive director unless prohibited by statute or rule.

(c) The executive director may:

- (1) impose sanctions and issue orders relating to a sanction as provided by Section 51.353; and
- (2) assess an administrative penalty or issue an order relating to an administrative penalty as authorized by a law establishing a program regulated by the department or as provided by Sections 51.301 and 51.302.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 14, eff. June 14, 2001.

Sec. 51.104. PERSONNEL. The executive director may employ persons to perform the department's work and may prescribe their duties and compensation, subject to the personnel policies adopted by



the commission and the commission's approval of the budget.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 15, eff. June 14, 2001.

Sec. 51.105. DIVISION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and the staff of the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 16, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.010, eff. Sept. 1, 2003.

Sec. 51.106. INFORMATION ON STANDARDS OF CONDUCT. The executive director or the executive director's designee shall provide to members of the commission and to department employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.011, eff. Sept. 1, 2003.

Sec. 51.107. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director shall develop a career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director shall develop a system of employee performance evaluations. The system must require that evaluations be conducted at least annually. All merit pay for department employees must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 17, eff. June 14, 2001.

Sec. 51.108. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the department to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the department's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 18, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.012, eff. Sept. 1, 2003.

#### **SUBCHAPTER D. POWERS AND DUTIES**

Sec. 51.201. GENERAL POWERS AND DUTIES OF COMMISSION. (a) The commission shall:

(1) supervise the executive director's administration of the department;

(2) formulate the policy objectives for the department;

and

(3) approve the department's operating budget and the department's requests for legislative appropriations.

(b) The commission:

(1) may adopt rules as necessary for its own procedures;

and

(2) shall adopt rules as necessary to implement this

chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 19, eff. June 14, 2001.

Sec. 51.202. FEES. (a) The commission shall set fees, in amounts reasonable and necessary to cover the costs of administering the programs or activities, for:

- (1) licenses issued by the department;
- (2) license renewals and late renewals;
- (3) examinations; and

(4) any other program or activity administered by the department for which a fee is authorized.

(b) The executive director by rule may provide for prorating fees for the issuance of a license, so that a person regulated by the department pays only that portion of the applicable fee that is allocable to the number of months during which the license is valid.

(c) The executive director shall develop cost management procedures that enable the commission to determine with reasonable accuracy the cost to the department of each program and activity for which a fee is charged.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 20, eff. June 14, 2001.

Sec. 51.203. RULES REGARDING PROGRAMS REGULATED BY DEPARTMENT. The commission shall adopt rules as necessary to implement each law establishing a program regulated by the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 21, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.014, eff. Sept. 1, 2003.

Sec. 51.204. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commission may not adopt rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.

(b) The commission may not include in rules to prohibit false,

misleading, or deceptive practices by a license holder a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts the license holder's personal appearance or the use of the license holder's voice in an advertisement;
- (3) relates to the size or duration of an advertisement;

or

- (4) restricts the use of a trade name in advertising.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 22, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.014, eff. Sept. 1, 2003.

Sec. 51.207. USE OF TECHNOLOGY. (a) The commission shall develop and implement a policy requiring the executive director and department employees to research and propose appropriate technological solutions to improve the department's ability to perform its functions. The technological solutions must:

- (1) ensure that the public is able to easily find information about the department on the Internet;
- (2) ensure that persons who want to use the department's services are able to:
  - (A) interact with the department through the Internet;

and

- (B) access any service that can be provided effectively through the Internet; and

- (3) be cost-effective and developed through the department's planning processes.

(b) The department shall provide on its Internet website a link to an Internet website that allows the public to track legislation affecting the programs administered by the department, which may be a website that provides legislative information administered by the Texas Legislature.

(c) The department may satisfy any requirement under this chapter or another law governing a program subject to regulation by the department to provide notice by delivering the notice by e-mail to the recipient's last known e-mail address if the recipient has previously authorized the department to deliver the notice by e-mail. An e-mail address used under this subsection is confidential and is not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.015, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 452 (S.B. 845), Sec. 1, eff. September 1, 2013.

Sec. 51.208. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of department rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the department's jurisdiction.

(b) The department's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the department.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.015, eff. Sept. 1, 2003.

Sec. 51.209. ADVISORY BOARDS; REMOVAL OF ADVISORY BOARD MEMBER.

(a) This section applies to any advisory board appointed to advise the commission or department regarding a program subject to regulation by the department.

(b) An advisory board member who was appointed by the presiding officer of the commission with the commission's approval may be removed from the advisory board by the presiding officer with the commission's approval on any of the following grounds:

(1) the member does not have at the time of becoming a member of the advisory board the qualifications required by the law or rule authorizing appointment of the member;

(2) the member does not maintain during service on the advisory board the qualifications required by the law or rule authorizing appointment of the member;

(3) the member cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term;

(4) the member is absent from more than half of the regularly scheduled advisory board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the advisory board; or

(5) the member is unfit to continue serving on the advisory board.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. [2310](#)), Sec. 2, eff. September 1, 2009.

Sec. 51.210. METHOD OF MAKING PAYMENTS. (a) The commission may authorize payment of regulatory fees, fines, penalties, and charges for goods and services through:

(1) an electronic payment method; or

(2) a credit card issued by a financial institution chartered by a state or the United States or issued by a nationally recognized credit organization approved by the commission.

(b) A payment by a method under this section may be made in person, by telephone, or through the Internet.

(c) The commission may require a person who makes a payment to the department through an electronic payment method or credit card to pay a discount or service charge in an amount reasonable and necessary to reimburse the commission for the costs involved in processing the payment.

(d) The commission may adopt rules as necessary to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. [2310](#)), Sec. 2, eff.

September 1, 2009.

**SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 51.251. PUBLIC INTEREST INFORMATION. (a) The department shall prepare information of public interest describing the functions of the commission and department and the procedures by which complaints are filed with and resolved by the commission or executive director.

(b) The department shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 24, eff. June 14, 2001.

Sec. 51.252. COMPLAINTS. (a) The executive director shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The department shall provide to the person filing the complaint and to each person who is a subject of the complaint information about the department's policies and procedures relating to complaint investigation and resolution.

(b) The department shall maintain a file on each written complaint filed with the department. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the department;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;

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

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

(c) The department, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an

undercover investigation.

(d) The commission shall adopt a procedure for documenting complaints to the department from the time of the submission of the initial complaint to the final disposition of the complaint. The commission shall publish the procedure in the Texas Register.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 25, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.016, eff. Jan. 1, 2004.

Sec. 51.253. PUBLIC PARTICIPATION. (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the commission's jurisdiction.

(b) The commission shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the commission's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. ADMINISTRATIVE PENALTY**

Sec. 51.301. IMPOSITION OF PENALTY. The executive director or commission may impose an administrative penalty against a person who violates:

(1) a law establishing a regulatory program administered by the department; or

(2) a rule adopted or order issued by the executive director or commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 26, eff. June 14, 2001.

Sec. 51.302. AMOUNT OF PENALTY. (a) If the relevant law establishing a program regulated by the department does not state the maximum amount of an administrative penalty under that law, the amount of the penalty shall be assessed by the commission or executive director in an amount that may not exceed \$5,000 per day



for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

- (1) the seriousness of the violation;
- (2) the respondent's history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts made by the respondent to correct the

violation; and

- (5) any other matter that justice may require.

(c) The commission shall by rule or by procedure published in the Texas Register establish a written enforcement plan that provides notice to license holders of the specific ranges of penalties that apply to specific alleged violations and the criteria by which the department determines the amount of a proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 27, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.017, eff. Sept. 1, 2003.

Sec. 51.3025. IMPOSITION OF SANCTION. A proceeding under this subchapter imposing an administrative penalty may be combined with a proceeding to impose an administrative sanction. If a sanction is imposed in a proceeding under this subchapter, the requirements of this subchapter apply to the imposition of the sanction.

Added by Acts 2001, 77th Leg., ch. 836, Sec. 28, eff. June 14, 2001.

Sec. 51.303. NOTICE OF VIOLATION AND PENALTY. If, after investigation of a possible violation and the facts surrounding the possible violation, the department determines that a violation occurred, the department shall issue to the respondent a notice of alleged violation stating:

- (1) a brief summary of the alleged violation;
- (2) the amount of the recommended administrative penalty;

and

(3) that the respondent has the right to a hearing to contest the alleged violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 29, eff. June 14, 2001.

Sec. 51.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the respondent receives the notice, the respondent may:

(1) accept the department's determination and recommended administrative penalty; or

(2) make a written request for a hearing on that determination.

(b) If the respondent accepts the department's determination, the executive director by order shall approve the determination and require the person to pay the recommended penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 30, eff. June 14, 2001.

Sec. 51.305. HEARING ON RECOMMENDATIONS. (a) If the respondent requests a hearing, the hearing shall be conducted by the State Office of Administrative Hearings.

(b) The State Office of Administrative Hearings shall consider the department's applicable substantive rules and policies when conducting a hearing under this subchapter.

(c) An administrative law judge at the State Office of Administrative Hearings shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the commission a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 31, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 1215, Sec. 11, eff. Sept. 1, 2003.

Sec. 51.306. DECISION BY COMMISSION. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the commission by order may determine that:

(1) a violation occurred and impose an administrative

penalty; or

(2) a violation did not occur.

(b) The department shall give notice of the order to the respondent.

(c) The order under this section must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty imposed;

(3) a statement of the right of the respondent to judicial review of the order; and

(4) any other information required by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 32, eff. June 14, 2001.

Sec. 51.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the commission's order becomes final, the respondent shall:

(1) pay the penalty; or

(2) file a petition for judicial review contesting the order and:

(A) forward the penalty to the department for deposit in an escrow account; or

(B) give the department a supersedeas bond in a form approved by the executive director that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the decision is final.

(b) A respondent who is financially unable to comply with Subsection (a)(2) is entitled to judicial review if the respondent files with the court, as part of the respondent's petition for judicial review, a sworn statement that the respondent is unable to meet the requirements of that subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 33, eff. June 14, 2001.

Sec. 51.308. COLLECTION OF PENALTY. If the person on whom the administrative penalty is imposed violates Section 51.307(a), the

department or the attorney general may bring an action to collect the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 51.309. REMITTANCE OF PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not imposed, the executive director shall:

(1) remit to the person the appropriate amount, plus accrued interest, if the person paid the amount of the penalty; or

(2) execute a release of the bond, if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is accrued at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid to the department and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 34, eff. June 14, 2001.

Sec. 51.310. ADMINISTRATIVE PROCEDURE. (a) The executive director by rule shall prescribe procedures for the determination and appeal of a decision to impose an administrative penalty.

(b) A proceeding under this subchapter to impose an administrative penalty is considered to be a contested case under Chapter 2001, Government Code.

(c) The executive director by rule shall prescribe notice procedures for proceedings under this subchapter that provide for notice by certified mail with electronic return receipt.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 35, eff. June 14, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. [2310](#)), Sec. 3, eff. September 1, 2009.

#### **SUBCHAPTER G. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 51.351. INSPECTIONS AND INVESTIGATIONS. (a) The department may conduct inspections or investigations as necessary to enforce the laws administered by the department.

(b) The department, during reasonable business hours, may:

(1) enter the business premises of a person regulated by the department or a person suspected of being in violation of or threatening to violate a law establishing a regulatory program administered by the department or a rule or order of the commission or executive director related to a regulatory program administered by the department; and

(2) examine and copy records pertinent to the inspection or investigation.

(c) A department employee may check the license, registration, or endorsement of a person regulated by the Texas State Board of Plumbing Examiners in accordance with the memorandum of understanding under Section 1301.259 and report any noncompliance to that agency.

(d) The department shall conduct joint investigations with the Texas State Board of Plumbing Examiners as circumstances require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 36, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 819, Sec. 27, eff. Sept. 1, 2003.

Sec. 51.3511. ISSUANCE OF EMERGENCY ORDERS. (a) If the executive director determines that an emergency exists requiring immediate action to protect the public health and safety, the executive director may issue an emergency order to:

(1) suspend or revoke a license or other authorization issued under a program regulated by the department; or

(2) halt operation of an unsafe facility or unsafe equipment that is subject to regulation by the department.

(b) The executive director may issue an emergency order with or without notice and hearing as the executive director considers practicable under the circumstances.

(c) If an emergency order is issued under this section without a hearing, the executive director shall set the time and place for a hearing conducted by the State Office of Administrative Hearings to affirm, modify, or set aside the emergency order not later than the 10th day after the date the order was issued. The order shall be

affirmed to the extent that reasonable cause existed to issue the order.

(d) The commission by rule may prescribe procedures for the determination and appeal of an emergency order issued under this section, including a rule allowing the commission to affirm, modify, or set aside a decision made by the State Office of Administrative Hearings under Subsection (c).

(e) A proceeding under this section is a contested case under Chapter 2001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 4, eff. September 1, 2009.

Sec. 51.3512. SUBPOENAS. (a) The department may issue a subpoena as provided by this section.

(b) The department may request and, if necessary, compel by subpoena:

(1) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter, a law establishing a regulatory program administered by the department, or a rule adopted or order issued by the commission or executive director; and

(2) the attendance of a witness for examination under oath.

(c) A subpoena under this section may be issued throughout this state and may be served by any person designated by the commission or the executive director.

(d) The department, acting through the attorney general, may bring an action to enforce a subpoena issued under this section against a person who fails to comply with the subpoena.

(e) Venue for an action brought under this section is in a district court in:

(1) Travis County; or

(2) any county in which the department may hold a hearing.

(f) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 4, eff. September 1, 2009.

Sec. 51.3513. CEASE AND DESIST ORDER. The executive director may issue a cease and desist order if the executive director determines that the action is necessary to prevent a violation of:

- (1) this chapter;
- (2) a law establishing a regulatory program administered by the department; or
- (3) a rule adopted or order issued by the commission or the executive director.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 4, eff. September 1, 2009.

Sec. 51.352. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The attorney general or the executive director may institute an action for injunctive relief to restrain a violation by and to collect a civil penalty from a person that appears to be in violation of or threatening to violate a law establishing a regulatory program administered by the department or a rule or order of the commission or executive director related to the regulatory program. A civil penalty assessed under this subsection may not exceed \$5,000 per day for each violation.

(b) An action filed under this section must be filed in a district court in Travis County.

(c) The attorney general and the department may recover reasonable expenses incurred in obtaining injunctive relief under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 37, eff. June 14, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 5, eff. September 1, 2009.

Sec. 51.353. LICENSE DENIAL; ADMINISTRATIVE SANCTIONS. (a) The commission may deny, revoke, suspend, or refuse to renew a license or may reprimand a license holder for a violation of this chapter, a law establishing a regulatory program administered by the department, or a rule or order of the commission or the executive

director.

(b) The commission may place on probation a person whose license is suspended. If a license suspension is probated, the commission may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the commission; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the commission in those areas that are the basis for the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 38, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.018, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 6, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 7, eff. September 1, 2009.

Sec. 51.354. RIGHT TO HEARING; ADMINISTRATIVE PROCEDURE. (a) A respondent is entitled to a hearing conducted by the State Office of Administrative Hearings if the executive director proposes to deny, suspend, or revoke a license.

(b) A proceeding under this chapter to deny, suspend, or revoke a license is considered to be a contested case under Chapter 2001, Government Code.

(c) The executive director by rule shall prescribe notice procedures for a contested case under this chapter that provide for notice by certified mail with electronic return receipt.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 39, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 1215, Sec. 12, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1215, Sec. 16, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 8, eff. September 1, 2009.



Sec. 51.355. LICENSE ELIGIBILITY OF PERSON WHOSE LICENSE HAS BEEN REVOKED. A person whose license has been revoked by order of the commission or executive director is not eligible for a new license until the first anniversary of the date of the revocation.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 9, eff. September 1, 2009.

Sec. 51.356. DEFERRED ADJUDICATION; LICENSE SUSPENSION, LICENSE REVOCATION, OR DENIAL OR REFUSAL TO RENEW LICENSE. (a) The commission may deny, suspend, revoke, or refuse to renew a license or other authorization issued by a program regulated by the department if:

(1) the person holding or seeking the license received deferred adjudication for:

(A) any offense described by Article 62.001(5), Code of Criminal Procedure; or

(B) an offense other than an offense described by Paragraph (A) if:

(i) the person has not completed the period of deferred adjudication or the person completed the period of deferred adjudication less than five years before the date the person applied for the license; or

(ii) a conviction for the offense would make the person ineligible for the license by operation of law; and

(2) the commission determines that the deferred adjudication makes the person unfit for the license.

(b) In making a determination under Subsection (a)(2), the commission shall consider the factors set forth in Sections 53.022 and 53.023 and the guidelines issued by the department under Section 53.025.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 9, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 938 (H.B. 1659), Sec. 1, eff. September 1, 2013.

#### **SUBCHAPTER H. LICENSE REQUIREMENTS**

Sec. 51.401. LICENSE EXPIRATION AND RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than 18 months may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee. On approval by the executive director, a person whose license has been expired for at least 18 months but less than three years may renew the license by paying to the department a renewal fee equal to two times the normally required renewal fee.

(d) Except as provided by Subsection (c), a person whose license has been expired for 18 months or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 30th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.019, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 133 (H.B. [3287](#)), Sec. 1, eff. September 1, 2011.

Sec. 51.4011. INACTIVE STATUS. (a) The commission may adopt

rules to allow a license holder to place a license issued by the department on inactive status by:

(1) submitting, on a form prescribed by the department, an application for inactive status to the department not later than the expiration date of the license; and

(2) paying the required fee.

(b) Except as provided by Subsection (f), a person whose license is on inactive status is not required to complete continuing education required under this chapter, a law establishing a program regulated by the department, or a rule adopted by the commission.

(c) A person whose license is on inactive status may reapply for inactive status before the expiration date of the license. The person must pay the required fee.

(d) A person whose license is on inactive status may not engage in any activity for which the license is required.

(e) A license holder may not employ a person for an activity for which a license is required if the person's license is on inactive status.

(f) A person whose license is on inactive status may return the license to active status by:

(1) applying to the department for active status on a form prescribed by the department;

(2) paying the required fee; and

(3) providing evidence satisfactory to the department that the person has completed the number of hours of continuing education that would otherwise have been required for a renewal of an active license for the preceding license period.

(g) The commission may set fees and adopt rules as necessary to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. [2310](#)), Sec. 10, eff. May 1, 2010.

Sec. 51.4012. LICENSE ELIGIBILITY REQUIREMENTS REGARDING APPLICANT'S BACKGROUND; DETERMINATION LETTER. (a) Notwithstanding any other law, the commission may determine that a person is not eligible for a license based on the person's criminal history or other information that indicates that the person lacks the honesty, trustworthiness, and integrity to hold a license issued by the

department.

(b) Before applying for a license from the department, a person may request that the department issue a letter determining whether the person would be eligible for a license under Subsection (a) of this section, Section 51.356, or Chapter 53. To obtain a determination letter, a person must file a request on a form prescribed by the department and pay the required fee.

(c) Not later than the 30th day after the date the department makes its determination, the department shall issue the determination letter to the person.

(d) The department has the same powers to investigate a request filed under this section as the department has to investigate a person applying for a license.

(e) A determination letter issued under this section that is adverse to a person does not prevent the person from subsequently applying for a license.

(f) The department is not bound by its determination that the person would be eligible if, after the issuance of the determination letter, the department determines there has been a change in a person's circumstances or discovers a previously undiscovered fact.

(g) A determination under this section is not a contested case under Chapter 2001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. [2310](#)), Sec. 10, eff. May 1, 2010.

Sec. 51.4013. LICENSE ELIGIBILITY REQUIREMENTS FOR APPLICANTS WITH MILITARY EXPERIENCE. (a) Notwithstanding any other law, the department shall credit verified military service, training, or education toward the licensing requirements, other than examination requirements, for a license issued by the department.

(b) The commission shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 738 (S.B. [242](#)), Sec. 1, eff. June 14, 2013.

Sec. 51.402. EXAMINATIONS. (a) Not later than the 30th day after the date a person takes a license examination, the department

shall notify the person of the results of the examination.

(b) If the examination is graded or reviewed by a testing service:

(1) the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to:

(1) notify a person of the results of the person's examination; or

(2) collect a fee for administering a license examination from a person taking the examination.

(d) If requested in writing by a person who fails a license examination, the department shall furnish the person with an analysis of the person's performance on the examination.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.019, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. [2310](#)), Sec. 11, eff. September 1, 2009.

Sec. 51.403. EXAMINATION FEE REFUND. (a) The department may refund a license examination fee to a person who is unable to take the examination if the person:

(1) provides reasonable advance notice to the department; or

(2) cannot take the examination because of an emergency.

(b) The commission by rule shall define what constitutes reasonable notice and an emergency under this section.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.019, eff. Sept. 1, 2003.

Sec. 51.404. ENDORSEMENT; RECIPROCITY. (a) The commission may waive any prerequisite to obtaining a license for an applicant

after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(b) The commission may waive any prerequisite to obtaining a license for an applicant who holds a license issued by another jurisdiction with which this state has a reciprocity agreement. The commission may make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.019, eff. Sept. 1, 2003.

Sec. 51.405. CONTINUING EDUCATION. The commission shall recognize, prepare, or administer continuing education programs for license holders. A license holder must participate in the programs to the extent required by the commission to keep the person's license.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.019, eff. Sept. 1, 2003.

Sec. 51.406. STAGGERED RENEWAL OF LICENSES. The commission by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.  
Renumbered from Occupations Code, Sec. 51.205 and amended by Acts 2003, 78th Leg., ch. 816, Sec. 1.020, eff. Sept. 1, 2003.

Sec. 51.407. TEMPORARY LICENSE. (a) The commission by rule may provide for the issuance of a temporary license to an applicant who:

(1) submits to the executive director an application on a form prescribed by the executive director;

(2) meets preliminary qualifications established by commission rule; and

(3) pays any required fees.

(b) A temporary license issued under this section expires on the 21st day after the date of issuance and may not be renewed.

(c) A temporary license holder is subject to:

(1) this chapter;

(2) any law applicable to the activity for which the license is required; and

(3) any rule of the commission or the executive director applicable to the license.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. [2310](#)), Sec. 12, eff. September 1, 2009.

Sec. 51.408. EMERGENCY LICENSE. (a) The executive director may issue an emergency license to a person who meets eligibility requirements provided by:

(1) a law establishing a regulatory program administered by the department; or

(2) a rule adopted to implement this section.

(b) An emergency license issued under this section expires on the date indicated by the executive director, but not later than the 90th day after the date the license is issued. If the governor declares an extended state of disaster under Section 418.014, Government Code, the executive director may extend the term of an emergency license to an expiration date after the 90th day after the date the license was issued.

(c) The emergency license holder may engage in the activities authorized by the type of license only:

(1) during a period in which a state of disaster has been declared and the following recovery period; and

(2) in an area designated as a disaster area under Chapter 418, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. [2310](#)), Sec. 12, eff. September 1, 2009.

**SUBCHAPTER I. TELEPHONE INFORMATION SYSTEM**

Sec. 51.451. DEFINITION. In this subchapter, "licensing entity" means a department, commission, board, office, authority, or other agency or governmental entity of this state that issues an occupational license.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.021, eff. Sept. 1, 2003.

Sec. 51.452. TELEPHONE INFORMATION SYSTEM. The department shall establish and operate a toll-free telephone information system to provide assistance and referral services for persons who inquire about a program regulated by a licensing entity.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.021, eff. Sept. 1, 2003.

**CHAPTER 52. TRANSFER OF LICENSE**

Sec. 52.001. TRANSFER OF LICENSE PERMITTED. Except as otherwise provided by law, a person who owns or holds a license to engage in an occupation issued in accordance with the laws of this state may transfer the license in the records of the licensing entity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 52.002. AUTHORITY TO ENGAGE IN OCCUPATION AFTER ACQUIRING LICENSE. A person who purchases or is assigned a license to engage in an occupation may engage in that occupation under the license during the unexpired term of the license after the person has complied with the legal requirements provided for in original applications for those licenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 52.003. MULTIPLE HOLDERS OF SINGLE LICENSE PROHIBITED. This chapter does not permit two or more persons to engage in the



same occupation under one license at the same time.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 52.004. SALE OF CERTAIN LICENSES. (a) A license held by a person to engage in an occupation is considered an asset of the person and may be sold in the same manner as the person's other property if the entity operating under the license is closed out by legal process.

(b) A person who purchases a license sold under Subsection (a) may engage in that occupation under the license or transfer the license to another person.

(c) A license transferred under Subsection (b) may be transferred only one time.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## **CHAPTER 53. CONSEQUENCES OF CRIMINAL CONVICTION**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 53.001. APPLICABILITY OF CERTAIN DEFINITIONS. The definitions provided by Chapter 2001, Government Code, apply to this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 53.002. APPLICABILITY OF CHAPTER. This chapter does not apply to:

(1) the Supreme Court of Texas, a person licensed under the court's authority on behalf of the judicial department of government, or an applicant for a license issued under the court's authority on behalf of the judicial department of government;

(2) a person licensed or an applicant for a license under Chapter 1701;

(3) an applicant for certification as emergency medical services personnel under Chapter 773, Health and Safety Code; or

(4) a person who:

(A) is licensed by the Texas Medical Board, the Texas State Board of Pharmacy, the State Board of Dental Examiners, or the

State Board of Veterinary Medical Examiners; and

(B) has been convicted of a felony under Chapter 481 or 483 or Section 485.033, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 754 (H.B. 1402), Sec. 1, eff. September 1, 2011.

#### **SUBCHAPTER B. INELIGIBILITY FOR LICENSE**

Sec. 53.021. AUTHORITY TO REVOKE, SUSPEND, OR DENY LICENSE.

(a) A licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of:

(1) an offense that directly relates to the duties and responsibilities of the licensed occupation;

(2) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license;

(3) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or

(4) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

(a-1) Subsection (a) does not apply to a person who has been convicted only of an offense punishable as a Class C misdemeanor unless:

(1) the person is an applicant for or the holder of a license that authorizes the person to possess a firearm; and

(2) the offense for which the person was convicted is a misdemeanor crime of domestic violence as that term is defined by 18 U.S.C. Section 921.

(b) A license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(c) Except as provided by Subsections (d) and (e), notwithstanding any other law, a licensing authority may not consider a person to have been convicted of an offense for purposes of this section if, regardless of the statutory authorization:

- (1) the person entered a plea of guilty or nolo contendere;
- (2) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and
- (3) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.

(d) A licensing authority may consider a person to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the person was discharged as described by Subsection (c) if:

- (1) the person was charged with:
  - (A) any offense described by Article 62.001(5), Code of Criminal Procedure; or
  - (B) an offense other than an offense described by Paragraph (A) if:

- (i) the person has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for the license; or

- (ii) a conviction for the offense would make the person ineligible for the license by operation of law; and

- (2) after consideration of the factors described by Sections 53.022 and 53.023(a), the licensing authority determines that:

- (A) the person may pose a continued threat to public safety; or

- (B) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

(e) Subsection (c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide:

- (1) law enforcement or public health, education, or safety services; or
- (2) financial services in an industry regulated by a person listed in Section 411.081(i)(19), Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 3, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1148 (H.B. 2808), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 938 (H.B. 1659), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1265 (H.B. 798), Sec. 1, eff. September 1, 2013.

Sec. 53.0211. LICENSING OF CERTAIN APPLICANTS WITH PRIOR CRIMINAL CONVICTIONS. (a) This section does not apply to an applicant for a license that would allow the applicant to provide:

- (1) law enforcement services;
- (2) public health, education, or safety services; or
- (3) financial services in an industry regulated by the

securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner.

(b) Notwithstanding any law other than Subsection (a) and unless the applicant has been convicted of an offense described by Section 53.021(a), a licensing authority shall issue to an otherwise qualified applicant who has been convicted of an offense:

- (1) the license for which the applicant applied; or
- (2) a provisional license described by Subsection (c).

(c) A licensing authority may issue a provisional license for a term of six months to an applicant who has been convicted of an offense.

(d) The licensing authority shall revoke a provisional license if the provisional license holder:

- (1) commits a new offense;
- (2) commits an act or omission that causes the person's community supervision, mandatory supervision, or parole to be

revoked, if applicable; or

(3) violates the law or rules governing the practice of the occupation for which the provisional license is issued.

(e) The licensing authority shall issue the license for which the applicant originally applied to a provisional license holder on

the expiration of the provisional license term if the provisional license holder does not engage in conduct described by Subsection (d).

(f) If the licensing authority revokes a provisional license under Subsection (d), the provisional license holder is disqualified from receiving the license for which the applicant originally applied.

(g) An applicant who is on community supervision, mandatory supervision, or parole and who is issued a provisional license under this section shall provide to the licensing authority the name and contact information of the probation or parole department to which the person reports. The licensing authority shall notify the probation or parole department that a provisional license has been issued. The probation or parole department shall notify the licensing authority if the person's community supervision, mandatory supervision, or parole supervision is revoked during the term of the provisional license.

Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 4, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1182 (H.B. 3453), Sec. 13, eff. September 1, 2011.

Sec. 53.022. FACTORS IN DETERMINING WHETHER CONVICTION RELATES TO OCCUPATION. In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 53.023. ADDITIONAL FACTORS FOR LICENSING AUTHORITY TO CONSIDER. (a) In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in Section 53.022:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person when the crime was committed;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person before and after the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
- (6) other evidence of the person's fitness, including letters of recommendation from:
  - (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
  - (B) the sheriff or chief of police in the community where the person resides; and
  - (C) any other person in contact with the convicted person.

(b) The applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by Subsection (a)(6).

(c) In addition to fulfilling the requirements of Subsection (b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has:

- (1) maintained a record of steady employment;
- (2) supported the applicant's dependents;
- (3) maintained a record of good conduct; and
- (4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 53.024. PROCEEDINGS GOVERNED BY ADMINISTRATIVE PROCEDURE ACT. A proceeding before a licensing authority to establish factors required to be considered under this subchapter is governed by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 53.025. GUIDELINES. (a) Each licensing authority shall issue guidelines relating to the practice of the licensing authority under this chapter. The guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

(b) A state licensing authority that issues guidelines under this section shall file the guidelines with the secretary of state for publication in the Texas Register.

(c) A local or county licensing authority that issues guidelines under this section shall post the guidelines at the courthouse for the county in which the licensing authority is located or publish the guidelines in a newspaper having countywide circulation in that county.

(d) Amendments to the guidelines, if any, shall be issued annually.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. NOTICE AND REVIEW OF SUSPENSION, REVOCATION, OR DENIAL OF LICENSE**

Sec. 53.051. NOTICE. A licensing authority that suspends or revokes a license or denies a person a license or the opportunity to be examined for a license because of the person's prior conviction of a crime and the relationship of the crime to the license shall notify the person in writing of:

(1) the reason for the suspension, revocation, denial, or disqualification;

(2) the review procedure provided by Section 53.052; and

(3) the earliest date the person may appeal the action of the licensing authority.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 53.052. JUDICIAL REVIEW. (a) A person whose license has been suspended or revoked or who has been denied a license or the opportunity to take an examination under Section 53.021 and who has exhausted the person's administrative appeals may file an action in the district court in the county in which the licensing authority is located for review of the evidence presented to the licensing authority and the decision of the licensing authority.

(b) The petition for an action under Subsection (a) must be filed not later than the 30th day after the date the licensing authority's decision is final and appealable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER D. PRELIMINARY EVALUATION OF LICENSE ELIGIBILITY**

Sec. 53.101. DEFINITIONS. In this subchapter:

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority; and

(B) a person must obtain to practice or engage in a particular business, occupation, or profession.

(2) "Licensing authority" means a department, commission, board, office, or other agency of the state that issues a license.

Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 1, eff. June 19, 2009.

Sec. 53.102. REQUEST FOR CRIMINAL HISTORY EVALUATION LETTER.

(a) A person may request a licensing authority to issue a criminal history evaluation letter regarding the person's eligibility for a license issued by that authority if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.



(b) The request must state the basis for the person's potential ineligibility.

Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 1, eff. June 19, 2009.

Sec. 53.103. AUTHORITY TO INVESTIGATE. A licensing authority has the same powers to investigate a request submitted under this subchapter and the requestor's eligibility that the authority has to investigate a person applying for a license.

Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 1, eff. June 19, 2009.

Sec. 53.104. DETERMINATION OF ELIGIBILITY; LETTER. (a) If a licensing authority determines that a ground for ineligibility does not exist, the authority shall notify the requestor in writing of the authority's determination on each ground of potential ineligibility.

(b) If a licensing authority determines that the requestor is ineligible for a license, the licensing authority shall issue a letter setting out each basis for potential ineligibility and the authority's determination as to eligibility. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the licensing authority at the time the letter is issued, the authority's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

(c) A licensing authority must provide notice under Subsection (a) or issue a letter under Subsection (b) not later than the 90th day after the date the authority receives the request.

Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 1, eff. June 19, 2009.

Sec. 53.105. FEES. A licensing authority may charge a person requesting an evaluation under this subchapter a fee adopted by the authority. Fees adopted by a licensing authority under this subchapter must be in an amount sufficient to cover the cost of

administering this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 1, eff. June 19, 2009.

**CHAPTER 54. EXAMINATION ON RELIGIOUS HOLY DAY; EXAMINATION ACCOMMODATIONS FOR PERSON WITH DYSLEXIA**

Sec. 54.001. DEFINITIONS. In this chapter:

(1) "Religious holy day" means a day on which the tenets of a religious organization prohibit the organization's members from participating in secular activities.

(2) "Religious organization" means an organization that qualifies under Section 11.20, Tax Code.

(3) "State agency" means an agency in the executive, legislative, or judicial branch of state government that administers an examination for licensing or other regulatory purposes.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 54.002. EXAMINATION SCHEDULED ON RELIGIOUS HOLY DAY. (a) Each state agency shall adopt a procedure to permit an examinee who wishes to observe a religious holy day on which the person's religious beliefs prevent the person from taking an examination to take an examination scheduled to be administered by the agency on that religious holy day on an alternate date.

(b) Each state agency shall adopt rules as necessary to implement this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 54.003. EXAMINATION ACCOMMODATIONS FOR PERSON WITH DYSLEXIA. (a) In this section, "dyslexia" has the meaning assigned by Section 51.970, Education Code.

(b) For each licensing examination administered by a state agency, the agency shall provide reasonable examination accommodations to an examinee diagnosed as having dyslexia.

(c) Each state agency shall adopt rules necessary to implement this section, including rules to establish the eligibility criteria

an examinee must meet for accommodation under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 418 (S.B. 867), Sec. 2, eff. September 1, 2011.

**Chapter heading as amended by Acts 2013, 83rd Leg., R.S., Ch. 66  
(S.B. 162), Sec. 1**

**CHAPTER 55. LICENSING OF MILITARY SERVICE MEMBERS, MILITARY  
VETERANS, AND MILITARY SPOUSES**

Sec. 55.001. DEFINITIONS. In this chapter:

(1) "License" means a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(1-a) "Military service member" means a person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(1-b) "Military spouse" means a person who is married to a military service member who is currently on active duty.

(1-c) "Military veteran" means a person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(2) "State agency" means a department, board, bureau, commission, committee, division, office, council, or agency of the state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 2, eff. May 18, 2013.

Sec. 55.002. EXEMPTION FROM PENALTY FOR FAILURE TO RENEW LICENSE. A state agency that issues a license shall adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty imposed by the agency for failing to renew the license in a timely manner if the individual establishes

to the satisfaction of the agency that the individual failed to renew the license in a timely manner because the individual was on active duty in the United States armed forces serving outside this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 55.003. EXTENSION OF CERTAIN DEADLINES FOR ACTIVE DUTY MILITARY PERSONNEL. A person who holds a license, is a member of the state military forces or a reserve component of the armed forces of the United States, and is ordered to active duty by proper authority is entitled to an additional amount of time, equal to the total number of years or parts of years that the person serves on active duty, to complete:

- (1) any continuing education requirements; and
- (2) any other requirement related to the renewal of the person's license.

Added by Acts 2005, 79th Leg., Ch. 675 (S.B. 143), Sec. 1, eff. June 17, 2005.

Sec. 55.004. ALTERNATIVE LICENSE PROCEDURE FOR MILITARY SPOUSE. (a) A state agency that issues a license shall adopt rules for the issuance of the license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States and:

- (1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license; or
- (2) within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months.

(b) Rules adopted under this section must include provisions to allow alternative demonstrations of competency to meet the requirements for obtaining the license.

(c) The executive director of a state agency may issue a license by endorsement in the same manner as the Texas Commission of Licensing and Regulation under Section 51.404 to an applicant described by Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 930 (S.B. 1733), Sec. 2, eff. June 17, 2011.

Text of section as added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3

For text of section as added by Acts 2013, 83rd Leg., R.S., Ch. 348 (H.B. 2254), Sec. 2, see other Sec. 55.005.

Sec. 55.005. EXPEDITED LICENSE PROCEDURE FOR MILITARY SPOUSES.

(a) A state agency that issues a license shall, as soon as practicable after a military spouse files an application for a license:

(1) process the application; and

(2) issue a license to a qualified military spouse

applicant who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in this state.

(b) A license issued under this section may not be a provisional license and must confer the same rights, privileges, and responsibilities as a license not issued under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3, eff. May 18, 2013.

Text of section as added by Acts 2013, 83rd Leg., R.S., Ch. 348 (H.B. 2254), Sec. 2

For text of section as added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3, see other Sec. 55.005.

Sec. 55.005. APPRENTICESHIP REQUIREMENTS FOR APPLICANT WITH MILITARY EXPERIENCE. (a) Notwithstanding any other law, if an apprenticeship is required for an occupational license issued by a state agency, the state agency shall credit verified military service, training, or education that is relevant to the occupation toward the apprenticeship requirements for the license.

(b) The state agency shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 348 (H.B. 2254), Sec. 2, eff.

June 14, 2013.

Sec. 55.006. RENEWAL OF EXPEDITED LICENSE ISSUED TO MILITARY SPOUSE. (a) As soon as practicable after a state agency issues a license under Section 55.005, the state agency shall determine the requirements for the license holder to renew the license.

(b) The state agency shall notify the license holder of the requirements for renewing the license in writing or by electronic means.

(c) A license issued under Section 55.005 has the term established by law or state agency rule, or a term of 12 months from the date the license is issued, whichever term is longer.

Added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3, eff. May 18, 2013.

Sec. 55.007. LICENSE ELIGIBILITY REQUIREMENTS FOR APPLICANTS WITH MILITARY EXPERIENCE. (a) Notwithstanding any other law, a state agency that issues a license shall, with respect to an applicant who is a military service member or military veteran, credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the state agency.

(b) The state agency shall adopt rules necessary to implement this section.

(c) Rules adopted under this section may not apply to an applicant who:

(1) holds a restricted license issued by another jurisdiction; or

(2) has an unacceptable criminal history according to the law applicable to the state agency.

Added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3, eff. May 18, 2013.

**Chapter heading as amended by Acts 2013, 83rd Leg., R.S., Ch. 348  
(H.B. 2254), Sec. 1**

**CHAPTER 55. LICENSE FOR MILITARY SERVICE MEMBER OR MILITARY SPOUSE**

Sec. 55.001. DEFINITIONS. In this chapter:

(1) "License" means a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(1-a) "Military service member" means a person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(1-b) "Military spouse" means a person who is married to a military service member who is currently on active duty.

(1-c) "Military veteran" means a person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(2) "State agency" means a department, board, bureau, commission, committee, division, office, council, or agency of the state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 2, eff. May 18, 2013.

Sec. 55.002. EXEMPTION FROM PENALTY FOR FAILURE TO RENEW LICENSE. A state agency that issues a license shall adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty imposed by the agency for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the agency that the individual failed to renew the license in a timely manner because the individual was on active duty in the United States armed forces serving outside this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 55.003. EXTENSION OF CERTAIN DEADLINES FOR ACTIVE DUTY MILITARY PERSONNEL. A person who holds a license, is a member of the state military forces or a reserve component of the armed forces of

the United States, and is ordered to active duty by proper authority is entitled to an additional amount of time, equal to the total number of years or parts of years that the person serves on active duty, to complete:

- (1) any continuing education requirements; and
- (2) any other requirement related to the renewal of the person's license.

Added by Acts 2005, 79th Leg., Ch. 675 (S.B. 143), Sec. 1, eff. June 17, 2005.

Sec. 55.004. ALTERNATIVE LICENSE PROCEDURE FOR MILITARY SPOUSE.

(a) A state agency that issues a license shall adopt rules for the issuance of the license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States and:

- (1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license; or
- (2) within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months.

(b) Rules adopted under this section must include provisions to allow alternative demonstrations of competency to meet the requirements for obtaining the license.

(c) The executive director of a state agency may issue a license by endorsement in the same manner as the Texas Commission of Licensing and Regulation under Section 51.404 to an applicant described by Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 930 (S.B. 1733), Sec. 2, eff. June 17, 2011.

Text of section as added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3

For text of section as added by Acts 2013, 83rd Leg., R.S., Ch. 348 (H.B. 2254), Sec. 2, see other Sec. 55.005.

Sec. 55.005. EXPEDITED LICENSE PROCEDURE FOR MILITARY SPOUSES.



(a) A state agency that issues a license shall, as soon as practicable after a military spouse files an application for a license:

(1) process the application; and

(2) issue a license to a qualified military spouse applicant who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in this state.

(b) A license issued under this section may not be a provisional license and must confer the same rights, privileges, and responsibilities as a license not issued under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3, eff. May 18, 2013.

Text of section as added by Acts 2013, 83rd Leg., R.S., Ch. 348 (H.B. 2254), Sec. 2

For text of section as added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3, see other Sec. 55.005.

Sec. 55.005. APPRENTICESHIP REQUIREMENTS FOR APPLICANT WITH MILITARY EXPERIENCE. (a) Notwithstanding any other law, if an apprenticeship is required for an occupational license issued by a state agency, the state agency shall credit verified military service, training, or education that is relevant to the occupation toward the apprenticeship requirements for the license.

(b) The state agency shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 348 (H.B. 2254), Sec. 2, eff. June 14, 2013.

Sec. 55.006. RENEWAL OF EXPEDITED LICENSE ISSUED TO MILITARY SPOUSE. (a) As soon as practicable after a state agency issues a license under Section 55.005, the state agency shall determine the requirements for the license holder to renew the license.

(b) The state agency shall notify the license holder of the requirements for renewing the license in writing or by electronic means.

(c) A license issued under Section 55.005 has the term established by law or state agency rule, or a term of 12 months from the date the license is issued, whichever term is longer.

Added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3, eff. May 18, 2013.

Sec. 55.007. LICENSE ELIGIBILITY REQUIREMENTS FOR APPLICANTS WITH MILITARY EXPERIENCE. (a) Notwithstanding any other law, a state agency that issues a license shall, with respect to an applicant who is a military service member or military veteran, credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the state agency.

(b) The state agency shall adopt rules necessary to implement this section.

(c) Rules adopted under this section may not apply to an applicant who:

(1) holds a restricted license issued by another jurisdiction; or

(2) has an unacceptable criminal history according to the law applicable to the state agency.

Added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3, eff. May 18, 2013.

## **CHAPTER 56. ACTION AGAINST RECIPIENTS OF STUDENT FINANCIAL ASSISTANCE**

Sec. 56.001. DEFINITIONS. In this chapter:

(1) "Administering entity" means a governmental entity that administers a student loan, student loan repayment, or scholarship program.

(2) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority; and

(B) a person must obtain to practice or engage in a particular business, occupation, or profession.

(3) "Licensing authority" means a department, commission, board, office, or other agency of the state that issues a license.

(4) "Scholarship contract" means an agreement by this

state, an agency of this state, or the United States to make a grant to a person to support the person while attending a public or private institution of higher education or other postsecondary educational establishment in exchange for the person's agreement to perform a service obligation.

(5) "Student loan" means a loan made to a person to support the person while attending a public or private institution of higher education or other postsecondary educational establishment that is:

(A) owed to this state, an agency of this state, or the United States; or

(B) guaranteed by this state, an agency of this state, or the United States.

(6) "Student loan repayment contract" means an agreement by this state, an agency of this state, or the United States to repay all or part of a person's student loan in exchange for the person's agreement to perform a service obligation.

Added by Acts 2001, 77th Leg., ch. 512, Sec. 1, eff. June 11, 2001.

Sec. 56.002. APPLICABILITY. This chapter applies only to the following licensing authorities:

- (1) Texas Board of Chiropractic Examiners;
- (2) State Board of Dental Examiners;
- (3) Texas State Board of Podiatric Medical Examiners; and
- (4) Texas State Board of Medical Examiners.

Added by Acts 2001, 77th Leg., ch. 512, Sec. 1, eff. June 11, 2001.

Sec. 56.003. AUTHORITY TO TAKE ACTION IN EVENT OF DEFAULT OR BREACH. On receipt of information from an administering entity that a person has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform the person's service obligation under the contract, a licensing authority may:

- (1) deny the person's application for a license or license renewal;
- (2) suspend the person's license; or
- (3) take other disciplinary action against the person.

Added by Acts 2001, 77th Leg., ch. 512, Sec. 1, eff. June 11, 2001.

Sec. 56.004. REBUTTABLE PRESUMPTION. A determination by an administering entity that a person has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform the person's service obligation under the contract creates a rebuttable presumption that the person has committed the default or breach.

Added by Acts 2001, 77th Leg., ch. 512, Sec. 1, eff. June 11, 2001.

Sec. 56.005. RESCISSION OF ACTION. A licensing authority may rescind any action taken under Section 56.003 on the receipt of information from an administering entity that the person against whom the action was taken has:

(1) entered into an agreement with the administering entity to:

(A) repay the student loan;

(B) perform the service obligation; or

(C) pay any damages required by the student loan repayment contract or scholarship contract; or

(2) taken other action resulting in the person no longer being in default on the student loan or in breach of the student loan repayment contract or scholarship contract.

Added by Acts 2001, 77th Leg., ch. 512, Sec. 1, eff. June 11, 2001.

Sec. 56.006. REINSTATEMENT OF ACTION. A licensing authority may reinstate any action taken under Section 56.003 and may take other disciplinary action on the receipt of information from an administering entity that the person against whom the action was taken has:

(1) defaulted on or breached an agreement under Section 56.005(1); or

(2) otherwise defaulted on the student loan or breached the student loan repayment contract or scholarship contract.

Added by Acts 2001, 77th Leg., ch. 512, Sec. 1, eff. June 11, 2001.

**CHAPTER 57. REQUIREMENTS FOR LICENSING AGENCIES**

Sec. 57.001. DEFINITIONS. In this chapter:

(1) "License" means a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business, occupation, or profession.

(2) "State agency" means a department, board, bureau, commission, committee, division, office, council, or agency of the state.

Added by Acts 2001, 77th Leg., ch. 1092, Sec. 1, eff. Sept. 1, 2001.

Sec. 57.002. REQUIREMENTS FOR GOVERNING BOARD MEMBERSHIP. A person may not be required to be a member of a private trade association as a precondition to serving as a member of the governing board of a state agency that issues a license or otherwise regulates a business, occupation, or profession.

Added by Acts 2001, 77th Leg., ch. 1092, Sec. 1, eff. Sept. 1, 2001.

**CHAPTER 58. USE OF GENETIC INFORMATION****SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 58.001. DEFINITIONS. In this chapter:

(1) 'DNA' means deoxyribonucleic acid.

(2) 'Family health history' means a history taken by a physician or genetic professional to ascertain genetic or medical information about an individual's family.

(3) 'Genetic characteristic' means a scientifically or medically identifiable genetic or chromosomal variation, composition, or alteration that:

(A) is scientifically or medically believed to:

(i) predispose an individual to a disease, disorder, or syndrome; or

(ii) be associated with a statistically significant increased risk of developing a disease, disorder, or syndrome; and

(B) may or may not be associated with any symptom of an ongoing disease, disorder, or syndrome affecting an individual on the

date the genetic information is obtained regarding the individual.

(4) 'Genetic information' means information that is:

(A) obtained from or based on a scientific or medical determination of the presence or absence in an individual of a genetic characteristic; or

(B) derived from the results of a genetic test performed on, or a family health history obtained from, an individual.

(5) 'Genetic test' means a presymptomatic laboratory test of an individual's genes, gene products, or chromosomes that:

(A) analyzes the individual's DNA, RNA, proteins, or chromosomes; and

(B) is performed to identify any genetic variation, composition, or alteration that is associated with the individual's having a statistically increased risk of:

(i) developing a clinically recognized disease, disorder, or syndrome; or

(ii) being a carrier of a clinically recognized disease, disorder, or syndrome.

The term does not include a blood test, cholesterol test, urine test, or other physical test used for a purpose other than determining a genetic or chromosomal variation, composition, or alteration in a specific individual.

(6) 'Licensing authority' means a state agency or political subdivision that issues an occupational license.

(7) 'Occupational license' means a license, certificate, registration, permit, or other form of authorization required by law or rule that must be obtained by an individual to engage in a particular business or occupation.

(8) 'Political subdivision' means a municipality, county, or special district or authority. The term includes a school district.

(9) 'RNA' means ribonucleic acid.

(10) 'State agency' means a department, board, bureau, commission, committee, division, office, council, or agency in the executive or judicial branch of state government.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

**SUBCHAPTER B. USE AND RETENTION OF GENETIC INFORMATION**

Sec. 58.051. CERTAIN USES OF GENETIC INFORMATION PROHIBITED. A licensing authority may not deny an application for an occupational license, suspend, revoke, or refuse to renew an occupational license, or take any other disciplinary action against a license holder based on the refusal of the license applicant or license holder to:

- (1) submit to a genetic test;
- (2) submit a family health history;
- (3) disclose whether the applicant or holder has submitted to a genetic test; or
- (4) disclose the results of any genetic test to which the applicant or holder has submitted.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

Sec. 58.052. DESTRUCTION OF SAMPLE MATERIAL; EXCEPTIONS. A sample of genetic material obtained from an individual for a genetic test shall be destroyed promptly after the purpose for which the sample was obtained is accomplished unless:

- (1) the sample is retained under a court order;
- (2) the individual authorizes retention of the sample for medical treatment or scientific research;
- (3) the sample was obtained for research that is cleared by an institutional review board and retention of the sample is:
  - (A) under a requirement the institutional review board imposes on a specific research project; or
  - (B) authorized by the research participant with institutional review board approval under federal law; or
- (4) the sample was obtained for a screening test established by the Texas Department of Health under Section 33.011, Health and Safety Code, and performed by that department or a laboratory approved by that department.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

**SUBCHAPTER C. DISCLOSURE OF GENETIC INFORMATION; CONFIDENTIALITY; EXCEPTIONS**

Sec. 58.101. DISCLOSURE OF TEST RESULTS TO INDIVIDUAL TESTED. An individual who submits to a genetic test has the right to know the results of the test. On written request by the individual, the entity that performed the test shall disclose the test results to:

- (1) the individual; or
- (2) a physician designated by the individual.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

Sec. 58.102. CONFIDENTIALITY OF GENETIC INFORMATION. (a) Except as provided by Section 58.103, genetic information is confidential and privileged regardless of the source of the information.

(b) A person who holds genetic information about an individual may not disclose or be compelled to disclose, by subpoena or otherwise, that information unless the disclosure is specifically authorized as provided by Section 58.104.

(c) This section applies to a redisclosure of genetic information by a secondary recipient of the information after disclosure of the information by an initial recipient.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

Sec. 58.103. EXCEPTIONS TO CONFIDENTIALITY. (a) Subject to Subchapter G, Chapter 411, Government Code, genetic information may be disclosed without an authorization under Section 58.104 if the disclosure is:

- (1) authorized under a state or federal criminal law relating to:
  - (A) the identification of individuals; or
  - (B) a criminal or juvenile proceeding, an inquest, or a child fatality review by a multidisciplinary child-abuse team;
- (2) required under a specific order of a state or federal court;
- (3) for the purpose of establishing paternity as authorized under a state or federal law;
- (4) made to provide genetic information relating to a



decedent and the disclosure is made to the blood relatives of the decedent for medical diagnosis; or

(5) made to identify a decedent.

(b) Genetic information may be disclosed without an authorization under Section 58.104 if:

(1) the disclosure is for information from a research study in which the procedure for obtaining informed written consent and the use of the information is governed by national standards for protecting participants involved in research projects, including guidelines issued under 21 C.F.R. Part 50 and 45 C.F.R. Part 46;

(2) the information does not identify a specific individual; and

(3) the information is provided to the Texas Department of Health to comply with Chapter 87, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

Sec. 58.104. AUTHORIZED DISCLOSURE. An individual or the legal representative of an individual may authorize disclosure of genetic information relating to the individual by a written authorization that includes:

(1) a description of the information to be disclosed;

(2) the name of the person to whom the disclosure is made;

and

(3) the purpose for the disclosure.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

Sec. 58.105. CIVIL PENALTY. (a) A person who discloses genetic information in violation of Sections 58.102-58.104 is liable for a civil penalty not to exceed \$10,000.

(b) The attorney general may bring an action in the name of the state to recover a civil penalty under this section, plus reasonable attorney's fees and court costs.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.002, eff. September 1, 2005.

**CHAPTER 59. INFORMATION RELATING TO LICENSING**

Sec. 59.001. CONFIDENTIALITY OF SOCIAL SECURITY NUMBER. The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.001(a), eff. Sept. 1, 2001. Renumbered from Occupations Code Sec. 56.001 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(112), eff. Sept. 1, 2003.

Renumbered from Occupations Code, Section 58.001 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(68), eff. September 1, 2005.

**TITLE 3. HEALTH PROFESSIONS****SUBTITLE A. PROVISIONS APPLYING TO HEALTH PROFESSIONS GENERALLY****CHAPTER 101. HEALTH PROFESSIONS COUNCIL****SUBCHAPTER A. HEALTH PROFESSIONS COUNCIL**

Sec. 101.001. HEALTH PROFESSIONS COUNCIL. In this chapter, "council" means the Health Professions Council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.002. COMPOSITION OF COUNCIL. The council consists of 14 members, with one member appointed by each of the following:

- (1) the Texas Board of Chiropractic Examiners;
- (2) the State Board of Dental Examiners;
- (3) the Texas Optometry Board;
- (4) the Texas State Board of Pharmacy;
- (5) the Texas State Board of Podiatric Medical Examiners;
- (6) the State Board of Veterinary Medical Examiners;
- (7) the Texas Medical Board;
- (8) the Texas Board of Nursing;
- (9) the Texas State Board of Examiners of Psychologists;
- (10) the Texas Funeral Service Commission;
- (11) the entity that regulates the practice of physical

therapy;

- (12) the entity that regulates the practice of occupational therapy;
- (13) the health licensing division of the Department of State Health Services; and
- (14) the governor's office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 2.013, eff. Feb. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 31, eff. September 1, 2007.

Sec. 101.003. OFFICERS. The council shall elect from the council's members a presiding officer and assistant presiding officer to conduct the business of the council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.004. COMPENSATION OF MEMBERS. A member of the council is not entitled to receive compensation or a per diem for the member's service on the council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.005. COUNCIL STAFF. The council may employ staff or designate staff for the council from the employees of the regulatory agencies listed in Section 101.002 as necessary for the council to carry out the council's duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.006. BUDGET. The council shall adopt an annual budget that is funded by a prorated assessment paid by the regulatory agencies listed in Section 101.002.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.007. DUTIES OF COUNCIL. The council shall:

- (1) administer the functions provided by this chapter; and
- (2) provide a means for the regulatory agencies represented on the council to coordinate administrative and regulatory efforts.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. TELEPHONE COMPLAINT SYSTEM**

Sec. 101.051. TELEPHONE COMPLAINT SYSTEM. The council shall establish and operate a toll-free telephone complaint system to provide assistance and referral services for persons making a complaint relating to a health profession regulated by the state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.0515. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to the Texas Funeral Service Commission.

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.02, eff. Sept. 1, 2001.

Sec. 101.052. TELEPHONE LISTING. A state agency that regulates a health profession shall list the toll-free telephone number of the complaint system with the agency's regular telephone number.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.053. CONFIDENTIALITY. A complaint, adverse report, or other information regarding the content of a complaint in the possession of the council or its employee or agent relating to a person initiating a complaint or the license holder who is the subject of the complaint is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than:

- (1) a council employee or agent involved in collecting

complaint information;

(2) the specific council member agency or board responsible for regulating the health profession in which the person who is the subject of the complaint is a license holder; or

(3) an employee or agent of the member agency or board who is involved in the discipline of license holders.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

### **SUBCHAPTER C. TRAINING PROGRAM**

Sec. 101.101. TRAINING PROGRAM. (a) The council shall establish a training program for the governing bodies of state agencies that regulate health professions.

(b) Before a member of a governing body may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of the training program established under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.102. PROGRAM REQUIREMENTS. The training program must provide information to a participant regarding:

(1) the enabling legislation that created the governing body to which the member is appointed;

(2) the programs operated by the state agency governed by the governing body;

(3) the role and functions of that state agency;

(4) the rules of that state agency with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for that state agency;

(6) the results of the most recent formal audit of that state agency;

(7) the requirements of the:

(A) open meetings law, Chapter 551, Government Code;

(B) open records law, Chapter 552, Government Code;

and

(C) administrative procedure law, Chapter 2001, Government Code;

(8) the requirements of the conflict of interest laws and

other laws relating to public officials; and

(9) any applicable ethics policies adopted by that state agency or the Texas Ethics Commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. REPORTING REQUIREMENTS**

Sec. 101.151. ANNUAL REPORT. (a) The council shall prepare an annual report that includes:

(1) a statistical compilation of enforcement actions taken by a regulatory agency listed in Section 101.002;

(2) recommendations for statutory changes to improve the regulation of the health care professions; and

(3) other relevant information and recommendations determined necessary by the council.

(b) The council shall send the report to the governor, the lieutenant governor, and the speaker of the house of representatives not later than February 1 of each year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER E. GROUNDS FOR LICENSE REVOCATION OR DENIAL**

Sec. 101.201. FALSE, MISLEADING, OR DECEPTIVE ADVERTISING. (a) A person may not use advertising that is false, misleading, deceptive, or not readily subject to verification.

(b) False, misleading, or deceptive advertising or advertising not readily subject to verification includes advertising that:

(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensing of a health care professional;

(6) represents that health care insurance deductibles or

copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;

(7) represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(9) represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.203. OVERCHARGING OR OVERTREATING. A health care professional may not violate Section 311.0025, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.011(a), eff. Sept. 1, 2001.

Sec. 101.204. REMEDIES. (a) A violation of this subchapter is subject to action by the appropriate health licensing agency as a ground for revocation or denial of a license.

(b) A violation of Section 101.201 is grounds for action under Section 17.47, 17.58, 17.60, or 17.61, Business & Commerce Code, by the consumer protection division of the office of the attorney general.

(c) A violation of Section 101.201 does not create a private cause of action, including an action for breach of warranty or for an implied contract or warranty for good and workmanlike service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. ENFORCEMENT**

Sec. 101.251. CIVIL PENALTY. (a) A person who violates this

chapter is liable to the state for a civil penalty in an amount not to exceed \$1,000 for each violation. Each day a violation occurs constitutes a separate violation.

(b) The attorney general may initiate an action under this section by filing suit in a district court in Travis County or in the county in which the violation occurred.

(c) The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, reasonable investigative costs, witness fees, and deposition expenses.

(d) A civil penalty recovered under this section shall be deposited in the state treasury.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.252. INJUNCTION. (a) The attorney general or the appropriate health licensing agency may bring an action for an injunction to stop a violation or threatened violation of this chapter.

(b) The attorney general or health licensing agency may recover reasonable expenses incurred in obtaining an injunction under this section, including court costs, reasonable attorney's fees, reasonable investigative costs, witness fees, and deposition expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.253. REMEDIES NOT EXCLUSIVE. The remedies provided by this chapter are in addition to any other remedy provided by law, including rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. OFFICE OF PATIENT PROTECTION**

Sec. 101.301. GENERAL PROVISIONS. (a) In this subchapter:

(1) "Consumers as a class" means five or more individuals whose complaints are of the same or similar regulatory and factual circumstances and issues.



(2) "Licensing agency" means a health occupation regulatory agency that is a member of the council.

(3) "Office" means the office of patient protection.

(b) The council shall establish an office of patient protection within the council to represent the interests of consumers in matters before licensing agencies.

Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.

Sec. 101.302. EXECUTIVE COMMITTEE; DIRECTOR. (a) The governor shall appoint an executive committee consisting of at least three members who are public members of the governing bodies of licensing agencies. The executive committee shall appoint a director for the office. The director shall be responsible for administering the provisions of this subchapter.

(b) The director may not be:

(1) a health care professional licensed or certified by a licensing agency;

(2) financially involved with the provision of health care or with an entity that provides health care, including an entity regulated by a licensing agency;

(3) an officer, employee, or paid consultant of a trade association for a profession that is regulated by a licensing agency;

(4) an officer, employee, or paid consultant of a trade association for an entity regulated by the Texas Department of Insurance; or

(5) required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation related to a person or organization subject to regulation by a licensing agency.

Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.

Sec. 101.303. ADMINISTRATIVE ATTACHMENT TO COUNCIL; REIMBURSEMENT. The office is located in the council but may not interfere with the other duties of the council. The office shall reimburse the council from fees received by the office under Section 101.307 for administrative costs incurred by the council in providing administrative support for the office.

Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.

Sec. 101.304. PUBLIC INFORMATION PROVIDED BY OFFICE; STANDARD COMPLAINT FORM. (a) The office shall provide to the public information about the complaint process at each licensing agency.

(b) The office shall conduct a public awareness campaign to increase awareness of the telephone complaint system under Subchapter B.

(c) Through the use of the Internet and other information and communications media, the office shall provide information to the public in easily understood language regarding the complaint procedures and sanctions processes used by the licensing agencies.

(d) The office, in cooperation with the licensing agencies, shall adopt a standard complaint form that may be used by a member of the public to file a complaint with a licensing agency. Each licensing agency shall accept the form adopted under this section in addition to any other form required by the agency.

Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.

Sec. 101.305. POWERS AND DUTIES OF OFFICE. (a) The office shall:

(1) establish, in consultation with and on the approval of the council, protocols for interaction with licensing agencies;

(2) serve as the ombudsman for consumer complaints at the licensing agencies on the request of an individual consumer;

(3) assist consumers in obtaining information about the status of complaints; and

(4) review the Internet websites of licensing agencies and make recommendations to the agencies on making public information, including information relating to disciplinary actions, understandable to and easily accessible by the public.

(b) The office may:

(1) appear at or present information or testimony to a licensing agency on behalf of consumers as a class; and

(2) appeal the decisions of licensing agencies to the governing body of the appropriate licensing agency on behalf of consumers as a class but not for individual complainants.

(c) The office may not appeal an individual complainant's case before any agency.

(d) The office is entitled to access to:

(1) complaints received by a licensing agency, unless the access would jeopardize an ongoing investigation; and

(2) the public records of a licensing agency and the records of a licensing agency that are filed with the State Office of Administrative Hearings.

(e) The confidentiality requirements that apply to the records of a licensing agency and the sanctions for disclosure of confidential information apply to the office and to information obtained by the office under Subsection (d).

Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.

Sec. 101.306. MONITORING OF AGENCIES. (a) The office shall review and evaluate rules proposed for adoption by the licensing agencies and changes made to the statutes that govern the operation of the agencies and the professions regulated by the agencies.

(b) The office may report to the legislature and recommend to licensing agencies changes in agency rules that, in the office's judgment, would positively affect the interests of consumers.

(c) The office shall recommend changes to the statutes described by Subsection (a) to the Sunset Advisory Commission during the commission's review of the relevant licensing agency.

Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.

Sec. 101.307. FUNDING OF OFFICE. (a) To provide funding sufficient for the office to exercise the powers and duties prescribed by this subchapter:

(1) the initial licensing or registration fee charged by each licensing agency is increased by \$5; and

(2) the renewal fee charged by each licensing agency is increased by \$1 for each year for which the license or registration is renewed.

(b) The fee increases authorized under this section shall be collected in the same manner as the assessment under Section 101.006. The council may spend the fees collected under this section only to

fund the activities of the office under this subchapter.

Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.

#### **SUBCHAPTER H. BILLING**

Sec. 101.351. FAILURE TO PROVIDE BILLING INFORMATION. On the written request of a patient, a health care professional shall provide, in plain language, a written explanation of the charges for professional services previously made on a bill or statement for the patient. This section does not apply to a physician subject to Section 101.352.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.  
Transferred from Occupations Code, Section 101.202 and amended by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 6, eff. September 1, 2007.

#### Sec. 101.352. BILLING POLICIES AND INFORMATION; PHYSICIANS.

(a) A physician shall develop, implement, and enforce written policies for the billing of health care services and supplies. The policies must address:

(1) any discounting of charges for health care services or supplies provided to an uninsured patient that is not covered by a patient's third-party payor, subject to Chapter 552, Insurance Code;

(2) any discounting of charges for health care services or supplies provided to an indigent patient who qualifies for services or supplies based on a sliding fee scale or a written charity care policy established by the physician;

(3) whether interest will be applied to any billed health care service or supply not covered by a third-party payor and the rate of any interest charged; and

(4) the procedure for handling complaints relating to billed charges for health care services or supplies.

(b) Each physician who maintains a waiting area shall post a clear and conspicuous notice of the availability of the policies required by Subsection (a) in the waiting area and in any registration, admission, or business office in which patients are reasonably expected to seek service.

(c) On the request of a patient who is seeking services that

are to be provided on an out-of-network basis or who does not have coverage under a government program, health insurance policy, or health maintenance organization evidence of coverage, a physician shall provide an estimate of the charges for any health care services or supplies. The estimate must be provided not later than the 10th business day after the date of the request. A physician must advise the consumer that:

(1) the request for an estimate of charges may result in a delay in the scheduling and provision of the services;

(2) the actual charges for the services or supplies will vary based on the patient's medical condition and other factors associated with performance of the services;

(3) the actual charges for the services or supplies may differ from the amount to be paid by the patient or the patient's third-party payor; and

(4) the patient may be personally liable for payment for the services or supplies depending on the patient's health benefit plan coverage.

(d) For services provided in an emergency department of a hospital or as a result of an emergent direct admission, the physician shall provide the estimate of charges required by Subsection (c) not later than the 10th business day after the request or before discharging the patient from the emergency department or hospital, whichever is later, as appropriate.

(e) A physician shall provide a patient with an itemized statement of the charges for professional services or supplies not later than the 10th business day after the date on which the statement is requested if the patient requests the statement not later than the first anniversary of the date on which the health care services or supplies were provided.

(f) If a patient requests more than two copies of the statement, a physician may charge a reasonable fee for the third and subsequent copies provided. The Texas Medical Board shall by rule set the permissible fee a physician may charge for copying, processing, and delivering a copy of the statement.

(g) On the request of a patient, a physician shall provide, in plain language, a written explanation of the charges for services or supplies previously made on a bill or statement for the patient.

(h) If a patient overpays a physician, the physician must refund the amount of the overpayment not later than the 30th day

after the date the physician determines that an overpayment has been made. This subsection does not apply to an overpayment subject to Section 1301.132 or 843.350, Insurance Code.

(i) In this section, "physician" means a person licensed to practice in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 6, eff. September 1, 2007.

## CHAPTER 102. SOLICITATION OF PATIENTS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 102.001. SOLICITING PATIENTS; OFFENSE. (a) A person commits an offense if the person knowingly offers to pay or agrees to accept, directly or indirectly, overtly or covertly any remuneration in cash or in kind to or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency.

(b) Except as provided by Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the person:

(1) has previously been convicted of an offense under this section; or

(2) was employed by a federal, state, or local government at the time of the offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.002. REBUTTABLE PRESUMPTION. It is a rebuttable presumption that a person violated Section 102.001 if:

(1) the person refers or accepts a referral of a patient to an inpatient mental health facility or chemical dependency treatment facility;

(2) before the patient is discharged or furloughed from the facility, the person pays the referring person or accepts payment from the facility for outpatient services to be provided by the referring person after the patient is discharged or furloughed from the facility; and

(3) the referring person does not provide the outpatient

services for which payment was made and does not return to the facility the payment received for those services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.003. FEDERAL LAW; CONSTRUCTION. Section 102.001 permits any payment, business arrangement, or payment practice permitted by 42 U.S.C. Section 1320a-7b(b) or any regulation adopted under that law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.004. APPLICABILITY TO ADVERTISING. Section 102.001 does not prohibit advertising, unless the advertising is:

- (1) false, misleading, or deceptive; or
- (2) not readily subject to verification, if the advertising claims professional superiority or the performance of a professional service in a superior manner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.005. APPLICABILITY TO CERTAIN ENTITIES. Section 102.001 does not apply to:

- (1) a licensed insurer;
- (2) a governmental entity, including:
  - (A) an intergovernmental risk pool established under Chapter 172, Local Government Code; and
  - (B) a system as defined by Section 1601.003, Insurance Code;
- (3) a group hospital service corporation;
- (4) a health maintenance organization that reimburses, provides, offers to provide, or administers hospital, medical, dental, or other health-related benefits under a health benefits plan for which it is the payor; or
- (5) a health care collaborative certified under Chapter 848, Insurance Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.542, eff. Sept. 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.05, eff.  
September 28, 2011.

Sec. 102.006. FAILURE TO DISCLOSE; OFFENSE. (a) A person commits an offense if:

(1) the person, in a manner otherwise permitted under Section 102.001, accepts remuneration to secure or solicit a patient or patronage for a person licensed, certified, or registered by a state health care regulatory agency; and

(2) does not, at the time of initial contact and at the time of referral, disclose to the patient:

(A) the person's affiliation, if any, with the person for whom the patient is secured or solicited; and

(B) that the person will receive, directly or indirectly, remuneration for securing or soliciting the patient.

(b) Except as provided by Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the person:

(1) has previously been convicted of an offense under this section; or

(2) was employed by a federal, state, or local government at the time of the offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.007. APPLICABILITY. (a) This subchapter does not apply to a health care information service that:

(1) provides its services to a consumer only by telephone communication on request initiated by the consumer and without charge to the consumer;

(2) provides information about health care providers to enable consumer selection of health care provider services without any direct influence by a health care provider on actual consumer selection of those services;

(3) in response to each consumer inquiry, on a



nondiscriminatory basis, provides information identifying health care providers who substantially meet the consumer's detailed criteria based on consumer responses to standard questions designed to elicit a consumer's criteria for a health care provider, including criteria concerning location of the practice, practice specialties, costs and payment policies, acceptance of insurance coverage, general background and practice experience, and various personal characteristics;

(4) does not attempt through its standard questions for solicitation of consumer criteria or through any other means to lead a consumer to select or consider selection of a particular health care provider for health care provider services;

(5) identifies to a consumer:

(A) all health care providers substantially meeting the consumer's stated criteria who are located within the zip code area in which the consumer elects to obtain services from a health care provider; or

(B) all health care providers substantially meeting the consumer's stated criteria who are located in zip code areas in the closest proximity to the elected zip code area if no health care provider substantially meeting the consumer's criteria is located within that zip code area;

(6) discloses to each consumer the relationship between the health care information service and health care providers participating in its services;

(7) does not provide or represent itself as providing diagnostic or counseling services or assessment of illness or injury and does not make any promise of cure or guarantee of treatment;

(8) does not provide or arrange for transportation of a consumer to or from the location of a health care provider;

(9) does not limit the scope of or direct its advertising or other marketing of its services to a particular health care provider specialty, to a particular segment of the population, or to persons suffering from a particular illness, condition, or infirmity;

(10) charges to and collects a fee from a health care provider participating in its services that is set in advance, is consistent with the fair market value for those information services, and is not based on the potential value of a patient to a health care provider or on the value of or a percentage of the value of a professional service provided by the health care provider;

(11) does not limit participation by a health care provider in its services to a particular health care specialty or to a particular service provided by a health care provider;

(12) does not limit participation by a health care provider in its services for a reason other than:

(A) failure to have a current license without limitation to practice in this state;

(B) failure to maintain professional liability insurance while participating in the service;

(C) significant dissatisfaction of consumers of the health care information service that is documented and can be proved;

(D) a decision by a peer review committee that the health care provider has failed to meet prescribed standards or has not acted in a professional or ethical manner; or

(E) termination of the contract between the health care provider and the health care information service by either party under the terms of the contract;

(13) maintains a customer service department to handle complaints and answer questions for consumers;

(14) maintains a customer follow-up system to monitor consumer satisfaction; and

(15) does not use, maintain, distribute, or provide for any purpose any information that will identify a particular consumer, such as a name, address, or telephone number, obtained from a consumer seeking its services other than for the purposes of:

(A) providing the information to the health care provider with whom an appointment is made;

(B) performing administrative functions necessary to operate the health care information service;

(C) providing directly to a consumer, at the request of that consumer on that consumer's initial contact with the health care information service, information relating to health-related support groups or providers of health-care-related services or equipment within the area of interest requested by the consumer; or

(D) conducting analytical research on data obtained through provision of services and preparing statistical reports that generally analyze that data but do not in any manner identify one or more specific consumers.

(b) In this section:

(1) "Health care information service" means a person who

provides information to a consumer regarding health care providers that can enable the consumer to select one or more health care providers to furnish health care services.

(2) "Health care provider" means a person licensed, certified, or registered by a state health care regulatory agency other than:

(A) a mental health facility as defined by Section 571.003, Health and Safety Code; or

(B) a treatment facility as defined by Section 464.001, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.008. DISCIPLINARY ACTION. A violation of Section 102.001 or 102.006 is grounds for disciplinary action by the regulatory agency that issued a license, certification, or registration to the person who committed the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.009. INJUNCTION. (a) The attorney general or the appropriate district or county attorney, in the name of the state, may institute and conduct an action in a district court of Travis County or of a county in which any part of the violation occurs for an injunction or other process against a person who is violating this subchapter.

(b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.010. CIVIL PENALTIES. (a) A person who violates this subchapter is subject to a civil penalty of not more than \$10,000 for each day of violation and each act of violation. In determining the amount of the civil penalty, the court shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation, including the nature,

circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the person; and

(5) the amount necessary to deter future violations.

(b) The attorney general or the appropriate district or county attorney, in the name of the state, may institute and conduct an action authorized by this section in a district court of Travis County or of a county in which any part of the violation occurs.

(c) A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.011. SUIT FOR INJUNCTIVE RELIEF OR ASSESSMENT OF CIVIL PENALTY. (a) The party bringing a suit under this subchapter may:

(1) combine a suit to assess and recover civil penalties with a suit for injunctive relief; or

(2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(b) The party bringing the suit may recover reasonable expenses incurred in obtaining civil penalties, injunctive relief, or both, including investigation costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses.

(c) The civil penalty and injunction authorized by this subchapter are in addition to any other civil, administrative, or criminal action provided by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. HEALING ARTS**

Sec. 102.051. SOLICITING PATIENTS; OFFENSE. (a) A person commits an offense if the person:

(1) practices the art of healing with or without the use of medicine; and

(2) employs or agrees to employ, pays or promises to pay,

or rewards or promises to reward another for soliciting or securing a patient or patronage.

(b) A person commits an offense if the person accepts or agrees to accept anything of value for soliciting or securing a patient or patronage for a person who practices the art of healing with or without the use of medicine.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$200. Each violation of this section is a separate offense.

(d) For purposes of this section, a person who practices the art of healing includes a masseur and an optometrist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.052. APPLICABILITY TO PHYSICIANS. This subchapter does not apply to a practitioner of medicine subject to regulation under Subtitle B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.053. EXCEPTION FOR CERTAIN ADVERTISING. Section 102.051 does not prohibit:

- (1) placement in a newspaper of an advertisement of the person's profession, business, or place of business; or
- (2) advertisement by handbill and payment for services in distributing the handbill.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.054. ACCESSIBILITY AND USE OF WITNESS TESTIMONY. (a) A person is not exempt from giving testimony in a proceeding to enforce Section 102.051.

(b) The testimony a person gives in a proceeding to enforce Section 102.051 may not be used against that person in any criminal action or proceeding. A criminal action or proceeding may not be brought against a person because of the testimony given by that person in a proceeding to enforce Section 102.051.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**CHAPTER 103. RIGHT TO OBJECT TO PARTICIPATION IN ABORTION PROCEDURE**

Sec. 103.001. RIGHT TO OBJECT. A physician, nurse, staff member, or employee of a hospital or other health care facility who objects to directly or indirectly performing or participating in an abortion procedure may not be required to directly or indirectly perform or participate in the procedure.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 103.002. DISCRIMINATION PROHIBITED. (a) A hospital or health care facility may not discriminate against a physician, nurse, staff member, or employee, or an applicant for one of those positions, who refuses to perform or participate in an abortion procedure.

(b) A hospital or health care facility may not discriminate against a physician, nurse, staff member, or employee because of the person's willingness to participate in an abortion procedure at another facility.

(c) An educational institution may not discriminate against an applicant for admission or employment as a student, intern, or resident because of the applicant's attitude concerning abortion.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 103.003. REMEDIES. A person whose rights under this chapter are violated may sue a hospital, health care facility, or educational institution in district court in the county where the hospital, facility, or institution is located for:

- (1) an injunction against any further violation;
- (2) appropriate affirmative relief, including admission or reinstatement of employment with back pay plus 10 percent interest; and
- (3) any other relief necessary to ensure compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 103.004. DUTY OF CERTAIN PRIVATE ENTITIES TO MAKE FACILITIES AVAILABLE. A private hospital or private health care facility is not required to make its facilities available for the performance of an abortion unless a physician determines that the life of the mother is immediately endangered.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### CHAPTER 104. HEALING ART PRACTITIONERS

Sec. 104.001. SHORT TITLE. This chapter may be cited as the Healing Art Identification Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 104.002. HEALING ART. The healing art includes any system, treatment, operation, diagnosis, prescription, or practice to ascertain, cure, relieve, adjust, or correct a human disease, injury, or unhealthy or abnormal physical or mental condition.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 104.003. REQUIRED IDENTIFICATION. (a) A person subject to this section who uses the person's name on a written or printed professional identification, including a sign, pamphlet, stationery, or letterhead, or who uses the person's signature as a professional identification shall designate as required by this section the healing art the person is licensed to practice.

(b) A person who is licensed by the Texas State Board of Medical Examiners and holds a doctor of medicine degree shall use:

- (1) physician or surgeon, M.D.;
- (2) doctor, M.D.; or
- (3) doctor of medicine, M.D.

(c) A person who is licensed by the Texas State Board of Medical Examiners and holds a doctor of osteopathy degree shall use:

- (1) physician or surgeon, D.O.;
- (2) osteopathic physician or surgeon;

- (3) doctor, D.O.;
- (4) doctor of osteopathy;
- (5) doctor of osteopathic medicine;
- (6) osteopath; or
- (7) D.O.

(d) A person who is licensed by the State Board of Dental Examiners shall use:

- (1) dentist;
- (2) doctor, D.D.S.;
- (3) doctor of dental surgery;
- (4) D.D.S.; or
- (5) doctor of dental medicine, D.M.D.

(e) A person who is licensed by the Texas Board of Chiropractic Examiners shall use:

- (1) chiropractor;
- (2) doctor, D.C.;
- (3) doctor of chiropractic; or
- (4) D.C.

(f) A person who is licensed by the Texas Optometry Board shall use:

- (1) optometrist;
- (2) doctor, optometrist;
- (3) doctor of optometry; or
- (4) O.D.

(g) A person who is licensed by the Texas State Board of Podiatric Medical Examiners shall use:

- (1) chiropodist;
- (2) doctor, D.S.C.;
- (3) doctor of surgical chiropody;
- (4) D.S.C.;
- (5) podiatrist;
- (6) doctor, D.P.M.;
- (7) doctor of podiatric medicine; or
- (8) D.P.M.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 104.004. OTHER PERSONS USING TITLE "DOCTOR". In using the title "doctor" as a trade or professional asset or on any manner of



professional identification, including a sign, pamphlet, stationery, or letterhead, or as a part of a signature, a person other than a person described by Section 104.003 shall designate the authority under which the title is used or the college or honorary degree that gives rise to the use of the title.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 104.005. ENFORCEMENT. (a) On the request of a healing art licensing board listed in Section 104.003, the district or county attorney shall file and prosecute appropriate judicial proceedings in the name of the state against a person who violates Section 104.003.

(b) The district or county attorney shall file the proceeding in the district court of the county in which the violation occurs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 104.006. APPLICABILITY TO ESTABLISHED CHURCH. This chapter does not affect the use of the principles or teachings of an established church in ministering, without the use of any drug or material remedy, to the sick or suffering by prayer if:

- (1) sanitary and quarantine laws are complied with; and
- (2) the person ministering or offering to minister does not maintain an office, other than to exercise the principles or teachings of the church of which the person is a bona fide member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 104.007. PENALTIES. (a) A person who violates this chapter commits an offense. An offense under this section is a misdemeanor punishable by:

- (1) on conviction of a first offense, a fine of \$100;
- (2) on conviction of a second offense, a fine of \$500; and
- (3) on conviction of a third offense:
  - (A) a fine of \$1,000; or
  - (B) revocation of the person's license to practice the healing art.

(b) On conviction of the person, the district court shall

notify the licensing board that issued the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**CHAPTER 105. UNPROFESSIONAL CONDUCT BY HEALTH CARE PROVIDER**

Sec. 105.001. DEFINITION. In this chapter, "health care provider" means a person who furnishes services under a license, certificate, registration, or other authority issued by this state or another state to diagnose, prevent, alleviate, or cure a human illness or injury.

Added by Acts 2001, 77th Leg., ch. 1033, Sec. 4, eff. Sept. 1, 2001.

Sec. 105.002. UNPROFESSIONAL CONDUCT. (a) A health care provider commits unprofessional conduct if the health care provider, in connection with the provider's professional activities:

(1) knowingly presents or causes to be presented a false or fraudulent claim for the payment of a loss under an insurance policy;

(2) knowingly prepares, makes, or subscribes to any writing, with intent to present or use the writing, or to allow it to be presented or used, in support of a false or fraudulent claim under an insurance policy; or

(3) knowingly directs or requires a patient to obtain health care goods or services from a niche hospital in which the health care provider or an immediate family member of the provider has a financial interest, unless the provider:

(A) discloses to the patient, in writing, that the provider or the provider's family member has a financial interest in the niche hospital; and

(B) informs the patient that the patient has the option of using an alternative health care facility.

(b) In addition to other provisions of civil or criminal law, commission of unprofessional conduct under Subsection (a) constitutes cause for the revocation or suspension of a provider's license, permit, registration, certificate, or other authority or other disciplinary action.

(c) Subsection (a)(3) does not apply to a financial interest in publicly available shares of a registered investment company, such as a mutual fund, that owns publicly traded equity securities or debt

obligations issued by a niche hospital or an entity that owns the niche hospital.

(d) In this section:

(1) "Diagnosis-related group" means the classification system mandated by Medicare regulations for reimbursement purposes that groups patients according to principal diagnosis, presence of a surgical procedure, age, presence or absence of significant complications, and other relevant criteria.

(2) "Niche hospital" means a hospital that:

(A) classifies at least two-thirds of the hospital's Medicare patients or, if data is available, all patients:

(i) in not more than two major diagnosis-related groups; or

(ii) in surgical diagnosis-related groups;

(B) specializes in one or more of the following areas:

(i) cardiac;

(ii) orthopedics;

(iii) surgery; or

(iv) women's health; and

(C) is not:

(i) a public hospital;

(ii) a hospital for which the majority of inpatient claims are for major diagnosis-related groups relating to rehabilitation, psychiatry, alcohol and drug treatment, or children or newborns; or

(iii) a hospital with fewer than 10 claims per bed per year.

Added by Acts 2001, 77th Leg., ch. 1033, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 836 (S.B. 872), Sec. 1, eff. September 1, 2005.

**CHAPTER 106. GENERAL REGULATORY AUTHORITY REGARDING HEALTH CARE  
PRACTITIONERS' USE OF INTERNET**

Sec. 106.001. EFFECT OF INTERNET ACTIVITY. (a) In this section:

(1) "Licensing authority" means a department, commission, board, office, or other agency of the state or a political

subdivision of the state that regulates activities and persons under this title.

(2) "Internet" has the meaning assigned by Section 2002.001, Government Code.

(b) The fact that an activity occurs through the use of the Internet does not affect a licensing authority's power to regulate an activity or person that would otherwise be regulated under this title.

Added by Acts 2001, 77th Leg., ch. 286, Sec. 1, eff. May. 23, 2001. Renumbered from Occupations Code Sec. 105.001 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(113), eff. Sept. 1, 2003.

## **CHAPTER 107. INTRACTABLE PAIN TREATMENT**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 107.001. SHORT TITLE. This chapter may be cited as the Intractable Pain Treatment Act.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

Sec. 107.002. DEFINITIONS. In this chapter:

(1) 'Board' means the Texas State Board of Medical Examiners.

(2) 'Intractable pain' means a state of pain for which:

(A) the cause of the pain cannot be removed or otherwise treated; and

(B) in the generally accepted course of medical practice, relief or cure of the cause of the pain:

(i) is not possible; or

(ii) has not been found after reasonable efforts.

(3) 'Physician' means a physician licensed by the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

Sec. 107.003. NONAPPLICABILITY OF CHAPTER TO CERTAIN CHEMICALLY DEPENDENT PERSONS. Except as provided by Subchapter C, this chapter

does not apply to a person being treated by a physician for chemical dependency because of the person's use of a dangerous drug or controlled substance.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

**SUBCHAPTER B. PRESCRIPTION AND ADMINISTRATION OF DANGEROUS DRUGS AND CONTROLLED SUBSTANCES**

Sec. 107.051. AUTHORITY TO PRESCRIBE OR ADMINISTER DANGEROUS DRUG OR CONTROLLED SUBSTANCE. Notwithstanding any other law, a physician may prescribe or administer a dangerous drug or controlled substance to a person in the course of the physician's treatment of the person for intractable pain.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

Sec. 107.052. LIMITATIONS ON PRESCRIPTION OR ADMINISTRATION OF DANGEROUS DRUG OR CONTROLLED SUBSTANCE. This chapter does not authorize a physician to prescribe or administer to a person a dangerous drug or controlled substance:

(1) for a purpose that is not a legitimate medical purpose as defined by the board; and

(2) if the physician knows or should know the person is using drugs for a nontherapeutic purpose.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

Sec. 107.053. LIMITATION ON AUTHORITY OF HOSPITAL OR OTHER HEALTH CARE FACILITY REGARDING USE OF DANGEROUS DRUG OR CONTROLLED SUBSTANCE. A hospital or other health care facility may not prohibit or restrict the use of a dangerous drug or controlled substance prescribed or administered by a physician who holds staff privileges at the hospital or facility for a person diagnosed and treated by a physician for intractable pain.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

**SUBCHAPTER C. TREATMENT OF CERTAIN PATIENTS**

Sec. 107.101. PATIENT. In this subchapter, "patient" includes a person who:

- (1) is currently abusing a dangerous drug or controlled substance;
- (2) is not currently abusing such a drug or substance but has a history of such abuse; or
- (3) lives in an environment that poses a risk for misuse or diversion to illegitimate use of such a drug or substance.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

Sec. 107.102. AUTHORITY TO TREAT. This chapter authorizes a physician to treat a patient with an acute or chronic painful medical condition with a dangerous drug or controlled substance to relieve the patient's pain using appropriate doses, for an appropriate length of time, and for as long as the pain persists.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

Sec. 107.103. DUTY TO MONITOR PATIENT. A physician who treats a patient under this subchapter shall monitor the patient to ensure that a prescribed dangerous drug or controlled substance is used only for the treatment of the patient's painful medical condition.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

Sec. 107.104. DOCUMENTATION AND CONSULTATION REQUIRED. To ensure that a prescribed dangerous drug or controlled substance is not diverted to another use and to ensure the appropriateness of the treatment of the patient's targeted symptoms, the physician shall:

(1) specifically document:

- (A) the understanding between the physician and patient about the patient's prescribed treatment;
- (B) the name of the drug or substance prescribed;
- (C) the dosage and method of taking the prescribed drug or substance;
- (D) the number of dose units prescribed; and
- (E) the frequency of prescribing and dispensing the drug or substance; and

(2) consult with a psychologist, psychiatrist, expert in the treatment of addictions, or other health care professional, as appropriate.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER D. DISCIPLINARY ACTION**

Sec. 107.151. DISCIPLINARY ACTION PROHIBITED. A physician is not subject to disciplinary action by the board for prescribing or administering a dangerous drug or controlled substance in the course of treatment of a person for intractable pain.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

Sec. 107.152. AUTHORITY OF BOARD TO REVOKE OR SUSPEND LICENSE.

(a) This chapter does not affect the authority of the board to revoke or suspend the license of a physician who:

(1) prescribes, administers, or dispenses a drug or treatment:

(A) for a purpose that is not a legitimate medical purpose as defined by the board; and

(B) that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed;

(2) fails to keep a complete and accurate record of the purchase and disposal of:

(A) a drug listed in Chapter 481, Health and Safety Code; or

(B) a controlled substance scheduled in the

Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

(3) writes a false or fictitious prescription for:

(A) a dangerous drug as defined by Chapter 483, Health and Safety Code;

(B) a controlled substance listed in a schedule under Chapter 481, Health and Safety Code; or

(C) a controlled substance scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or

(4) prescribes, administers, or dispenses in a manner inconsistent with public health and welfare:

(A) a dangerous drug as defined by Chapter 483, Health and Safety Code;

(B) a controlled substance listed in a schedule under Chapter 481, Health and Safety Code; or

(C) a controlled substance scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) For purposes of Subsection (a)(2), the physician's records must include a record of:

(1) the date of purchase;

(2) the sale or disposal of the drug or substance by the physician;

(3) the name and address of the person receiving the drug or substance; and

(4) the reason for the disposal or dispensing of the drug or substance to the person.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER E. PAIN TREATMENT REVIEW COMMITTEE**

#### **CHAPTER 108. LICENSE SUSPENSION OR REVOCATION REQUIRED FOR CERTAIN DRUG FELONY CONVICTIONS**

Sec. 108.001. DEFINITION. In this chapter, "board" means the Texas State Board of Medical Examiners.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.003(a), eff. Sept. 1, 2003.



Sec. 108.002. LICENSE SUSPENSION ON CONVICTION; REVOCATION.

(a) The board shall suspend a license issued by the board if it is determined at an administrative hearing that the license holder has been convicted of a felony under Chapter 481 or 483, Health and Safety Code, or Section 485.032 of that code.

(b) A hearing under Subsection (a) shall be conducted under Chapter 2001, Government Code.

(c) The board shall revoke the license of a person whose license is suspended under Subsection (a) on the person's final conviction.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.003(a), eff. Sept. 1, 2003.

Sec. 108.003. LICENSE REINSTATEMENT OR REISSUANCE. (a) The board may not reinstate or reissue a license suspended or revoked under Section 108.002 unless an express determination is made that the reinstatement or reissuance of the license is in the best interests of the public and the person whose license was suspended or revoked.

(b) The board must base its determination under Subsection (a) on substantial evidence contained in an investigative report.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.003(a), eff. Sept. 1, 2003.

**CHAPTER 109. RELEASE OF SEX OFFENDER TREATMENT INFORMATION**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 109.001. DEFINITIONS. In this chapter:

(1) "Administration of criminal justice" and "criminal justice agency" have the meanings assigned by Article 60.01, Code of Criminal Procedure.

(2) "Local law enforcement authority" has the meaning assigned by Article 62.001, Code of Criminal Procedure.

(3) "Sex offender" has the meaning assigned by Section 9(m), Article 42.12, Code of Criminal Procedure.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.004(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1008 (H.B. 867), Sec. 2.10, eff. September 1, 2005.

Sec. 109.002. PURPOSE OF RELEASING INFORMATION. A person who is required by this chapter to release or obtain information may do so only for the administration of criminal justice.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.004(a), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 6, Sec. 4, eff. April 10, 2003.

Sec. 109.003. IMMUNITY FROM DAMAGES. A person who releases or obtains information as authorized by this chapter is not liable for damages arising from the release of the information.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.004(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER B. RELEASE OF TREATMENT INFORMATION**

Sec. 109.051. RELEASE BY PERSONS PROVIDING MENTAL HEALTH OR MEDICAL SERVICES. (a) Information concerning the treatment of a sex offender may be released by a person who:

(1) is licensed or certified in this state to provide mental health or medical services, including a:

- (A) physician;
- (B) psychiatrist;
- (C) psychologist;
- (D) licensed professional counselor;
- (E) licensed marriage and family therapist; or
- (F) social worker; and

(2) while licensed or certified, provides or provided mental health or medical services for the rehabilitation of sex offenders.

(b) Notwithstanding Subtitle B, Title 3, of this code or Chapter 611, Health and Safety Code, a person described by Subsection

(a), on request or in the normal course of business, shall release information concerning the treatment of a sex offender to:

- (1) another person described by Subsection (a);
- (2) a criminal justice agency; or
- (3) a local law enforcement authority.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.004(a), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 6, Sec. 4, eff. April 10, 2003.

Sec. 109.052. RELEASE BY CRIMINAL JUSTICE AGENCY. A criminal justice agency, on request or in the normal course of official business, shall release information concerning the treatment of a sex offender to:

- (1) another criminal justice agency;
- (2) a local law enforcement authority; or
- (3) a person described by Section 109.051(a).

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.004(a), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 6, Sec. 4, eff. April 10, 2003.

Sec. 109.053. RELEASE BY LOCAL LAW ENFORCEMENT AUTHORITY. A local law enforcement authority, on request or in the normal course of official business, shall release information concerning the treatment of a sex offender to:

- (1) another local law enforcement authority;
- (2) a criminal justice agency; or
- (3) a person described by Section 109.051(a).

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.004(a), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 6, Sec. 4, eff. April 10, 2003.

Sec. 109.054. TREATMENT INFORMATION. In this subchapter, information concerning the treatment of a sex offender includes:

- (1) criminal history;
- (2) the discharge summary;

- (3) the official offense report;
- (4) progress reports;
- (5) test results;
- (6) victim statements; and
- (7) any other information necessary for the treatment of the sex offender.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 2, eff. September 1, 2005.

## CHAPTER 110. COUNCIL ON SEX OFFENDER TREATMENT

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 110.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Council" means the Council on Sex Offender Treatment.
- (3) "Department" means the Texas Department of Health.
- (3-a) "Executive director" means the executive director of the council.
- (4) Repealed by Acts 2005, 79th Leg., Ch. 1089, Sec. 31(1), eff. September 1, 2005.
- (5) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1219, Sec. 11, eff. September 1, 2007.
- (6) "Sex offender" means a person who:
  - (A) is convicted of committing or adjudicated to have committed a sex crime under state or federal law;
  - (B) is awarded deferred adjudication for a sex crime under state or federal law; or
  - (C) is convicted of, adjudicated to have committed, or awarded deferred adjudication for an offense that is based on sexually motivated conduct.
- (7) "Sex offender treatment provider" means a person, licensed by the council and recognized based on training and experience to provide assessment and treatment to adult sex offenders or juveniles with sexual behavioral problems who have been convicted, adjudicated, awarded deferred adjudication, or referred by a state agency or a court, and licensed in this state to practice as a physician, psychiatrist, psychologist, psychological associate, provisionally licensed psychologist, licensed professional counselor, licensed professional counselor intern, licensed marriage and family

therapist, licensed marriage and family associate, licensed clinical social worker, licensed master social worker under a clinical supervision plan approved by the Texas State Board of Social Worker Examiners, or advanced practice nurse recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner, who provides mental health or medical services for rehabilitation of sex offenders.

(8) "Sexually motivated conduct" has the meaning assigned by Section 841.002, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 31(1), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 11, eff. September 1, 2007.

Sec. 110.002. APPLICATION OF CHAPTER. (a) This chapter does not apply to a person licensed to practice in this state who provides adjunct therapy.

(b) This chapter does not apply to the prescribing of a drug, remedy, or clinical supply by a physician licensed under Subtitle B.

Added by Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 2, eff. September 1, 2007.

#### **SUBCHAPTER B. COUNCIL ON SEX OFFENDER TREATMENT**

Sec. 110.051. COUNCIL; MEMBERSHIP. (a) The council is within the department.

(b) The council consists of seven part-time members, appointed by the governor with the advice and consent of the senate as follows:

(1) three representatives of the public; and

(2) four members each of whom meets the requirements for a license as a sex offender treatment provider under this chapter.

(c) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 4, eff. September 1, 2005.

Sec. 110.052. PUBLIC MEMBERSHIP ELIGIBILITY. A person is not eligible for appointment as a public member if:

(1) the person meets the requirements for a license as a sex offender treatment provider under this chapter; or

(2) the person or the person's spouse:

(A) is registered, certified, or licensed by an occupational regulatory agency in the field of sex offender treatment;

(B) is employed by or participates in the management of a business entity or other organization regulated by the council or receiving funds from the council;

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

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

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 5, eff. September 1, 2005.

Sec. 110.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members

and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) An officer, employee, or paid consultant of a Texas trade association in the field of sex offender treatment may not be a member of the council and may not be an employee of the council who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of sex offender treatment may not be a member of the council and may not be an employee of the council who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

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

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.054. TERMS. Members of the council serve staggered six-year terms. The terms of two or three members expire on February 1 of each odd-numbered year.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.004(b), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 6, eff. September 1, 2005.

Sec. 110.055. PRESIDING OFFICER. The governor shall designate a member of the council as the presiding officer of the council to

serve in that capacity at the pleasure of the governor.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.056. GROUND FOR REMOVAL. (a) It is a ground for removal from the council that a member:

(1) does not have at the time of appointment the qualifications required by Sections 110.051(b) and 110.052;

(2) does not maintain during service on the council the qualifications required by Sections 110.051(b) and 110.052;

(3) does not complete the training program as required by Section 110.059;

(4) violates a prohibition established by Section 110.053;

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

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

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

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

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.057. MEETINGS. (a) The council shall meet at least four times each year.

(b) The council may hold additional meetings at the call of the



presiding officer or as provided by council rule.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.058. COMPENSATION; REIMBURSEMENT. (a) A council member may not receive compensation for performing the duties of the council.

(b) A council member is entitled to reimbursement for travel and other necessary expenses incurred in performing official duties at the rate provided in the General Appropriations Act for state employees.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.059. TRAINING. (a) To be eligible to take office as a member of the council, a person appointed to the council must complete at least one course of a training program that complies with this section. If the person has not completed the training course at the time of the appointment, the person must complete the training program not later than six months after the date of appointment.

(b) The training program must provide information to a person regarding:

- (1) the enabling legislation that created the council;
- (2) the programs operated by the council;
- (3) the role and functions of the council;
- (4) the rules of the council, with an emphasis on the rules relating to disciplinary and investigatory authority;
- (5) the current budget for the council;
- (6) the results of the most recent formal audit of the council;
- (7) the requirements of Chapters 551, 552, and 2001, Government Code;
- (8) the requirements of the conflict of interest laws and other laws relating to public officials; and
- (9) any applicable ethics policies adopted by the council or the Texas Ethics Commission.

(c) A person appointed to the council is entitled to

reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act, as if the person were a member of the council.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER C. EXECUTIVE DIRECTOR AND STAFF**

Sec. 110.101. EXECUTIVE DIRECTOR. The commissioner of public health shall employ an executive director, chosen with the advice and consent of the council, who is the executive head of the council and performs its administrative duties.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.102. STAFF. The executive director shall employ staff necessary to administer the council's duties.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.103. DIVISION OF RESPONSIBILITIES. The council shall develop and implement policies that clearly separate the policymaking responsibilities of the council and the management responsibilities of the executive director and the staff of the council.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.104. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide, as often as necessary, to council members and employees information regarding their:

- (1) qualifications for office or employment under this chapter; and
- (2) responsibilities under applicable laws relating to

standards of conduct for state officers or employees.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER D. COUNCIL POWERS AND DUTIES**

Sec. 110.151. TREATMENT FOR SEX OFFENDERS. The council shall:

- (1) develop treatment strategies for sex offenders by evaluating in-state and out-of-state programs for sex offender treatment;
- (2) set standards for treatment of sex offenders that must be met by sex offender treatment providers to be eligible for a license under this chapter; and
- (3) recommend to licensing and regulatory boards and to the directors of current programs methods of improving programs to meet council standards.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 7, eff. September 1, 2005.

Sec. 110.152. LIST AND LICENSE REQUIREMENTS. The council shall:

- (1) maintain a list of sex offender treatment providers under Section 110.161; and
- (2) develop and implement by rule under Subchapter G:
  - (A) license requirements; and
  - (B) procedures for sex offender treatment providers.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 8, eff. September 1, 2005.

Sec. 110.153. COLLECTION AND DISSEMINATION OF INFORMATION. The

council shall collect and disseminate information about available sex offender treatment programs to:

- (1) judicial officers;
- (2) community supervision or parole workers;
- (3) appropriate state and municipal agencies; and
- (4) the public.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.154. DISTRIBUTION OF MONEY. The council shall distribute money appropriated to the council by the legislature for that purpose to political subdivisions, private organizations, or other persons to be used for the development, operation, or evaluation of sex offender treatment programs.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.155. AGENCY ASSISTANCE. The council shall advise and assist agencies in coordinating procedures to provide treatment services. The treatment services may include community-based programs.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.156. ADJUDICATION INFORMATION. (a) The council shall establish a uniform method of obtaining adjudication information. The uniform method must require that:

- (1) a complete set of fingerprints, the complete name of the person being investigated, or other information necessary to conduct a criminal history background check be submitted to the Department of Public Safety or another law enforcement agency; and
- (2) if fingerprints are submitted, the fingerprints be submitted to the Federal Bureau of Investigation for further information if a relevant disqualifying record or other substantive information is not obtained from a state or local law enforcement

agency.

(b) A law enforcement agency may provide to the council information about the conviction or deferred adjudication of a person being investigated only if the information:

(1) is relevant to the person's current or proposed registration; and

(2) was collected in accordance with this section.

(c) The council is not entitled to adjudication information that is not relevant. Adjudication information is relevant only if it relates to a conviction or deferred adjudication for:

(1) a sexual offense;

(2) murder, assault, battery, or any other offense involving personal injury or threat to another person; or

(3) a felony not listed in Subdivision (1) or (2).

(d) All adjudication information received by the council is privileged information and for the exclusive use of the council. The information may be released or otherwise disclosed to any other person or agency only:

(1) on court order; or

(2) with the consent of the person being investigated.

(e) The council by rule shall establish a method to collect and destroy adjudication information after the council makes a decision on the eligibility of the person for registration who is the subject of the information. The council shall destroy the adjudication information not later than the first anniversary of the date of the council's decision on the person's eligibility for registration.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.157. CONTINUING EDUCATION PROGRAMS. The council shall design and conduct continuing education programs for sex offender treatment providers.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.158. RULEMAKING. (a) The council may adopt rules consistent with this chapter. In adopting rules, the council shall:

(1) consider the rules and procedures of the board and the department; and

(2) adopt procedural rules consistent with similar existing rules and procedures of the board or the department.

(b) A sex offender treatment provider licensed under this chapter is subject to the rules of the council, in relation to the person's provision of sex offender treatment, rather than the rules of the licensing entity by which the provider is licensed or otherwise regulated. A sex offender treatment provider who acts in conformance with the rules, policies, and procedures of the council is not subject to any administrative sanction against the provider by the licensing entity by which the provider is licensed or otherwise regulated.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 3, eff. September 1, 2007.

Sec. 110.159. COLLECTION OF FEES. (a) The council shall:

(1) charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and

(2) send all fees collected under this section to the department.

(b) Fees charged and collected by the council under this section may include:

(1) sex offender treatment provider license and renewal fees;

(2) training fees;

(3) publication fees; and

(4) fees for providing continuing education and other services to sex offender treatment providers.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 9, eff. September 1, 2005.

Sec. 110.160. BIENNIAL REPORT. (a) The council shall file biennially a report with the governor, lieutenant governor, and speaker of the house of representatives about the activities of the council. The council shall include in the report:

- (1) any recommendation made under Section 110.151; and
- (2) any other recommendation the council considers appropriate.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.161. PUBLICATION OF LIST. (a) The council shall prepare annually a list of sex offender treatment providers.

(b) The council by rule shall establish procedures for developing and distributing the list of sex offender treatment providers.

(c) The council, on request, shall make the list of sex offender treatment providers available on payment of a reasonable fee in an amount sufficient to cover the costs of printing and distribution.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. [2036](#)), Sec. 10, eff. September 1, 2005.

Sec. 110.162. CONFIDENTIALITY REQUIRED. The council and the staff and consultants employed by the council shall keep confidential any record relating to the identity, examination, diagnosis, prognosis, or treatment of a sex offender.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.163. GRANTS AND DONATIONS. The council may apply for and accept on behalf of the state a grant or donation from any source to be used by the council to perform its duties.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.164. DYNAMIC RISK ASSESSMENT TOOL. (a) The council shall develop or adopt a dynamic risk assessment tool to be used in determining the likelihood that a person who is confined in a penal institution and will become subject to Chapter 62, Code of Criminal Procedure, on being released from the institution will commit an offense described by Article 62.001(5), Code of Criminal Procedure, after being released from the institution.

(b) The dynamic risk assessment tool must enable the assignment to a person of a risk level of low, medium, or high.

Added by Acts 2007, 80th Leg., R.S., Ch. 1308 (S.B. 909), Sec. 46, eff. June 15, 2007.

#### **SUBCHAPTER E. INTERAGENCY ADVISORY COMMITTEE**

Sec. 110.201. INTERAGENCY ADVISORY COMMITTEE. The interagency advisory committee shall advise the council on administering the council's duties under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.202. ADVISORY COMMITTEE MEMBERSHIP. (a) The executive head of each of the following agencies or that person's designated representative shall serve as a member of the interagency advisory committee:

- (1) Texas Department of Criminal Justice;
- (2) Texas Juvenile Probation Commission;
- (3) Texas Department of Mental Health and Mental

Retardation;

- (4) Texas Youth Commission;
- (5) Sam Houston State University;
- (6) Department of Protective and Regulatory Services; and
- (7) Texas Council of Community Mental Health and Mental

Retardation Centers.

(b) The director of each of the following divisions of a state



agency or that person's designated representative shall serve as a member of the interagency advisory committee:

(1) the criminal justice division of the governor's office;  
and

(2) the sexual assault prevention and crisis services division of the office of the attorney general.

(c) The council may appoint additional members to the interagency advisory committee as the council determines is necessary. An additional member appointed by the council must be a representative of a public or private nonprofit entity that has a demonstrated interest in improving the treatment of sex offenders.

(d) If the executive head of a state agency or the director of a division designates a representative as a member of the interagency advisory committee, the representative must be, at the time of the designation and during the time of service on the committee, an officer or employee of the agency or division.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.203. MEETINGS. The interagency advisory committee shall meet at the call of its presiding officer or at the request of the council.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.204. AGENCY COOPERATION. Each state agency or division of an agency represented on the interagency advisory committee shall cooperate with the council at the request of the council.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER F. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 110.251. PUBLIC INTEREST INFORMATION. (a) The council shall prepare information of public interest describing the functions

of the council and the procedures by which complaints are filed with and resolved by the council.

(b) The council shall make the information available to the public and appropriate state agencies.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.252. PUBLIC PARTICIPATION. (a) The council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the council and to speak on any issue under the council's jurisdiction.

(b) The executive director shall prepare and maintain a written plan describing how a person who does not speak English may be provided reasonable access to the council's programs and services.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.253. COMPLAINTS. The council by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the council for the purpose of directing complaints to the council. The council may provide for that notice:

(1) on each license form, application, or written contract for services of a person regulated under this chapter;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or

(3) in a bill for service provided by a person regulated under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. [2036](#)), Sec. 11, eff. September 1, 2005.

Sec. 110.254. RECORD OF COMPLAINTS. (a) The council shall

keep an information file about each written complaint filed with the council that the council has authority to resolve. The information file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) for a complaint for which the council took no action, an explanation of the reason the complaint was closed without action.

(b) The council shall provide to a person filing a complaint and to each person who is the subject of the complaint a copy of the council's policies and procedures relating to complaint investigation and resolution.

(c) The council, at least quarterly and until final disposition of a complaint, shall notify the person filing the complaint and each person who is the subject of the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.255. COMPLAINT INVESTIGATION; SUBPOENAS. (a) In an investigation of a complaint filed with the council, the council may request that the commissioner of public health or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the council may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence in this state. The council may delegate the authority granted under this subsection to the executive director of the council.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the council, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or the county in which a hearing conducted by the council may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The council shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the council may charge for copies of its records.

(f) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.256. CONFIDENTIALITY. (a) Except as provided by Subsection (b), all information and materials subpoenaed or compiled by the council in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the council or its employees or agents involved in the complaint and investigation.

(b) The information described by Subsection (a) may be disclosed to:

(1) persons involved with the council in a complaint and investigation;

(2) professional sex offender treatment provider licensing or disciplinary boards in other jurisdictions;

(3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information is deleted.

(c) The filing of formal charges by the council against a person under this chapter, the nature of those charges, the council's disciplinary proceedings, and final disciplinary actions, including warnings and reprimands, by the council are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept.

1, 2003.

**SUBCHAPTER G. SEX OFFENDER TREATMENT PROVIDER LICENSE**

Sec. 110.301. LICENSE REQUIRED. (a) A person may not provide sex offender treatment or act as a sex offender treatment provider unless the person is licensed under this chapter.

(b) A person may not claim to be a sex offender treatment provider, or use the title "sex offender treatment provider" or a similar title or an abbreviation that implies the person is a sex offender treatment provider, unless the person is licensed under this chapter.

(c) This section does not apply to a physician whose treatment of a sex offender is limited to prescribing medication to the sex offender.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 13, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 4, eff. September 1, 2007.

Sec. 110.302. LICENSE REQUIREMENTS. (a) The council by rule shall develop procedures and eligibility and other requirements for issuance of a license under this chapter, including, if appropriate, requirements related to clinical practice experience and assessment, continuing education, and supervision.

(b) In developing the rules, the council shall coordinate with the Texas Department of Criminal Justice, the Texas Youth Commission, and the Texas Juvenile Probation Commission.

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch. 263 (S.B. 103), Sec. 61

(c) The Texas Board of Criminal Justice may vote to exempt employees of the Texas Department of Criminal Justice from a specific licensing requirement imposed under this section if the board determines that the requirement causes financial or operational hardship on the agency. The Texas Youth Commission may not exempt

any employee of the commission from a licensing requirement imposed by this section for any reason.

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch. 1308 (S.B. 909), Sec. 47

(c) The governing board of the Texas Youth Commission may vote to exempt employees of the Texas Youth Commission from a specific licensing requirement imposed under this section if the board determines that the requirement causes financial or operational hardship on the agency. The Texas Board of Criminal Justice may not exempt any employee of the Texas Department of Criminal Justice from a licensing requirement imposed by this section for any reason.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 14, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 263 (S.B. 103), Sec. 61, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1308 (S.B. 909), Sec. 47, eff. June 15, 2007.

Sec. 110.303. LICENSE OF OUT-OF-STATE APPLICANTS. The council may waive any prerequisite to a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a valid license from another state that has license requirements substantially equivalent to those of this state.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 15, eff. September 1, 2005.

Sec. 110.304. CONVICTION OR DEFERRED ADJUDICATION INFORMATION. The council may receive from a law enforcement agency information about the conviction or deferred adjudication of a person who has applied for a license or renewal of a license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 16, eff. September 1, 2005.

Sec. 110.305. LICENSE EXPIRATION. (a) The council by rule may adopt a system under which licenses expire on various dates during the year.

(b) For the year in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each person pays only that portion of the license fee allocable to the number of months during which the license is valid.

(c) On renewal of a license on the new expiration date, the total license renewal fee is payable.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 17, eff. September 1, 2005.

Sec. 110.306. LICENSE RENEWAL REQUIRED. A person whose license has expired may not engage in activities that require a license until the license is renewed.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 18, eff. September 1, 2005.

Sec. 110.307. PROCEDURE FOR RENEWAL. (a) Not later than the 30th day before the expiration date of a person's license, the council shall send written notice of the license expiration to the person at the person's last known address according to the records of the council.

(b) A person who is otherwise eligible to renew a license may

renew an unexpired license by paying the required license fee to the council before the license expiration date.

(c) A person who is otherwise eligible to renew a license and whose license has been expired for:

(1) 90 days or less, may renew the license by paying to the council a fee equal to one and one-half times the required renewal fee; and

(2) longer than 90 days but less than one year, may renew the license by paying to the council a fee equal to two times the required renewal fee.

(d) Except as provided by Section 110.308, a person whose license has been expired for one year or longer may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 19, eff. September 1, 2005.

Sec. 110.308. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. A person whose license has been expired for one year or longer may renew the license without complying with the requirements of Section 110.307(d) by paying to the council a fee equal to two times the required renewal fee if the person:

(1) was licensed in this state;

(2) moved to another state; and

(3) has been licensed and in practice in the other state for two years preceding the date of application for renewal.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 20, eff. September 1, 2005.

Sec. 110.309. DENIAL OF LICENSE. The council may deny an



application for a license if:

(1) the council determines that a previous criminal conviction or deferred adjudication indicates the applicant is not qualified or suitable; or

(2) the applicant fails to provide the information described by Section 110.156(a)(1).

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 21, eff. September 1, 2005.

#### **SUBCHAPTER H. DISCIPLINARY PROCEDURES**

Sec. 110.351. DISCIPLINARY POWERS OF COUNCIL. The council shall revoke, suspend, or refuse to renew a license, place on probation a person whose license has been suspended, or reprimand a person who is licensed under this chapter if the person violates this chapter or a rule of the council.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 22, eff. September 1, 2005.

Sec. 110.352. PROBATION. If the suspension of a person's license is probated, the council may require the person to:

(1) report regularly to the council on matters that are the basis of the probation;

(2) limit the person's practice to the areas prescribed by the council; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the council in those areas that are the basis of the probation.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 23, eff. September 1, 2005.

Sec. 110.353. DISCIPLINARY HEARING. (a) If the council proposes to revoke, suspend, or refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Disciplinary proceedings are governed by Chapter 2001, Government Code.

(c) Rules of practice adopted by the council under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 24, eff. September 1, 2005.

Sec. 110.354. EMERGENCY SUSPENSION. (a) The council or a three-member committee of council members designated by the council shall temporarily suspend the license of a person licensed under this chapter if the council or committee determines from the evidence or information presented to it that continued practice by the person would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare

still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 25, eff. September 1, 2005.

#### **SUBCHAPTER I. CRIMINAL PENALTIES**

Sec. 110.401. OFFENSE. (a) A person commits an offense if the person violates Section 110.301.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 27, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 28, eff. September 1, 2005.

Sec. 110.402. OFFENSE: RELEASE OF ADJUDICATION INFORMATION.

(a) A person commits an offense if the person releases or discloses in violation of Section 110.156 adjudication information received by the council.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER J. ADMINISTRATIVE PENALTY**

Sec. 110.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The council may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.452. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the administrative penalty may not be less than \$50 or more than \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.453. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the executive director determines that a violation occurred, the executive director may issue to the council a report stating:

- (1) the facts on which the determination is based; and
- (2) the executive director's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the executive director shall give written notice of the report to the person. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended administrative penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.454. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 20 days after the date the person receives the notice, the person in writing may:

- (1) accept the determination and recommended administrative

penalty of the executive director; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the executive director, or fails to respond in a timely manner to the notice, the council by order shall approve the determination and impose the recommended penalty.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.455. HEARING. (a) If the person requests a hearing, the executive director shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the council a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.456. DECISION BY COUNCIL. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the council by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the council's order given to the person must include a statement of the right of the person to judicial review of the order.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.457. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a)

Within 30 days after the date the council's order becomes final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the council's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.458. COLLECTION OF PENALTY. (a) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.459. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.460. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.461. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is a contested case under Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff.

September 1, 2005.

**CHAPTER 111. TELEMEDICINE AND TELEHEALTH**

Sec. 111.001. DEFINITIONS. In this chapter:

(1) 'Health professional' and 'physician' have the meanings assigned by Section 1455.001, Insurance Code.

(2) 'Telehealth service' and 'telemedicine medical service' have the meanings assigned by Section 57.042, Utilities Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 22, eff. April 1, 2005. Renumbered from Occupations Code, Section 107.001 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(69), eff. September 1, 2005.

Sec. 111.002. INFORMED CONSENT. A treating physician or health professional who provides or facilitates the use of telemedicine medical services or telehealth services shall ensure that the informed consent of the patient, or another appropriate individual authorized to make health care treatment decisions for the patient, is obtained before telemedicine medical services or telehealth services are provided.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 22, eff. April 1, 2005. Renumbered from Occupations Code, Section 107.002 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(69), eff. September 1, 2005.

Sec. 111.003. CONFIDENTIALITY. A treating physician or health professional who provides or facilitates the use of telemedicine medical services or telehealth services shall ensure that the confidentiality of the patient's medical information is maintained as required by Chapter 159 or other applicable law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 22, eff. April 1, 2005. Renumbered from Occupations Code, Section 107.003 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(69), eff. September 1, 2005.

Sec. 111.004. RULES. The Texas State Board of Medical Examiners, in consultation with the commissioner of insurance, as



appropriate, may adopt rules necessary to:

- (1) ensure that patients using telemedicine medical services receive appropriate, quality care;
- (2) prevent abuse and fraud in the use of telemedicine medical services, including rules relating to the filing of claims and records required to be maintained in connection with telemedicine medical services;
- (3) ensure adequate supervision of health professionals who are not physicians and who provide telemedicine medical services;
- (4) establish the maximum number of health professionals who are not physicians that a physician may supervise through a telemedicine medical service; and
- (5) require a face-to-face consultation between a patient and a physician providing a telemedicine medical service within a certain number of days following an initial telemedicine medical service only if the physician has never seen the patient.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 22, eff. April 1, 2005. Renumbered from Occupations Code, Section 107.004 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(69), eff. September 1, 2005.

**CHAPTER 112. GENERAL LICENSING REQUIREMENTS APPLICABLE  
TO MULTIPLE HEALTH CARE PRACTITIONERS  
SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 112.001. DEFINITIONS. In this chapter:

- (1) "Health care practitioner" means an individual issued a license, certificate, registration, title, permit, or other authorization to engage in a health care profession.
- (2) "Licensing entity" means a department, commission, board, office, authority, or other agency of the state that regulates activities and persons under this title.

Added by Acts 2005, 79th Leg., Ch. 1136 (H.B. 2680), Sec. 1, eff. June 18, 2005.

Sec. 112.002. APPLICABILITY. This chapter applies only to licensing entities and health care practitioners under Chapters 401, 453, and 454 and Subtitles B, C, D, E, F, and K.

Added by Acts 2005, 79th Leg., Ch. 1136 (H.B. 2680), Sec. 1, eff. June 18, 2005.

**SUBCHAPTER B. SERVICES PROVIDED TO CHARITIES**

Sec. 112.051. REDUCED LICENSE REQUIREMENTS FOR RETIRED HEALTH CARE PRACTITIONERS PERFORMING CHARITY WORK. (a) Each licensing entity shall adopt rules providing for reduced fees and continuing education requirements for a retired health care practitioner whose only practice is voluntary charity care.

(b) The licensing entity by rule shall define voluntary charity care.

Added by Acts 2005, 79th Leg., Ch. 1136 (H.B. 2680), Sec. 1, eff. June 18, 2005.

**CHAPTER 114. REPORTING REQUIREMENTS APPLICABLE TO MULTIPLE HEALTH OCCUPATION REGULATORY AGENCIES**

Sec. 114.001. DEFINITIONS. In this chapter:

(1) "Health care practitioner" means an individual issued a license, certificate, registration, title, permit, or other authorization to engage in a health care profession.

(2) "Health occupation regulatory agency" means a department, commission, board, office, authority, or other agency of the state that regulates a health care practitioner under this title.

Added by Acts 2009, 81st Leg., R.S., Ch. 512 (S.B. 1058), Sec. 1, eff. September 1, 2009.

Sec. 114.002. ANNUAL REPORT TO LEGISLATURE. (a) Not later than February 1 of each year, each health occupation regulatory agency shall file a report with the chairs of the house and senate committees with primary oversight over the agency that includes the following:

- (1) the number of persons regulated by the agency;
- (2) the number of persons who became subject to regulation by the agency in the previous year;
- (3) the number of persons regulated by the agency by county;

(4) a description of any complaints reported to the agency or a description of the complaint categories used by the agency and the number of complaints in each category;

(5) the number of complaints investigated by the agency and a description of the final resolution of the complaints;

(6) the amount of fees collected by the agency each year;

(7) the expenses of the agency; and

(8) any unfunded needs of the agency.

(b) The Health Professions Council shall adopt a standard format that must be used by health occupation regulatory agencies to report the information required under Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 512 (S.B. 1058), Sec. 1, eff. September 1, 2009.

#### **CHAPTER 115. HEALTH OR VETERINARY SERVICES PROVIDED IN CATASTROPHIC CIRCUMSTANCES**

Sec. 115.001. SHORT TITLE. This chapter may be cited as the Uniform Emergency Volunteer Health Practitioners Act.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.002. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

(2) "Disaster relief organization" means an entity that provides emergency or disaster relief services that include health or veterinary services provided by volunteer health practitioners and that:

(A) is designated or recognized as a provider of those services under a disaster response and recovery plan adopted by an agency of the federal government or the division; or

(B) regularly plans and conducts its activities in coordination with an agency of the federal government or the division.

(3) "Division" has the meaning assigned by Section 418.004, Government Code.

(4) "Emergency" means an event or condition that is a

disaster as defined by Section 418.004, Government Code.

(5) "Emergency declaration" means a declaration of emergency issued by the governor or a designee of the governor.

(6) "Emergency Management Assistance Compact" means the interstate compact approved by Congress (Pub. L. No. 104-321) as provided by Chapter 778, Health and Safety Code.

(7) "Entity" means a person other than an individual.

(8) "Health facility" means an entity licensed under the laws of this or another state to provide health or veterinary services.

(9) "Health practitioner" means an individual licensed under the laws of this or another state to provide health or veterinary services.

(10) "Health services" means the provision of treatment, care, advice or guidance, or other services or supplies related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:

(A) with respect to the physical or mental condition or functional status of an individual or the structure or function of the body:

(i) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; and

(ii) counseling and assessment procedures or other related services;

(B) the sale or dispensing of a drug, a device, equipment, or another item to an individual in accordance with a prescription; and

(C) funeral, cremation, cemetery, or other mortuary services.

(11) "Host entity" means an entity operating in this state that uses volunteer health practitioners to respond to an emergency.

(12) "License" means an authorization by a state agency to engage in health or veterinary services that are unlawful without the authorization. The term includes authorization under the laws of this state to an individual to provide health or veterinary services based on a national certification issued by a public or private entity.

(13) "Scope of practice" means the extent of the authorization to provide health or veterinary services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner's services are

rendered, including any conditions imposed by the licensing authority.

(14) "Veterinary services" means the provision of treatment, care, advice or guidance, or other services or supplies related to the health or death of an animal or to animal populations, to the extent necessary to respond to an emergency, including:

(A) diagnosis, treatment, or prevention of an animal disease, injury, or other physical or mental condition by the prescription, administration, or dispensing of a vaccine, a drug, surgery, or therapy;

(B) use of a procedure for reproductive management; and

(C) monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans.

(15) "Volunteer health practitioner" means a health practitioner who provides health or veterinary services without compensation. The term does not include a practitioner who receives compensation under a preexisting employment relationship with a host entity or affiliate that requires the practitioner to provide health services in this state, unless the practitioner is not a resident of this state and is employed by a disaster relief organization providing services in this state while an emergency declaration is in effect.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.003. APPLICABILITY TO VOLUNTEER HEALTH PRACTITIONERS. This chapter applies to volunteer health practitioners who are registered with the system administered by the department under Section 115.005 and who provide health or veterinary services in this state for a host entity while an emergency declaration is in effect.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.004. REGULATION OF SERVICES DURING EMERGENCY. (a) While an emergency declaration is in effect, the division by order may limit, restrict, or otherwise regulate:

- (1) the duration of practice by volunteer health practitioners;
- (2) the geographical areas in which volunteer health practitioners may practice;
- (3) the types of volunteer health practitioners who may practice; and
- (4) any other matters necessary to coordinate effectively the provision of health or veterinary services during the emergency.

(b) An order issued under Subsection (a) may take effect immediately, without prior notice or comment, and is not a rule within the meaning of Chapter 2001, Government Code.

(c) A host entity that uses volunteer health practitioners to provide health or veterinary services in this state shall:

- (1) consult and coordinate its activities with the division to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and
- (2) comply with laws in addition to this chapter relating to the management of emergency health or veterinary services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.005. VOLUNTEER HEALTH PRACTITIONER REGISTRATION SYSTEM. (a) The department shall administer a volunteer health practitioner registration system that:

- (1) accepts applications for the registration of volunteer health practitioners before or during an emergency;
- (2) includes information about the licensing and good standing of health practitioners that is accessible by authorized persons;
- (3) is capable of confirming whether a health practitioner is licensed and in good standing before health or veterinary services are provided by the practitioner under this chapter; and
- (4) includes information regarding the results of a criminal history record information check performed on the volunteer health practitioners listed in the system.

(b) To satisfy a requirement of Subsection (a) or (c), the department may:

- (1) use information available in the Texas disaster

volunteer registry maintained by the department; or

(2) enter into agreements with disaster relief organizations or the verification systems of other states for the advance registration of volunteer health practitioners under 42 U.S.C. Section 247d-7b.

(c) While an emergency declaration is in effect, a state agency that grants a license to a health practitioner shall coordinate with the department to provide licensing or criminal history record information for volunteer health practitioners seeking registration under this chapter.

(d) If an applicant for registration under this chapter has an unacceptable licensing or criminal history, the department may not allow the applicant to register and the applicant may not serve as a volunteer health practitioner under this chapter.

(e) While an emergency declaration is in effect, the division, a person authorized to act on behalf of the division, or a host entity may confirm whether volunteer health practitioners used in this state are registered with the registration system under Subsection (a). Confirmation is limited to obtaining the identity of the practitioners from the system and determining whether the system indicates that the practitioners are licensed and in good standing and have an acceptable criminal history.

(f) On request by a person in this state authorized under Subsection (e) or a similarly authorized person in another state, the department shall notify the person of the identity of volunteer health practitioners registered with the registration system and whether the practitioners are licensed and in good standing and have an acceptable criminal history.

(g) A host entity is not required to use the services of a volunteer health practitioner even if the practitioner is registered with the registration system and the system indicates that the practitioner is licensed and in good standing and has an acceptable criminal history.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.006. RECOGNITION OF VOLUNTEER HEALTH PRACTITIONERS LICENSED IN OTHER STATES. (a) While an emergency declaration is in

effect, a volunteer health practitioner registered with the registration system under Section 115.005 who is licensed and in good standing in another state and has an acceptable criminal history may practice in this state to the extent authorized by this chapter as if the practitioner were licensed in this state.

(b) A volunteer health practitioner qualified under Subsection (a) is not entitled to the protections of this chapter if the practitioner is licensed in more than one state and any license of the practitioner is suspended, revoked, or subject to an agency order limiting or restricting practice privileges or has been voluntarily terminated under threat of sanction.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.007. NO EFFECT ON CREDENTIALING AND PRIVILEGING. (a) In this section:

(1) "Credentialing" means obtaining, verifying, and assessing the qualifications of a health practitioner to provide treatment, care, or services in or for a health facility.

(2) "Privileging" means the authorizing by an appropriate authority, such as a governing body, of a health practitioner to provide specific treatment, care, or services at a health facility subject to limits based on factors that include license, education, training, experience, competence, health status, and specialized skill.

(b) This chapter does not affect credentialing or privileging standards of a health facility and does not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.008. PROVISION OF VOLUNTEER HEALTH OR VETERINARY SERVICES; ADMINISTRATIVE SANCTIONS. (a) Subject to Subsections (b) and (c), a volunteer health practitioner shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions or other laws of this state.



(b) Except as otherwise provided by Subsection (c), this chapter does not authorize a volunteer health practitioner to provide a service that is outside the practitioner's scope of practice, even if a similarly licensed practitioner in this state would be permitted to provide the service.

(c) The division may modify or restrict the health or veterinary services that a volunteer health practitioner may provide under this chapter. An order under this subsection may take effect immediately, without prior notice or comment, and is not a rule within the meaning of Chapter 2001, Government Code.

(d) A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide under this chapter.

(e) A volunteer health practitioner does not engage in unauthorized practice unless the practitioner has reason to know of any limitation, modification, or restriction under this section or that a similarly licensed practitioner in this state would not be permitted to provide the service. A volunteer health practitioner has reason to know of a limitation, modification, or restriction or that a similarly licensed practitioner in this state would not be permitted to provide a service if:

(1) the practitioner knows the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service; or

(2) from all the facts and circumstances known to the practitioner at the relevant time, a reasonable person would conclude that the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service.

(f) In addition to the authority granted by the law of this state other than this chapter to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in this state:

(1) may impose administrative sanctions on a health practitioner licensed in this state for conduct outside of this state in response to an out-of-state emergency;

(2) may impose administrative sanctions on a practitioner not licensed in this state for conduct in this state in response to an in-state emergency; and

(3) shall report any administrative sanction imposed on a

practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed.

(g) In determining whether to impose an administrative sanction under Subsection (f), a licensing board or other disciplinary authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the practitioner's scope of practice, education, training, experience, and specialized skill.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.009. RELATION TO OTHER LAWS. (a) This chapter does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this chapter. Except as otherwise provided by Subsection (b), this chapter does not affect requirements for the use of health practitioners under the Emergency Management Assistance Compact.

(b) The division, under the Emergency Management Assistance Compact, may incorporate into the emergency forces of this state volunteer health practitioners who are not officers or employees of this state or a political subdivision of this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.010. REGULATORY AUTHORITY. The division may adopt rules to implement this chapter. In adopting rules, the division shall consult with and consider the recommendations of the entity established to coordinate the implementation of the Emergency Management Assistance Compact and shall consult with and consider rules adopted by similarly empowered agencies in other states to promote uniformity in the application of this chapter and to make the emergency response systems in the various states reasonably compatible.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.011. LIMITATIONS ON CIVIL LIABILITY FOR VOLUNTEER HEALTH PRACTITIONERS. (a) Subject to Subsection (c), a volunteer health practitioner who provides health or veterinary services under this chapter is not liable for damages for an act or omission of the practitioner in providing those services.

(b) A person is not vicariously liable for damages for an act or omission of a volunteer health practitioner if the practitioner is not liable for the damages under Subsection (a).

(c) This section does not limit the liability of a volunteer health practitioner for:

- (1) wilful misconduct or wanton, grossly negligent, reckless, or criminal conduct;
- (2) an intentional tort;
- (3) breach of contract;
- (4) a claim asserted by a host entity or by an entity located in this or another state that employs or uses the services of the practitioner; or
- (5) an act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle.

(d) A person who operates, uses, or relies on information provided by the volunteer health practitioner registration system under this chapter is not liable for damages for an act or omission relating to that operation, use, or reliance unless the act or omission is an intentional tort or is wilful misconduct or wanton, grossly negligent, reckless, or criminal conduct.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

#### **SUBTITLE B. PHYSICIANS**

##### **CHAPTER 151. GENERAL PROVISIONS**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 151.001. SHORT TITLE. This subtitle may be cited as the Medical Practice Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 151.002. DEFINITIONS. (a) In this subtitle:

(1) "Board" means the Texas Medical Board.

(2) "Continuing threat to the public welfare" means a real danger to the health of a physician's patients or to the public from the acts or omissions of the physician caused through the physician's lack of competence, impaired status, or failure to care adequately for the physician's patients, as determined by:

(A) the board;

(B) a medical peer review committee in this state;

(C) a physician licensed to practice medicine in this state or otherwise lawfully practicing medicine in this state;

(D) a physician engaged in graduate medical education or training; or

(E) a medical student.

(3) "Disciplinary order" means an action taken under Section 164.001, 164.053, 164.058, or 164.101.

(4) "Doctor of osteopathic medicine" includes a doctor of osteopathy, an osteopath, an osteopathic physician, and an osteopathic surgeon.

(5) "Health care entity" means:

(A) a hospital licensed under Chapter 241 or 577, Health and Safety Code;

(B) an entity, including a health maintenance organization, group medical practice, nursing home, health science center, university medical school, hospital district, hospital authority, or other health care facility, that:

(i) provides or pays for medical care or health care services; and

(ii) follows a formal peer review process to further quality medical care or health care;

(C) a professional society or association of physicians, or a committee of such a society or association, that follows a formal peer review process to further quality medical care or health care;

(D) an organization established by a professional society or association of physicians, hospitals, or both, that:

(i) collects and verifies the authenticity of documents and other information concerning the qualifications, competence, or performance of licensed health care professionals; and

(ii) acts as a health care facility's agent under

the Health Care Quality Improvement Act of 1986 (42 U.S.C. Section 11101 et seq.); or

(E) a health care collaborative certified under Chapter 848, Insurance Code.

(6) "Legally authorized representative" of a patient means:

(A) a parent or legal guardian if the patient is a minor;

(B) a legal guardian if the patient has been adjudicated incompetent to manage the patient's personal affairs;

(C) an agent of the patient authorized under a durable power of attorney for health care;

(D) an attorney ad litem appointed for the patient;

(E) a guardian ad litem appointed for the patient;

(F) a personal representative or statutory beneficiary if the patient is deceased; or

(G) an attorney retained by the patient or by another person listed by this subdivision.

(6-a) "License holder" means a person holding a license, permit, or certificate issued under this subtitle.

(7) "Medical peer review" or "professional review action" means the evaluation of medical and health care services, including evaluation of the qualifications and professional conduct of professional health care practitioners and of patient care provided by those practitioners. The term includes evaluation of the:

(A) merits of a complaint relating to a health care practitioner and a determination or recommendation regarding the complaint;

(B) accuracy of a diagnosis;

(C) quality of the care provided by a health care practitioner;

(D) report made to a medical peer review committee concerning activities under the committee's review authority;

(E) report made by a medical peer review committee to another committee or to the board as permitted or required by law; and

(F) implementation of the duties of a medical peer review committee by a member, agent, or employee of the committee.

(8) "Medical peer review committee" or "professional review body" means a committee of a health care entity, the governing board of a health care entity, or the medical staff of a health care

entity, that operates under written bylaws approved by the policy-making body or the governing board of the health care entity and is authorized to evaluate the quality of medical and health care services or the competence of physicians, including evaluation of the performance of those functions specified by Section 85.204, Health and Safety Code. The term includes:

(A) an employee or agent of the committee, including an assistant, investigator, intervenor, attorney, and any other person or organization that serves the committee; and

(B) the governing body of a public hospital owned or operated by a governmental entity, the governing body of a hospital authority created under Chapter 262 or 264, Health and Safety Code, and the governing body of a hospital district created under Article IX, Texas Constitution, but only:

(i) in relation to the governing body's evaluation of the competence of a physician or the quality of medical and health care services provided by the public hospital, hospital authority, or hospital district; and

(ii) to the extent that the evaluation under Subparagraph (i) involves discussions or records that specifically or necessarily identify an individual patient or physician.

(9) "Medical records" means all records relating to the history, diagnosis, treatment, or prognosis of a patient.

(10) "Operation" means the application of surgery or the performance of surgical services.

(11) "Person" means an individual, unless the term is expressly made applicable to a partnership, association, or corporation.

(12) "Physician" means a person licensed to practice medicine in this state.

(13) "Practicing medicine" means the diagnosis, treatment, or offer to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempt to effect cures of those conditions, by a person who:

(A) publicly professes to be a physician or surgeon;  
or

(B) directly or indirectly charges money or other compensation for those services.

(14) "Surgery" includes:

(A) surgical services, procedures, and operations; and

(B) the procedures described in the surgery section of the common procedure coding system as adopted by the Health Care Financing Administration of the United States Department of Health and Human Services.

(b) The terms "physician" and "surgeon" are synonyms. As used in this subtitle, the terms "practitioner" and "practitioner of medicine" include physicians and surgeons.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.021(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 1, eff. June 10, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.01, eff. September 1, 2005.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.06, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1180 (S.B. 949), Sec. 1, eff. June 14, 2013.

Sec. 151.003. LEGISLATIVE FINDINGS. The legislature finds that:

(1) the practice of medicine is a privilege and not a natural right of individuals and as a matter of public policy it is necessary to protect the public interest through enactment of this subtitle to regulate the granting of that privilege and its subsequent use and control; and

(2) the board should remain the primary means of licensing, regulating, and disciplining physicians.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 151.004. APPLICATION OF SUNSET ACT. The Texas Medical Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subtitle and Chapters 204, 205, and 206 expire September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.02, eff. September 1, 2005.

Sec. 151.005. GOVERNMENTAL DISCRIMINATION PROHIBITED. (a) A program supported in whole or in part by the state or by a political subdivision of the state may not discriminate against a health care practitioner because the practitioner is a physician specializing in ophthalmology.

(b) A law or policy of the state or of a political subdivision of the state that requires or encourages a person to obtain vision care or medical eye care that is within the scope of practice of an optometrist or therapeutic optometrist may not discriminate against a health care practitioner because the practitioner is a physician specializing in ophthalmology.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. APPLICATION AND CONSTRUCTION OF SUBTITLE**

Sec. 151.051. DISCRIMINATION BASED ON TYPE OF ACADEMIC MEDICAL DEGREE OR CERTAIN RELIGIOUS TENETS PROHIBITED. (a) A hospital, institution, or program that is licensed by the state, is operated by the state or a political subdivision of the state, or directly or indirectly receives state financial assistance may not differentiate in regard to a person licensed under this subtitle solely on the basis of the academic medical degree held by the person. The hospital, institution, program, state agency, or political subdivision may adopt rules and requirements relating to qualifications for medical staff appointments, including reappointments and the termination of appointments, the delineation of clinical privileges, or the curtailment of clinical privileges of persons who are appointed to that medical staff or permitted to participate in educational programs if those rules and requirements do not differentiate solely on the basis of the academic medical degree held by the affected physician and are:

- (1) determined on a reasonable basis, such as the professional and ethical qualifications of the physician;
- (2) based on reasonable standards;
- (3) applied without irrelevant considerations;



- (4) supported by sufficient evidence; and
- (5) not arbitrary or capricious.

(b) The limitations imposed under this section relating to discrimination based on the academic medical degree of a physician do not apply to practice limitations adopted by:

- (1) a medical school or college, including a program of a medical school or college; or
- (2) any office or offices of physicians, singularly or in groups, in the conduct of their profession.

(c) This subtitle may not be construed in a manner that:

- (1) discriminates against a school or system of medical practice; or
- (2) affects the use of the principles or teachings of any church in ministering to the sick or suffering by prayer or pastoral counseling without the use of a drug or other material substance represented as medically effective.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 151.052. EXEMPTIONS. (a) This subtitle does not apply to:

- (1) a dentist, licensed under the laws of this state, engaged strictly in the practice of dentistry;
- (2) a licensed optometrist or therapeutic optometrist engaged strictly in the practice of optometry or therapeutic optometry as defined by law;
- (3) a licensed chiropractor engaged strictly in the practice of chiropractic as defined by law;
- (4) a registered nurse or licensed vocational nurse engaged strictly in the practice of nursing in accordance with the applicable licensing acts and other laws of this state;
- (5) a licensed podiatrist engaged strictly in the practice of podiatry as defined by law;
- (6) a licensed or certified psychologist engaged strictly in the practice of psychology as defined by law;
- (7) a licensed physical therapist engaged strictly in the practice of physical therapy in accordance with the law relating to physical therapy practice;
- (8) a commissioned or contract surgeon in the United States

uniformed services or Public Health Service in the performance of that person's duties if the person is not engaged in private practice;

(9) a person who furnishes medical assistance in an emergency or disaster situation if no charge is made for the medical assistance;

(10) a student in training in a board-approved medical school while performing, under the supervision of a licensed practitioner, the duties assigned in the course of training;

(11) a legally qualified physician of another state who is in this state for consultation with a physician licensed in this state but who does not:

(A) maintain an office in this state; or

(B) appoint a place in this state for seeing, examining, or treating a patient; or

(12) any other activity that the board designates as exempt from the application of this subtitle.

(b) Notwithstanding Subsection (a)(10), a medical resident, intern, or fellow is required to register and is subject to the other applicable provisions of this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 151.053. APPLICATION TO CERTAIN PERSONS PROVIDING NUTRITIONAL ADVICE. (a) This subtitle does not prohibit a person from giving advice regarding the use and role of food and food ingredients, including dietary supplements.

(b) Subsection (a) does not authorize a person to:

(1) practice medicine; or

(2) state, in violation of law, that a product might cure a disease, disorder, or condition.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 151.054. APPLICATION TO SELF-CARE. (a) This subtitle does not prohibit:

(1) a person from providing or seeking advice or information relating to that person's self-care; or

(2) the dissemination of information relating to self-care.

(b) This section does not confer authority to practice medicine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 151.055. APPLICATION TO CERTAIN INDEPENDENT CONTRACTOR AGREEMENTS. This subtitle does not prohibit a hospital from entering into an independent contractor agreement with a physician to provide services at the hospital or at another health care facility owned or operated by the hospital and:

- (1) paying the physician a minimum guaranteed amount to ensure the physician's availability;
- (2) billing and collecting from patients the physician's professional fees; or
- (3) retaining the collected professional fees up to the amount of the minimum guaranteed amount plus a reasonable collection fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 151.056. APPLICATION TO TELEMEDICINE. (a) A person who is physically located in another jurisdiction but who, through the use of any medium, including an electronic medium, performs an act that is part of a patient care service initiated in this state, including the taking of an x-ray examination or the preparation of pathological material for examination, and that would affect the diagnosis or treatment of the patient, is considered to be engaged in the practice of medicine in this state and is subject to appropriate regulation by the board.

(b) This section does not apply to the act of:

- (1) a medical specialist located in another jurisdiction who provides only episodic consultation services on request to a physician licensed in this state who practices in the same medical specialty;
- (2) a physician located in another jurisdiction who is providing consultation services to a medical school as defined by Section 61.501, Education Code;
- (3) a physician located in another jurisdiction who is providing consultation services to an institution subject to:

(A) Subchapter C, Chapter 73, Education Code; or

(B) Subchapter K, Chapter 74, Education Code; or

(4) a physician located in another jurisdiction of a state having borders contiguous with the borders of this state who is the treating physician of a patient and orders home health or hospice services for a resident of this state to be delivered by a home and community support services agency licensed in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.022(a), eff. Sept. 1, 2001.

## **CHAPTER 152. STATE BOARD OF MEDICAL EXAMINERS**

### **SUBCHAPTER A. ORGANIZATION OF BOARD**

Sec. 152.001. TEXAS MEDICAL BOARD. (a) The Texas Medical Board is an agency of the executive branch of state government with the power to regulate the practice of medicine.

(b) A reference in any other law to the former Texas State Board of Medical Examiners means the Texas Medical Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. [419](#)), Sec. 1.03, eff. September 1, 2005.

Sec. 152.002. BOARD MEMBERSHIP. (a) The board consists of 19 members appointed by the governor with the advice and consent of the senate as follows:

(1) twelve members who are learned and eminent physicians licensed in this state for at least three years before the appointment, nine of whom must be graduates of a reputable medical school or college with a degree of doctor of medicine (M.D.) and three of whom must be graduates of a reputable medical school or college with a degree of doctor of osteopathic medicine (D.O.); and

(2) seven members who represent the public.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 26.01, eff. Sept. 1, 2003.

Sec. 152.003. ADDITIONAL MEMBERSHIP REQUIREMENTS. (a) In this section:

(1) "Direct provider of health care" includes:

- (A) an athletic trainer;
- (B) a chiropractor;
- (C) a dentist;
- (D) a hospital administrator;
- (E) a licensed vocational nurse;
- (F) a nursing home administrator;
- (G) an optometrist;
- (H) a pharmacist;
- (I) a physical therapist;
- (J) a physician assistant;
- (K) a podiatrist;
- (L) a psychologist;
- (M) a registered nurse; and
- (N) a social psychotherapist.

(2) "Fiduciary position or interest" means a position or interest with respect to an entity that has the character of a trust. The term includes:

- (A) a member of a board of directors;
- (B) an officer;
- (C) a majority shareholder;
- (D) an agent; and
- (E) a person who, directly or through that person's

spouse, receives more than one-tenth of the person's annual income from compensation for research into or instruction in the provision of health care received from:

(i) a health care entity or other person, association, or organization engaged in the provision of health care; or

(ii) a person, association, or organization engaged in producing drugs or analogous products.

(3) "Immediate family member" means the parent, spouse, child, or sibling of a person who resides in the same household as the person.

(4) "Provider of health care" means:

(A) a direct provider of health care:

(i) whose primary current activity is the provision of health care to persons or the administration of facilities or institutions in which that care is provided, including hospitals, long-term care facilities, out-patient facilities, and health maintenance organizations;

(ii) who, if required by law or otherwise, has received professional or other training in the provision of that care or administration; and

(iii) who is licensed or certified or otherwise claims the authority to provide that care or administration;

(B) a person who is an indirect provider of health care in that the person holds a fiduciary position with or has a fiduciary interest in a health care entity;

(C) a member of the immediate family of a person described by this subdivision;

(D) a person who is engaged in or employed by an entity issuing a policy or contract of individual or group health insurance or hospital or medical service benefits; or

(E) a person who is employed by, on the board of directors of, or holds elective office by or under the authority of a unit of federal, state, or local government or any organization that receives a significant part of its funding from a unit of federal, state, or local government.

(b) A person may not be a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;

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

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

(5) is a provider of health care.

(c) Each public member must be a resident of this state for at least the five years preceding appointment.

(d) Each physician board member must be actively engaged in:

(1) the practice of medicine for at least the five years preceding appointment; and

(2) medical peer review at a health care entity for at least the three years preceding appointment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.04, eff. September 1, 2005.

Sec. 152.004. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person is ineligible for appointment to the board if, at the time of appointment, the person is younger than 18 years of age or is a stockholder or a member of the board of trustees of a medical school.

(c) A person may not be a member of the board and may not be a board employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care or a national organization incorporated to represent the entire profession licensed to practice medicine in this state or the United States, including an organization representing the practice of osteopathic medicine; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(f) A person may not serve as a member of the board or act as general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the

person's activities for compensation on behalf of a profession related to the operation of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.05, eff. September 1, 2005.

Sec. 152.0041. RESTRICTION ON USE OF INFORMATION. A board member who is a physician or a physician acting as an agent of the board, including a member of an expert physician panel appointed under Section 154.056(e), may not use information to which the person has access solely by virtue of the person's position as a member or agent of the board for the benefit of the person's practice or for the benefit of another physician or person affiliated with the physician.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.06, eff. September 1, 2005.

Sec. 152.005. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms.

(b) If a vacancy occurs during a member's term, the governor shall appoint a person to fill the vacancy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.006. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

- (1) does not have at the time of taking office the qualifications required by Section 152.002;
- (2) does not maintain during service on the board the qualifications required by Section 152.002;
- (3) is ineligible for membership under Sections 152.003 and 152.004;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly



scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.07, eff. September 1, 2005.

Sec. 152.007. PER DIEM. (a) Each board member is entitled to receive a per diem as set by legislative appropriation for each day that the member engages in the business of the board.

(b) If the General Appropriations Act does not prescribe the amount of the per diem, the per diem consists of actual expenses for meals, lodging, and transportation, plus \$100.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.008. OFFICERS. Not later than December after each regular session of the legislature, the governor shall appoint from the members of the board a president, to serve in that capacity at the pleasure of the governor, and the board shall elect from its members a vice president, secretary-treasurer, and other officers as are required, in the board's opinion, to carry out the board's duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.08, eff. September 1, 2005.

Sec. 152.009. MEETINGS; QUORUM REQUIREMENTS. (a) The board shall conduct regular meetings at least four times a year at the times and places the board considers most convenient for applicants and board members.

(b) The board may hold special meetings in accordance with rules adopted by the board.

(c) After hearing all evidence and arguments in an open meeting, the board may conduct deliberations relating to license applications and disciplinary actions in executive sessions. The board shall vote and announce its decisions in open session.

(d) A majority of the appointed board members constitutes a quorum for all purposes except for a board activity related to examining the credentials of license applicants as provided by Section 155.053.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.010. TRAINING; GUIDELINES. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

- (1) this subtitle;
- (2) the programs operated by the board;
- (3) the role and functions of the board;
- (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the board;
- (6) the results of the most recent formal audit of the board;
- (7) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of

interest; and

(8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

(d) Repealed by Acts 2005, 79th Leg., Ch. 269, Sec. 1.49(1), eff. September 1, 2005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.09, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.49(1), eff. September 1, 2005.

#### **SUBCHAPTER B. EXECUTIVE DIRECTOR AND OTHER PERSONNEL**

Sec. 152.051. EXECUTIVE DIRECTOR. (a) The board shall appoint an executive director. The executive director serves as the chief executive and administrative officer of the board.

(b) The executive director serves at the pleasure of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.052. EXECUTIVE DIRECTOR POWERS AND DUTIES. The executive director shall administer and enforce this subtitle under the supervision and at the direction of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.054. CHIEF OPERATING OFFICER; MEDICAL DIRECTOR. (a) The executive director may employ a chief operating officer to:

(1) administer, implement, and monitor systems and necessary measures to promote the quality and efficiency of board operations; and

(2) perform other duties as assigned by the executive

director.

(b) If the executive director is not a physician licensed to practice in this state, the executive director shall appoint a medical director who is:

- (1) a physician licensed to practice in this state; and
- (2) primarily responsible for implementing and maintaining policies, systems, and measures regarding clinical and professional issues and determinations.

(c) The chief operating officer or medical director acts under the supervision and at the direction of the executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.055. PERSONNEL. (a) The board shall employ, compensate, and provide persons as determined necessary by the board to administer this subtitle, including administrators, clerks, employees, consultants, and professionals.

(b) The board shall reimburse those persons for actual and necessary expenses, including investigation expenses, travel expenses, and other incidental expenses, incurred in the performance of official duties as determined by the board.

(c) An employee of the board may not be employed by or paid a fee for services provided by a statewide or national organization incorporated to represent the entire profession licensed to practice medicine in this state or the United States, including an organization representing the practice of osteopathic medicine.

(d) A person is not eligible to serve as an employee of the board if the person is related within the second degree by affinity or within the third degree by consanguinity, as determined under Chapter 573, Government Code, to a person who is employed by or paid a fee for services provided by an organization described by Subsection (c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.056. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the

board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.10, eff. September 1, 2005.

Sec. 152.057. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide, as often as necessary, to its members and employees information regarding their:

(1) qualifications for office or employment under this subtitle; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.058. CAREER LADDER; ANNUAL PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all nonentry-level positions concurrently with any public posting.

(b) The board shall develop a system of annual performance evaluations of the board's employees based on measurable job tasks. Any merit pay authorized by the board must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.059. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

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

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

promotion of personnel, that are in compliance with requirements adopted under Chapter 21, Labor Code;

(2) a comprehensive analysis of the board's workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board's workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually and reviewed by the Commission on Human Rights for compliance with requirements adopted under Chapter 21, Labor Code; and

(3) be filed with the governor.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## **CHAPTER 153. POWERS AND DUTIES**

### **SUBCHAPTER A. GENERAL POWERS AND DUTIES OF BOARD**

Sec. 153.001. ADOPTION OF RULES. The board may adopt rules and bylaws as necessary to:

(1) govern its own proceedings;

(2) perform its duties;

(3) regulate the practice of medicine in this state; and

(4) enforce this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.0015. GUIDELINES FOR INPUT IN RULEMAKING. (a) The board shall adopt guidelines to establish procedures for receiving input during the rulemaking process from individuals and groups that have an interest in matters under the board's jurisdiction, including input from the Texas Physician Assistant Board and the Texas State Board of Acupuncture Examiners. The guidelines must provide an

opportunity for those individuals and groups to provide input before the board provides notice of the proposed rule under Section 2001.023, Government Code.

(b) The guidelines adopted under this section shall also include procedures for the board to receive comments on rules recommended by the physician assistant board or acupuncture board for adoption by the board.

(c) A rule adopted by the board may not be challenged on the grounds that the board did not comply with this section. If the board was unable to solicit a significant amount of input from the public or affected persons early in the rulemaking process, the board shall state in writing the reasons why the board was unable to do so.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.11, eff. September 1, 2005.

Sec. 153.002. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts the person's personal appearance or the use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.003. RULES REGARDING MAINTENANCE OF PATIENT RECORDS. The board by rule shall establish the period for which patient records must be maintained.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## Sec. 153.004. RULES REGARDING TELEMEDICINE MEDICAL SERVICES.

(a) In consultation with the Health and Human Services Commission and the commissioner of insurance, the board may adopt rules as necessary to:

- (1) ensure that appropriate care is provided to Medicaid and Medicare patients who receive telemedicine medical services; and
- (2) prevent abuse and fraud in the use of telemedicine medical services for Medicaid and Medicare patients.

(b) The rules adopted under Subsection (a)(2) may include rules relating to filing of claims and records required to be maintained in relation to telemedicine medical services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1255, Sec. 10, eff. June 15, 2001.

## Sec. 153.0045. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.

The board shall adopt rules and guidelines as necessary to comply with Chapter 53, except to the extent the requirements of this subtitle are stricter than the requirements of that chapter.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.12, eff. September 1, 2005.

Sec. 153.005. EXECUTIVE COMMITTEE; APPOINTMENT OF OTHER COMMITTEES. (a) Except as otherwise provided by this subtitle, the board may act under its rules through the executive director, the executive committee, or another committee. Except as otherwise provided by this subtitle, the executive committee consists of the president, vice president, and secretary-treasurer of the board.

(b) The board may appoint committees from its membership. A committee appointed from the board membership shall:

- (1) consider matters relating to the enforcement of this subtitle and the rules adopted under this subtitle as referred to the committee; and
- (2) make recommendations to the board regarding those matters.

(c) Each committee must have at least one member who meets the qualifications for a physician member under Sections 152.002 and 152.003 and holds the degree of doctor of osteopathic medicine and



one member who meets the qualifications for a public member under Section 152.003. If a member appointed to a committee declines to accept the appointment or is determined to not be qualified under this subtitle to serve on the committee, the vacancy on the committee may be filled by any other board member regardless of qualification.

(d) If members who meet the qualifications of Subsection (c) are not elected to the executive committee, the board shall appoint additional members to that committee so that at least one executive committee member meets the qualifications for a physician member under Sections 152.002 and 152.003 and holds the degree of doctor of osteopathic medicine and one executive committee member meets the qualifications for a public member under Section 152.003.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.006. CRIMINAL RECORD REPORT. (a) The board may receive criminal record reports from any law enforcement agency or another source regarding a license holder or license applicant.

(b) Each criminal record report received from the Department of Public Safety is for the exclusive use of the board and is privileged. The report may not be released or otherwise disclosed to any person or agency by the board except on court order.

(c) Repealed by Acts 2001, 77th Leg., ch. 1420, Sec. 14.023(d), eff. Sept. 1, 2001.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.023(d), eff. Sept. 1, 2001.

Sec. 153.007. AUTHORITY TO ISSUE SUBPOENA OR ADMINISTER OATH.

(a) The board may issue a subpoena or a subpoena duces tecum to compel the attendance of a witness and the production of books, records, and documents. The board may administer oaths and take testimony regarding any matter within its jurisdiction.

(b) The board may delegate the authority granted under Subsection (a) to the executive director or the secretary-treasurer of the board.

(c) A subpoena issued at the request of the board staff may be served either personally by the board's investigators or by certified

mail.

(d) The board shall pay, for photocopies subpoenaed at the request of the board's staff, a reasonable fee in an amount not to exceed the amount the board may charge for copies of its records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.008. BOARD RECORDS. (a) The board shall maintain a record of its proceedings. The record maintained under this subsection is public information.

(b) The board's records must indicate whether an applicant was issued or denied a license. The record constitutes prima facie evidence of each matter contained in the record.

(c) A certified copy of a record maintained under this section, under the hand and seal of the executive director of the board, is admissible in evidence in all courts.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.023(a), eff. Sept. 1, 2001.

Sec. 153.010. ADOPTION OF FEE SCHEDULE BY BOARD PROHIBITED. The board may not establish a fee schedule for medical services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.011. WAIVER OF FEE OR PENALTY BY BOARD PROHIBITED. The board may not waive collection of a fee or penalty assessed under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.012. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

(1) adopt a form to standardize information concerning complaints made to the board; and

(2) prescribe information to be provided to a person when

the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.013. REPRESENTATION BY ATTORNEY GENERAL. The board shall be represented in court proceedings by the attorney general.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.014. INFORMATION PROVIDED TO LICENSE HOLDERS. At least once each biennium, the board shall provide to license holders information on:

(1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;

(2) abusive and addictive behavior of certain persons who use prescription pain medications;

(3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and

(4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 1, eff. Sept. 1, 2003.

Sec. 153.015. POISON CONTROL CENTER INFORMATION. The board shall provide to license holders information regarding the services provided by poison control centers.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 1, eff. Sept. 1, 2003.

Sec. 153.016. EXPERT TESTIMONY. A member of the board may not serve as an expert witness in a suit involving a health care liability claim against a physician for injury to or death of a

patient.

Added by Acts 2007, 80th Leg., R.S., Ch. 880 (H.B. 1973), Sec. 1, eff. June 15, 2007.

#### SUBCHAPTER B. FEES AND FUNDS

Sec. 153.051. FEES; BUDGET. (a) The board by rule shall set reasonable and necessary fees in amounts sufficient to cover the cost of administering this subtitle.

(b) The board may not adjust a fee established on or before September 1, 1993, to an amount less than the amount of the fee on September 1, 1993.

(c) The board shall by annual budget determine the manner of handling the funds received under this subtitle and the purposes for which those funds may be used. The budgeted expenses authorized by the board shall be paid from the funds received by the board and are not a charge on the general revenue of the state.

(d) The board may not set, charge, collect, receive, or deposit any of the following fees in excess of:

- (1) \$900 for a license;
- (2) \$400 for a first registration permit;
- (3) \$200 for a temporary license;
- (4) \$400 for renewal of a registration permit;
- (5) \$200 for a physician-in-training permit;
- (6) \$600 for the processing of an application and the issuance of a registration for anesthesia in an outpatient setting;
- (7) \$200 for an endorsement to other state medical boards;
- (8) \$200 for a duplicate license;
- (9) \$700 for a reinstated license after cancellation for cause; or
- (10) \$1,200 for an annual fee under Section 167.011(c) for a program participant in the Texas Physician Health Program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.024(b), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 2, eff. June 10, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(b), eff. September 1, 2009.

Sec. 153.052. DEPOSIT AND EXPENDITURE OF RECEIPTS. (a) The board shall deposit all receipts collected by the board in the state treasury.

(b) The money collected by the board may be spent only as provided by the General Appropriations Act, this subtitle, or other applicable law for the:

- (1) enforcement of this subtitle;
- (2) prohibition of the unlawful practice of medicine;
- (3) dissemination of information to prevent the violation of the laws; and
- (4) prosecution of those who violate the laws.

(c) Distributions may be made only on the written approval of the executive director of the board or the executive director's designated representative.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.024(c), eff. Sept. 1, 2001.

Sec. 153.053. SURCHARGE FOR CERTAIN FEES. (a) The board shall collect a fee surcharge as follows:

- (1) \$200 for the license fee;
- (2) \$400 for the first registration permit;
- (3) \$400 for renewal of a registration permit; and
- (4) \$200 for reinstatement of a license after cancellation for cause.

(b) Of each surcharge collected under Subsections (a)(1) and (4), the board shall deposit \$50 to the credit of the foundation school fund and \$150 to the credit of the general revenue fund.

(c) Of each surcharge collected under Subsections (a)(2) and (3), the board shall deposit \$100 to the credit of the foundation school fund and \$300 to the credit of the general revenue fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.025(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 3, eff. June 10, 2003.

Sec. 153.0535. SURCHARGE FOR REGISTRATION PERMIT. (a) The board shall collect an additional \$80 surcharge for each of the

following fees:

- (1) first registration permit; and
- (2) renewal of a registration permit.

(b) The board shall deposit each surcharge collected to the credit of the public assurance account. The public assurance account is an account in the general revenue fund that shall be appropriated only to the board to pay for the board's enforcement program, including the expert physician panel.

Added by Acts 2003, 78th Leg., ch. 202, Sec. 4, eff. June 10, 2003.

Sec. 153.054. CHARGES FOR CERTAIN RECORDS AND OTHER MATERIAL. The board may set and collect a fee for:

- (1) each copy made of a record in the office of the board;
- or
- (2) any material published by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.024(d), eff. Sept. 1, 2001.

Sec. 153.056. REPORT ON PENDING COMPLAINTS. The board shall include with its annual financial report information regarding any investigations that remain pending after one year, including the reasons the investigations remain pending. Information in the report under this section may not identify a patient for any purpose unless proper consent to the release is given by the patient.

Added by Acts 2003, 78th Leg., ch. 202, Sec. 5, eff. June 10, 2003.

Sec. 153.057. USE OF TECHNOLOGY. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. [419](#)), Sec. 1.13, eff. September 1, 2005.

Sec. 153.058. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.13, eff. September 1, 2005.

**CHAPTER 154. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**  
**SUBCHAPTER A. PUBLIC INTEREST INFORMATION**

Sec. 154.001. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 154.002. INFORMATION FOR PUBLIC DISSEMINATION. (a) The board shall prepare:

(1) an alphabetical list of the names of the license holders;

(2) an alphabetical list of the names of the license holders by the county in which the license holder's principal place of practice is located;

(3) a summary of the board's functions;

(4) a copy of this subtitle and a list of other laws relating to the practice of medicine;

(5) a copy of the board's rules;

(6) a statistical report each fiscal year to the legislature and the public that provides aggregate information about all complaints received by the board categorized by type of complaint, including administrative, quality of care, medical error, substance abuse, other criminal behavior, and the disposition of those complaints by category; and

(7) other information considered appropriate by the board.

(b) The board shall provide:

(1) a copy of the information prepared under Subsection (a) to each person who requests a copy; and

(2) copies of the information prepared under Subsection (a) to each public library in this state that requests the copies.

(c) The board shall make available on the board's Internet website a consumer guide to health care. The board shall include information in the guide concerning the billing and reimbursement of health care services provided by physicians, including information that advises consumers that:

(1) the charge for a health care service or supply will vary based on:

(A) the person's medical condition;

(B) any unknown medical conditions of the person;

(C) the person's diagnosis and recommended treatment protocols; and

(D) other factors associated with performance of the health care service;

(2) the charge for a health care service or supply may differ from the amount to be paid by the consumer or the consumer's third-party payor;

(3) the consumer may be personally liable for payment for the health care service or supply depending on the consumer's health benefit plan coverage; and



(4) the consumer should contact the consumer's health benefit plan for accurate information regarding the plan structure, benefit coverage, deductibles, copayments, coinsurance, and other plan provisions that may impact the consumer's liability for payment for the health care services or supplies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 6, eff. June 10, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. [1731](#)), Sec. 7, eff. September 1, 2007.

Sec. 154.003. INFORMATION FOR PHYSICIANS. (a) The board shall disseminate at least twice a year and at other times determined necessary by the board information of significant interest to the physicians of this state. The information must include summaries of:

- (1) disciplinary orders made against physicians licensed in this state;
- (2) board activities and functions;
- (3) pertinent changes in this subtitle or board rules; and
- (4) attorney general opinions.

(b) The requirements of this section are in addition to the reporting requirements imposed under Section 164.060.

(c) The board shall disseminate the information to:

- (1) each physician practicing in this state;
- (2) each health care entity and other board-designated health care institution operating in this state;
- (3) each member of a health-related legislative committee;
- (4) a member of the public who submits a written request;

and

- (5) public libraries throughout this state.

(d) Except as provided by this subsection, the board shall publish information regarding errors in and reversals of disciplinary actions taken by the board. The information to be published under this subsection includes instances in which a disciplinary action initiated by the board is overturned by a court. The board shall disseminate the information under this subsection in the same format, size, style, and manner as the information regarding the original action by the board was disseminated. The board may not publish

information under this subsection if the physician who was the subject of the disciplinary action requests that the information not be published.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.14, eff. September 1, 2005.

Sec. 154.004. DISCLOSURE OF DISCIPLINARY ORDERS. (a) On written request the board shall make available to the general public on payment of a reasonable fee to cover expenses and to appropriate state agencies information that includes:

- (1) a summary of any previous disciplinary order by the board against a specific physician licensed in this state;
- (2) the date of the order; and
- (3) the current status of the order.

(b) If the board is not required under other state law to establish a toll-free telephone number, the board shall establish an eight-hour toll-free telephone number to make the information required by this section immediately available to any caller.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 154.005. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 154.006. PHYSICIAN PROFILES. (a) The board shall create a profile of each physician licensed under this subtitle. The profile must:

- (1) include the information required by Subsection (b);

and

(2) be compiled in a format that makes the information contained in the profile easily available to the public.

(b) A profile must contain the following information on each physician:

(1) the name of each medical school attended and the dates of:

(A) graduation; or

(B) Fifth Pathway designation and completion of the Fifth Pathway Program;

(2) a description of all graduate medical education in the United States or Canada;

(3) any specialty certification held by the physician and issued by a medical licensing board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists;

(4) the number of years the physician has actively practiced medicine in:

(A) the United States or Canada; and

(B) this state;

(5) the name of each hospital in this state in which the physician has privileges;

(6) the physician's primary practice location;

(7) the type of language translating services, including translating services for a person with impairment of hearing, that the physician provides at the physician's primary practice location;

(8) whether the physician participates in the Medicaid program;

(9) a description of any conviction for a felony, a Class A or Class B misdemeanor, or a Class C misdemeanor involving moral turpitude;

(10) a description of any charges reported to the board to which the physician has pleaded no contest, for which the physician is the subject of deferred adjudication or pretrial diversion, or in which sufficient facts of guilt were found and the matter was continued by a court;

(11) a description of any disciplinary action against the physician by the board;

(12) a description of any disciplinary action against the physician by a medical licensing board of another state;

(13) a description of the final resolution taken by the board on medical malpractice claims or complaints required to be opened by the board under Section 164.201;

(14) whether the physician's patient service areas are accessible to disabled persons, as defined by federal law;

(15) a description of any formal complaint against the physician initiated and filed under Section 164.005 and the status of the complaint; and

(16) a description of any medical malpractice claim against the physician, not including a description of any offers by the physician to settle the claim, for which the physician was found liable, a jury awarded monetary damages to the claimant, and the award has been determined to be final and not subject to further appeal.

(c) Information required to be included under Subsection (b) that is not maintained by the board in the ordinary course of the board's duties shall be obtained from a physician at the time the physician renews the physician's license. In requesting information from the physician, the board shall:

(1) inform the physician that compliance with the request for information is mandatory;

(2) inform the physician of the date the information will be made available to the public; and

(3) instruct the physician about the requirements under Subsection (f) for the physician to obtain a copy of the physician's profile to make corrections.

(d) This section does not:

(1) prevent the board from providing explanatory information regarding the significance of categories in which malpractice settlements are reported; or

(2) require the board to disclose confidential settlement information.

(e) A pending malpractice claim or complaint, other than a claim disclosed under Subsection (b)(13), may not be disclosed to the public by the board. This subsection does not prevent the board from investigating and disciplining a physician on the basis of a pending medical malpractice claim or complaint.

(f) The board shall provide a physician with a copy of the physician's profile if the physician requests a copy at the time the physician renews the physician's license. If a copy is requested by

a physician, the board shall provide the physician one month from the date the copy is provided to the physician to correct factual errors in the physician's profile.

(g) The board shall update the information contained in a physician's profile annually, except that information provided under Subsection (i) shall be updated not later than the 10th working day after the date the formal complaint is filed or the board's order is issued. The board shall adopt a form that allows a physician to update information contained in a physician's profile. The form shall be made available on the Internet and in other formats as prescribed by board rule. The board may adopt rules concerning the type and content of additional information that may be included in a physician's profile.

(h) The board shall adopt rules as necessary to implement this section.

(i) In addition to the information required by Subsection (b), a profile must contain the text of a formal complaint filed under Section 164.005 against the physician or of a board order related to the formal complaint.

(j) Information included in a physician's profile under Subsections (b) and (i) may not include any patient identifying information.

(k) In the annual update of a physician's profile under Subsection (g), the board shall remove any record of a formal complaint required under Subsection (b)(15) or (i) if the complaint was dismissed more than five years before the date of the update and the complaint was dismissed as baseless, unfounded, or not supported by sufficient evidence that a violation occurred, or no action was taken against the physician's license as a result of the complaint. The board shall also remove any record of the investigation of medical malpractice claims or complaints required to be investigated by the board under Section 164.201 if the investigation was resolved more than five years before the date of the update and no action was taken against the physician's license as a result of the investigation.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.026(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 7, eff. June 10, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 607 (H.B. 732), Sec. 1, eff. September 1, 2009.

#### **SUBCHAPTER B. COMPLAINT PROCEDURES**

Sec. 154.051. COMPLAINT INITIATION. (a) The board by rule shall establish methods by which members of the public and license holders are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

(1) on each registration form, application, or written contract for services of a person or entity regulated under this subtitle;

(2) on a sign prominently displayed in the place of business of each person or entity regulated under this subtitle; or

(3) in a bill for service provided by a person or entity regulated under this subtitle.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

(c) A person, including a partnership, association, corporation, or other entity, may file a complaint against a license holder with the board. The board may file a complaint on its own initiative.

(d) The board may not consider or act on a complaint involving care provided more than seven years before the date on which the complaint is received by the board unless the care was provided to a minor. If the care was provided to a minor, the board may not consider or act on a complaint involving the care after the later of:

(1) the date the minor is 21 years of age; or

(2) the seventh anniversary of the date of the care.

(e) On receipt of a complaint, the board may consider a previously investigated complaint to determine whether there is a pattern of practice violating this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1349 (H.B. 680), Sec. 1, eff. September 1, 2011.

Sec. 154.052. RECORDS OF COMPLAINTS. The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about:

- (1) the parties to the complaint;
- (2) the subject matter of the complaint;
- (3) a summary of the results of the review or investigation of the complaint; and
- (4) the disposition of the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.15, eff. September 1, 2005.

Sec. 154.053. NOTIFICATION CONCERNING COMPLAINT. (a) The board shall notify a physician who is the subject of a complaint filed with the board that a complaint has been filed and shall notify the physician of the nature of the complaint unless the notice would jeopardize an investigation.

(b) Each party shall be notified of the projected time requirements for pursuing the complaint. Each party to the complaint must be notified of a change in the schedule not later than the 14th day after the date the change is made unless the notice would jeopardize an investigation.

(c) The board shall periodically notify the parties to the complaint of the status of the complaint until final disposition unless the notice would jeopardize an investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.16, eff. September 1, 2005.

Sec. 154.0535. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a) In this section:

(1) "Anonymous complaint" means a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint.

(2) "Insurance agent" means a person licensed under Chapter

4054, Insurance Code.

(3) "Insurer" means an insurance company or other entity authorized to engage in the business of insurance under Subtitle C, Title 6, Insurance Code.

(4) "Third-party administrator" means a person required to have a certificate of authority under Chapter 4151, Insurance Code.

(b) The board may not accept anonymous complaints.

(c) Notwithstanding any confidentiality requirements under Chapter 552, Government Code, this subtitle, or rules adopted under this subtitle, a complaint filed with the board by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a physician must include the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator filing the complaint. Not later than the 15th day after the date the complaint is filed with the board, the board shall notify the physician who is the subject of the complaint of the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator who filed the complaint, unless the notice would jeopardize an investigation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1349 (H.B. 680), Sec. 2, eff. September 1, 2011.

Sec. 154.054. COMPLAINT INFORMATION TO HEALTH CARE ENTITY. On written request, the board shall provide information to a health care entity regarding:

(1) a complaint filed against a license holder that was resolved after investigation by:

(A) a disciplinary order of the board; or

(B) an agreed settlement; and

(2) the basis of and current status of any complaint under active investigation that has been assigned by the executive director to a person authorized by the board to pursue legal action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 8, eff. June 10, 2003.

Sec. 154.055. RELEASE OF COMPLAINT INFORMATION TO LEGISLATIVE COMMITTEE. (a) On request from a legislative committee created



under Subchapter B, Chapter 301, Government Code, the board shall release all information regarding a complaint against a physician to aid in a legitimate legislative inquiry. The board may release the information only to the members of the committee.

(b) In complying with a request under Subsection (a), the board may not identify the complainant or the patient and may reveal the identity of the affected physician only to the members of the committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 154.056. GENERAL RULES REGARDING COMPLAINT INVESTIGATION; DISPOSITION. (a) The board shall adopt rules concerning the investigation and review of a complaint filed with the board. The rules adopted under this section must:

(1) distinguish among categories of complaints and give priority to complaints that involve sexual misconduct, quality of care, and impaired physician issues;

(2) ensure that a complaint is not dismissed without appropriate consideration;

(3) require that the board be advised of the dismissal of a complaint and that a letter be sent to the person who filed the complaint and to the physician who was the subject of the complaint explaining the action taken on the complaint;

(4) ensure that a person who files a complaint has an opportunity to explain the allegations made in the complaint;

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator;

(6) provide for an expert physician panel authorized under Subsection (e) to assist with complaints and investigations relating to medical competency; and

(7) require the review of reports filed with the National Practitioner Data Bank for any report of the termination, limitation, suspension, limitation in scope of practice, or probation of clinical or hospital staff privileges of a physician by:

(A) a hospital;

(B) a health maintenance organization;

- (C) an independent practice association;
- (D) an approved nonprofit health corporation certified under Section 162.001; or
- (E) a physician network.

(b) The board shall:

- (1) dispose of each complaint in a timely manner; and
- (2) establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) The executive director shall notify the board of a complaint that is unresolved after the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

(d) The board shall adopt other rules as appropriate to administer this subchapter.

(e) The board by rule shall provide for an expert physician panel appointed by the board to assist with complaints and investigations relating to medical competency by acting as expert physician reviewers. Each member of the expert physician panel must be licensed to practice medicine in this state. The rules adopted under this subsection must include provisions governing the composition of the panel, qualifications for membership on the panel, length of time a member may serve on the panel, grounds for removal from the panel, the avoidance of conflicts of interest, including situations in which the affected physician and the panel member live or work in the same geographical area or are competitors, and the duties to be performed by the panel. The board's rules governing grounds for removal from the panel must include providing for the removal of a panel member who is repeatedly delinquent in reviewing complaints and in submitting reports to the board. The board's rules governing appointment of expert physician panel members to act as expert physician reviewers must include a requirement that the board randomly select, to the extent permitted by Section 154.058(b) and the conflict of interest provisions adopted under this subsection, panel members to review a complaint.

(f) In the board rules adopted under Subsection (a)(3), the board shall require that the letter informing the person who filed the complaint of the dismissal of the complaint include an explanation of the reason the complaint was dismissed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 9, eff. June 10, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.17, eff. September 1, 2005.

Sec. 154.0561. PROCEDURES FOR EXPERT PHYSICIAN REVIEW. (a) A physician on the expert physician panel authorized by Section 154.056(e) who is selected to review a complaint shall:

(1) determine whether the physician who is the subject of the complaint has violated the standard of care applicable to the circumstances; and

(2) issue a preliminary written report of that determination.

(b) A second expert physician reviewer shall review the first physician's preliminary report and other information associated with the complaint. If the second expert physician agrees with the first expert physician, the first physician shall issue a final written report on the matter.

(c) If the second expert physician does not agree with the conclusions of the first expert physician, a third expert physician reviewer shall review the preliminary report and information and decide between the conclusions reached by the first two expert physicians. The final written report shall be issued by the third physician or the physician with whom the third physician concurs.

(d) In reviewing a complaint, the expert physician reviewers assigned to examine the complaint may consult and communicate with each other about the complaint in formulating their opinions and reports.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.18, eff. September 1, 2005.

Sec. 154.057. CONDUCT OF INVESTIGATION; USE OF INVESTIGATORS AS PEACE OFFICERS. (a) Except as otherwise provided by this subchapter, each investigation of a complaint filed under this subtitle shall be conducted by the board or by a person authorized by the board to conduct the investigation.

(b) The board shall complete a preliminary investigation of the complaint not later than the 45th day after the date of receiving the complaint. The board shall first determine whether the physician constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the board shall determine whether to officially proceed on the complaint. If the board fails to complete the preliminary investigation in the time required by this subsection, the board's official investigation of the complaint is considered to commence on that date.

(c) The board may commission investigators as peace officers to enforce this subtitle. An investigator commissioned as a peace officer under this subsection may not carry a firearm or exercise the powers of arrest.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.19, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1349 (H.B. 680), Sec. 3, eff. September 1, 2011.

Sec. 154.058. DETERMINATION OF MEDICAL COMPETENCY. (a) Each complaint against a physician that requires a determination of medical competency shall be reviewed initially by a board member, consultant, or employee with a medical background considered sufficient by the board.

(b) If the initial review under Subsection (a) indicates that an act by a physician falls below an acceptable standard of care, the complaint shall be reviewed by an expert physician panel authorized under Section 154.056(e) consisting of physicians who practice in the same specialty as the physician who is the subject of the complaint or in another specialty that is similar to the physician's specialty.

(c) The expert physician panel shall report in writing the panel's determinations based on the review of the complaint under Subsection (b). The report must specify the standard of care that applies to the facts that are the basis of the complaint and the clinical basis for the panel's determinations, including any reliance on peer-reviewed journals, studies, or reports.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2003, 78th Leg., ch. 202, Sec. 10, eff. June 10, 2003.

## CHAPTER 155. LICENSE TO PRACTICE MEDICINE

### SUBCHAPTER A. LICENSE REQUIREMENTS

Sec. 155.001. LICENSE REQUIRED. A person may not practice medicine in this state unless the person holds a license issued under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 155.002. ISSUANCE OF LICENSE. (a) The board, at its sole discretion, may issue a license to practice medicine to a person who:

(1) submits to the board a license application as required by this chapter;

(2) presents satisfactory proof that the person meets the eligibility requirements established by this chapter; and

(3) satisfies the examination requirements of Section 155.051.

(b) The board may delegate authority to board employees to issue licenses under this subtitle to applicants who clearly meet all licensing requirements. If the board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the board. A license issued under this subsection does not require formal board approval.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.20, eff. September 1, 2005.

Sec. 155.003. GENERAL ELIGIBILITY REQUIREMENTS. (a) To be eligible for a license under this chapter, an applicant must present proof satisfactory to the board that the applicant:

(1) is at least 21 years of age;

(2) is of good professional character and has not violated

Section 164.051, 164.052, or 164.053;

(3) has completed:

(A) at least 60 semester hours of college courses, other than courses in medical school, that are acceptable to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree;

(B) the entire primary, secondary, and premedical education required in the country of medical school graduation, if the medical school is located outside the United States or Canada; or

(C) substantially equivalent courses as determined by board rule;

(4) is a graduate of a medical school located in the United States or Canada and approved by the board;

(5) has either:

(A) successfully completed one year of graduate medical training approved by the board in the United States or Canada; or

(B) graduated from a medical school located outside the United States or Canada and has successfully completed two years of graduate medical training approved by the board in the United States or Canada;

(6) has passed an examination accepted or administered by the board; and

(7) has passed a Texas medical jurisprudence examination as determined by board rule.

(b) All medical or osteopathic medical education an applicant receives in the United States must be accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree. This subsection does not apply to postgraduate medical education or training.

(c) An applicant who is unable to meet the requirement established by Subsection (b) may be eligible for an unrestricted license if the applicant:

(1) received medical education in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the board in the same subject as the medical or osteopathic medical education as defined by board rule; or

(2) is specialty board certified by a specialty board approved by the American Osteopathic Association or the American Board of Medical Specialties.

(d) In addition to the other requirements prescribed by this subtitle, the board may require an applicant to comply with other requirements that the board considers appropriate.

(e) An applicant is not eligible for a license if:

(1) the applicant holds a medical license that is currently restricted for cause, canceled for cause, suspended for cause, or revoked by a state, a province of Canada, or a uniformed service of the United States;

(2) an investigation or a proceeding is instituted against the applicant for the restriction, cancellation, suspension, or revocation in a state, a province of Canada, or a uniformed service of the United States; or

(3) a prosecution is pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony or a misdemeanor that involves moral turpitude.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.21, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 498 (H.B. 1380), Sec. 1, eff. September 1, 2011.

Sec. 155.0031. APPLICATION PROCEDURES AND REQUIREMENTS. (a) An application for a license must be in writing and on forms prescribed by the board. The board may allow or require applicants, by board rule, to use the Federation Credentials Verification Service offered by the Federation of State Medical Boards of the United States.

(b) The application forms must be accompanied by all fees, documents, and photographs required by board rule.

(c) Applicants for a license must subscribe to an oath. The written oath is part of the application.

(d) An applicant must present proof satisfactory to the board that:

(1) each medical school attended by the applicant is substantially equivalent to a Texas medical school as determined by board rule; or

(2) the applicant is specialty board certified by a specialty board organization acceptable to the board.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(c), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1406 (H.B. 3674), Sec. 1, eff. September 1, 2009.

Sec. 155.004. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR GRADUATES OF CERTAIN FOREIGN MEDICAL SCHOOLS. A license applicant who is a graduate of a medical school that is located outside the United States and Canada must present proof satisfactory to the board that the applicant:

(1) is a graduate of a school whose curriculum meets the requirements for an unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board;

(2) has successfully completed at least two years of graduate medical training in the United States or Canada that was approved by the board;

(3) holds a valid certificate issued by the Educational Commission for Foreign Medical Graduates; and

(4) is able to communicate in English.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(d), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1406 (H.B. 3674), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 498 (H.B. 1380), Sec. 2, eff. September 1, 2011.



Sec. 155.005. ELIGIBILITY REQUIREMENTS OF FOREIGN MEDICAL SCHOOL STUDENTS IN FIFTH PATHWAY PROGRAM. (a) To be eligible for a license under this chapter, an applicant who has been a student of a foreign medical school must present proof satisfactory to the board that the applicant:

- (1) meets the requirements of Section 155.003;
- (2) has studied medicine in a medical school located outside the United States and Canada that is acceptable to the board;
- (3) has completed all of the didactic work of the foreign medical school but has not graduated from the school;
- (4) has attained a score satisfactory to a medical school in the United States approved by the Liaison Committee on Medical Education on a qualifying examination and has satisfactorily completed one academic year of supervised clinical training for foreign medical students, as defined by the American Medical Association Council on Medical Education (Fifth Pathway Program), under the direction of the medical school in the United States;
- (5) has attained a passing score on the Educational Commission for Foreign Medical Graduates examination or another examination, if required by the board;
- (6) has successfully completed at least two years of graduate medical training in the United States or Canada that was approved by the board as of the date the training was completed; and
- (7) has passed the license examination under Subchapter B required by the board of each applicant.

(b) An applicant who satisfies the requirements of this section is not required to:

- (1) meet any requirement of the foreign medical school beyond completion of the didactic work; or
- (2) be certified by the Educational Commission for Foreign Medical Graduates.

(c) A hospital that is licensed by this state, that is operated by this state or a political subdivision of this state, or that directly or indirectly receives state financial assistance may not require a person who has been a student of a foreign medical school but has not graduated from the school to satisfy any requirements other than those listed in Subsection (a) before beginning an internship or residency.

(d) For purposes of licensing under this chapter, a document granted by a medical school located outside the United States issued

after the completion of all the didactic work of the medical school is considered the equivalent of a degree of doctor of medicine or doctor of osteopathy on certification by the medical school in the United States in which the training was received that the person to whom the document was issued satisfactorily completed the requirements listed in Subsection (a)(4).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(e), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 498 (H.B. 1380), Sec. 3, eff. September 1, 2011.

Text of section as added by Acts 2005, 79th Leg., R.S., Ch. 269 (S.B. 419), Sec. 1.22

For text of section as added by Acts 2005, 79th Leg., Ch. 799 (S.B. 423), Sec. 1, see other Sec. 155.006.

Sec. 155.006. ISSUANCE OF LIMITED LICENSE. (a) The board may adopt rules and prescribe fees related to the issuance of a license under this section that is limited in scope to an applicant by virtue of the applicant's conceded eminence and authority in the applicant's specialty.

(b) An applicant is eligible for a limited license under this section on presenting proof satisfactory to the board that the applicant:

(1) is recommended to the board by the dean, president, or chief academic officer of:

- (A) a school of medicine in this state;
- (B) The University of Texas Health Center at Tyler;
- (C) The University of Texas M. D. Anderson Cancer

Center; or

(D) a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, that exceeds the requirements for eligibility for first board certification in the discipline;

(2) is expected to receive an appointment at the institution or program making the recommendation under Subdivision (1);

(3) has not failed a licensing examination that would prevent the applicant from obtaining a full license not limited in scope in this state;

(4) has passed a Texas medical jurisprudence examination as determined by board rule;

(5) has successfully completed at least one year of approved subspecialty training accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(6) is of good professional character, is not subject to denial of a license under Section 164.051, and has not engaged in conduct described by Section 164.052 or 164.053; and

(7) meets any other requirements prescribed by board rule adopted under this section.

(c) In adopting rules under this section, the board may adopt rules that prescribe additional qualifications for an applicant, including education and examination requirements, conditions of employment, and application procedures. The board by rule may qualify, restrict, or otherwise limit a license issued under this section.

(d) The board by rule may define "conceded eminence and authority in the applicant's specialty." In adopting rules under this subsection, the board shall consider criteria that include a person's:

- (1) academic appointments;
- (2) length of time in a profession;
- (3) scholarly publications; and
- (4) professional accomplishments.

(e) The board may require that the holder of a license under this section serve a six-month probationary period during which medical services provided by the license holder are supervised by another licensed physician.

(f) The holder of a license under this section shall be limited to the practice of only a specialty of medicine for which the license holder has trained and qualified, as determined by the board. The license holder may not practice medicine outside of the setting of the institution or program that recommended the license holder under Subsection (b)(1).

(g) The holder of a license under this section may not change the license holder's practice setting to a new institution or program

unless the license holder applies for a new license under this section with the recommendation of that institution or program as required by Subsection (b)(1).

(h) A license holder under this section may obtain a full license not limited in scope to practice medicine in this state by meeting all applicable eligibility requirements for that license.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.22, eff. September 1, 2005.

Text of section as added by Acts 2005, 79th Leg., R.S., Ch. 799 (S.B. 423), Sec. 1

For text of section as added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.22, see other Sec. 155.006.

Sec. 155.006. ISSUANCE OF LIMITED LICENSE. (a) The board may adopt rules and prescribe fees related to the issuance of a license under this section that is limited in scope to an applicant by virtue of the applicant's conceded eminence and authority in the applicant's specialty.

(b) An applicant is eligible for a limited license under this section on presenting proof satisfactory to the board that the applicant:

(1) is recommended to the board by the dean, president, or chief academic officer of:

- (A) a school of medicine in this state;
- (B) The University of Texas Health Center at Tyler;
- (C) The University of Texas M. D. Anderson Cancer

Center; or

(D) a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, that exceeds the requirements for eligibility for first board certification in the discipline;

(2) is expected to receive an appointment at the institution or program making the recommendation under Subdivision (1);

(3) has not failed a licensing examination that would prevent the applicant from obtaining a full license not limited in scope in this state;

(4) has passed a Texas medical jurisprudence examination as

determined by board rule;

(5) has successfully completed at least one year of approved subspecialty training accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(6) is of good professional character, is not subject to denial of a license under Section 164.051, and has not engaged in conduct described by Section 164.052 or 164.053; and

(7) meets any other requirements prescribed by board rule adopted under this section.

(c) In adopting rules under this section, the board may adopt rules that prescribe additional qualifications for an applicant, including education and examination requirements, conditions of employment, and application procedures. The board by rule may qualify, restrict, or otherwise limit a license issued under this section.

(d) The board by rule may define "conceded eminence and authority in the applicant's specialty." In adopting rules under this subsection, the board shall consider criteria that include a person's:

- (1) academic appointments;
- (2) length of time in a profession;
- (3) scholarly publications; and
- (4) professional accomplishments.

(e) The board may require that the holder of a license under this section serve a six-month probationary period during which medical services provided by the license holder are supervised by another licensed physician.

(f) The holder of a license under this section shall be limited to the practice of only a specialty of medicine for which the license holder has trained and qualified, as determined by the board. The license holder may not practice medicine outside of the setting of the institution or program, or an affiliate of the institution or program, that recommended the license holder under Subsection (b)(1).

(g) The holder of a license under this section may not change the license holder's practice setting to a new institution or program unless the license holder applies for a new license under this section with the recommendation of that institution or program as required by Subsection (b)(1).

(h) A license holder under this section may obtain a full

license not limited in scope to practice medicine in this state by meeting all applicable eligibility requirements for such license.

Added by Acts 2005, 79th Leg., Ch. 799 (S.B. 423), Sec. 1, eff. September 1, 2005.

Sec. 155.007. APPLICATION PROCESS. (a) The executive director shall review each application for a license and shall:

(1) recommend to the board each applicant eligible for a license; and

(2) report to the board the name of each applicant determined to be ineligible for a license, together with the reasons for that determination.

(b) An applicant determined to be ineligible for a license by the executive director may request review of that determination by a committee of the board. The applicant must request the review not later than the 20th day after the date the applicant receives notice of the determination.

(c) The executive director may refer an application to the board committee for a recommendation concerning eligibility. If the committee determines that the applicant is ineligible for a license, the committee shall submit that determination, together with the reasons for the determination, to the board unless the applicant requests a hearing not later than the 20th day after the date the applicant receives notice of the determination.

(d) The committee may refer an application for determination of eligibility to the full board.

(e) A hearing requested under Subsection (c) shall be held before an administrative law judge of the State Office of Administrative Hearings and must comply with:

(1) Chapter 2001, Government Code; and

(2) the rules of:

(A) the State Office of Administrative Hearings; and

(B) the board.

(f) After receipt of the administrative law judge's proposed findings of fact and conclusions of law, the board shall determine the applicant's eligibility. The board shall provide an applicant who is denied a license a written statement containing the reasons for the board's action.

(g) Each report received or gathered by the board on a license applicant is confidential and is not subject to disclosure under Chapter 552, Government Code. The board may disclose a report to an appropriate licensing authority in another state. The board shall report all licensing actions to appropriate licensing authorities in other states and to the Federation of State Medical Boards of the United States.

(h) Not later than January 1 of each year:

(1) the executive director shall review the policy and procedures the board uses to issue licenses; and

(2) the board shall perform a needs assessment to enable the board to determine the performance goals that the board must meet to reduce any unreasonable delays in the timely completion of the licensing process and to ensure the process is completed in a reasonable number of days.

(i) Not later than August 1 of each even-numbered year, the executive director shall issue a report to the governor, the Legislative Budget Board, and the relevant committees of the senate and the house of representatives on the state of the board's licensing process.

(j) The report required under Subsection (i) must include a projected yearly budget for board staffing and technology improvements that will allow the board to issue licenses within a reasonable number of days.

(k) The board and the executive director shall ensure that any change in licensing policies or procedures is made only to increase the number of licenses issued under this chapter, reduce unreasonable delays in the licensing process, and maintain public safety.

(l) The report required under Subsection (i) must include:

(1) any specialty certification information collected from applicants, including any information similar to information collected under Section 154.006;

(2) the location where each applicant intends to practice; and

(3) in aggregate form, data collected since the prior report relating to felony convictions, Class A and Class B misdemeanor convictions, and deferred adjudications for felonies and Class A and Class B misdemeanors.

(m) Not later than August 31, 2008, the board shall ensure that the average time to process license applications under this chapter

does not exceed 51 days. The board shall include the board's progress toward this performance measure target in the report required under Subsection (i).

(n) The board shall make an effort to give priority to an application submitted by an applicant who informs the board that the applicant intends to practice in a medically underserved area of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(f), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 880 (H.B. 1973), Sec. 2, eff. June 15, 2007.

Sec. 155.008. CRIMINAL RECORD CHECK. (a) The board may submit to the Department of Public Safety a complete set of fingerprints of each license applicant, and the department shall classify and check the fingerprints against those in the department's fingerprint records. The department shall certify to the board its findings regarding the criminal record of the applicant or the applicant's lack of a criminal record.

(b) Each applicant shall submit information to the board detailing any conviction for a felony or a Class A or Class B misdemeanor or a deferred adjudication for a felony or Class A or Class B misdemeanor for a violation relating to:

- (1) Medicare, Medicaid or insurance fraud;
- (2) the Texas Controlled Substances Act or intoxication or alcoholic beverage offenses;
- (3) sexual or assaultive offenses; and
- (4) tax fraud or evasion.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.023(b), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 880 (H.B. 1973), Sec. 3, eff. June 15, 2007.



Sec. 155.009. LIMITED LICENSE FOR PRACTICE OF ADMINISTRATIVE MEDICINE. (a) The board shall adopt rules for the issuance of a license that limits the license holder to the practice of administrative medicine. The board's rules under this section must include provisions for eligibility for the license, issuance and renewal of the license, the fees applicable to the license, continuing education requirements, and the scope of practice of a person who holds the license.

(b) An applicant for a license under this section must meet all of the requirements for issuance of a license under Section 155.002.

(c) A license holder under this section who seeks to practice medicine under an unrestricted license that is not limited to the practice of administrative medicine must provide proof to the board that the license holder has the clinical competence to practice medicine under that license and must meet all applicable eligibility requirements for that license. The board may require the license holder to pass any examination the board determines necessary.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.23, eff. September 1, 2005.

#### **SUBCHAPTER B. LICENSE EXAMINATION**

Sec. 155.051. EXAMINATION REQUIRED. (a) Except as provided by Subsection (b), an applicant for a license to practice medicine in this state must pass each part of an examination described by Section 155.0511(2), (3), (4), (6), or (7) within seven years.

(b) An applicant who is a graduate of a program designed to lead to both a doctor of philosophy degree and a doctor of medicine degree or doctor of osteopathy degree must pass each part of an examination described by Section 155.0511(2), (3), (4), (6), or (7) not later than the second anniversary of the date the applicant completed the graduate medical training described by Section 155.003(a)(5).

(c) The time frame to pass each part of the examination described by Subsection (a) is extended to 10 years and the anniversary date to pass each part of the examination described by Subsection (b) is extended to the 10th anniversary if the applicant:

- (1) is specialty board certified by a specialty board that:
  - (A) is a member of the American Board of Medical

Specialties; or

(B) is a member of the Bureau of Osteopathic

Specialists; or

(2) has been issued a faculty temporary license, as prescribed by board rule, and has practiced under such a license for a minimum of 12 months and, at the conclusion of the 12-month period, has been recommended to the board by the chief administrative officer and the president of the institution in which the applicant practiced under the faculty temporary license.

(d) The time frame to pass each part of the examination does not apply to an applicant who:

(1) is licensed and in good standing as a physician in another state;

(2) has been licensed for at least five years;

(3) does not hold a medical license in the other state that has or has ever had any restrictions, disciplinary orders, or probation; and

(4) will practice in a medically underserved area or a health manpower shortage area, as those terms are defined by Section 157.052.

(e) The board may by rule establish a process to verify that a person, after meeting the requirements of Subsection (d), practices only in an area described by Subsection (d)(4).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(g), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 79 (S.B. 424), Sec. 1, eff. May 17, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1180 (S.B. 949), Sec. 2, eff. June 14, 2013.

Sec. 155.0511. EXAMINATIONS ADMINISTERED OR ACCEPTED BY BOARD. The board may administer or accept the following examinations for licensing as determined by rule:

(1) a state board licensing examination;

(2) the Medical Council of Canada Examination (LMCC) or its successor;

(3) the National Board of Osteopathic Medical Examiners (NBOME) examination or its successor;

(4) the National Board of Medical Examiners (NBME) examination or its successor;

(5) the Federation Licensing Examination (FLEX) with a weighted average in one sitting before June 1985;

(6) the Federation Licensing Examination (FLEX) after May 1985;

(7) the United States Medical Licensing Examination (USMLE) or its successor;

(8) a combination of the examinations described by Subdivisions (3) and (6) as determined by board rule; or

(9) a combination of the examinations described by Subdivisions (4), (6), and (7) as determined by board rule.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(h), eff. Sept. 1, 2001.

Sec. 155.052. GENERAL EXAMINATION PROCEDURES. (a) Each examination administered to evaluate basic medical knowledge and clinical competency must be prepared by a national testing service or the board and validated by qualified independent testing professionals. The examination must be in writing and in English.

(b) A license examination must be entirely fair and impartial to all persons and to each school or system of medicine.

(c) An applicant who wishes to request reasonable accommodations due to a disability must submit the request on filing the application.

(d) The board by rule shall determine the passing grade for each examination used by the board.

(e) The board shall give each license applicant notice of the date and place of the examination, if administered by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(i), eff. Sept. 1, 2001.

Sec. 155.053. PUBLIC MEMBER PARTICIPATION IN EXAMINATION. (a) A public member of the board may not participate in the preparation

of an examination used to examine the academic and professional credentials of a license applicant or to examine the applicant orally or in writing.

(b) Each public member shall be given notice of, and may be present at, each examination or deliberation concerning the results of an examination and may participate in the development and establishment of the procedures and criteria for each examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 155.054. EXAMINATION SUBJECTS. (a) Each license examination must include subjects generally taught by medical schools, a knowledge of which is commonly and generally required of each candidate for the degree of doctor of medicine or doctor of osteopathy conferred by schools in this state.

(b) The board shall administer the Texas medical jurisprudence examination to all applicants.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(j), eff. Sept. 1, 2001.

Sec. 155.055. NOTICE OF EXAMINATION RESULTS. The board shall notify each examinee of the results of a licensing examination not later than the 120th day after the date the examination is administered by the board. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than the 30th day after the date the board receives the results from the testing service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(k), eff. Sept. 1, 2001.

Sec. 155.056. EXAMINATION ATTEMPT LIMITS. (a) An applicant must pass each part of an examination within three attempts.

(b) The board shall adopt rules that prescribe how the limit on

the number of examination attempts under Subsection (a) shall apply to an applicant who seeks a license and who attempts more than one type of examination.

(c) Notwithstanding Subsection (a), an applicant who, on September 1, 2005, held a physician-in-training permit issued under Section 155.105 or had an application for that permit pending before the board must pass each part of the examination within three attempts, except that, if the applicant has passed all but one part of the examination within three attempts, the applicant may take the remaining part of the examination one additional time. However, an applicant is considered to have satisfied the requirements of this subsection if the applicant:

- (1) passed all but one part of the examination approved by the board within three attempts and passed the remaining part of the examination within six attempts;
- (2) is specialty board certified by a specialty board that:
  - (A) is a member of the American Board of Medical Specialties; or
  - (B) is approved by the American Osteopathic Association; and
- (3) has completed in this state an additional two years of postgraduate medical training approved by the board.

(d) The limitation on examination attempts by an applicant under Subsection (a) does not apply to an applicant who:

- (1) is licensed and in good standing as a physician in another state;
- (2) has been licensed for at least five years;
- (3) does not hold a medical license in the other state that has any restrictions, disciplinary orders, or probation; and
- (4) passed all but one part of the examination approved by the board within three attempts and:
  - (A) passed the remaining part of the examination within one additional attempt; or
  - (B) passed the remaining part of the examination within six attempts if the applicant:
    - (i) is specialty board certified by a specialty board that:
      - (a) is a member of the American Board of Medical Specialties; or
      - (b) is approved by the American Osteopathic

Association; and

(ii) has completed in this state an additional two years of postgraduate medical training approved by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(1), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.24, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 796 (S.B. 36), Sec. 1, eff. June 15, 2007.

Sec. 155.057. PRESERVATION OF EXAMINATION MATERIALS. The board shall preserve all examination questions, answers, and grades as directed by board rule until the first anniversary of the date of the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(m), eff. Sept. 1, 2001.

Sec. 155.058. APPLICATION OF OPEN RECORDS AND OPEN MEETINGS LAW TO EXAMINATION PROCEDURES. (a) The following are exempt from Chapters 551 and 552, Government Code:

- (1) examination questions that may be used in the future;
- (2) examinations; and
- (3) deliberations and records relating to the professional character and fitness of applicants.

(b) Subsection (a)(2) does not prohibit the board from providing an examination to an applicant who has taken that examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(n), eff. Sept. 1, 2001.

#### **SUBCHAPTER C. CERTAIN TEMPORARY OR LIMITED LICENSES OR PERMITS**

## Sec. 155.101. PROVISIONAL LICENSE TO PRACTICE IN CERTAIN AREAS.

(a) On application, the board shall grant a provisional license to practice medicine in a location described by Subsection (e) to an applicant for a license under this subtitle who is licensed in good standing as a physician in another state.

(b) The board may not grant a provisional license under this section to an applicant who:

(1) has had a medical license suspended or revoked by another state or a Canadian province; or

(2) holds a medical license issued by another state or a Canadian province that is subject to a restriction, disciplinary order, or probationary order.

(c) The provisional license applicant must:

(1) have passed a national or other examination recognized by the board relating to the practice of medicine within the number of attempts allowed under Section 155.056;

(2) submit information to enable the board to conduct a criminal background check as required by the board; and

(3) be sponsored by a person licensed under this subtitle with whom the provisional license holder may practice under this section.

(d) The board may excuse an applicant for a provisional license from the requirement of Subsection (c)(3) if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(e) A person who holds a provisional license issued under this section may only practice medicine in a location:

(1) designated by the federal government as a health professional shortage area; or

(2) designated by the federal or state government as a medically underserved area.

(f) A provisional license expires on the earlier of:

(1) the date the board issues the provisional license holder a license under this subtitle or denies the provisional license holder's application for a license; or

(2) the 270th day after the date the provisional license was issued.

(g) The board shall issue a license under this subtitle to the holder of a provisional license under this section if:

(1) the provisional license holder passes the examination

required by Section 155.051; and

(2) the provisional license holder satisfies all other license requirements under this subtitle.

Added by Acts 2009, 81st Leg., R.S., Ch. 463 (S.B. 202), Sec. 1, eff. September 1, 2009.

Sec. 155.1025. EXPEDITED PROCESS FOR CERTAIN APPLICANTS. (a) The board shall adopt rules for expediting any application for a license under this subtitle made by a person who submits an affidavit with the application stating that:

(1) the applicant intends to practice in a rural community;  
or

(2) the applicant intends to practice medicine in a medically underserved area or health professional shortage area, designated by the United States Department of Health and Human Services, that has a current shortage of physicians.

(b) The board shall notify the Texas Department of Health on receipt of an application for expedited processing under Subsection (a)(2).

Added by Acts 2001, 77th Leg., ch. 1293, Sec. 1, eff. June 16, 2001.  
Amended by Acts 2003, 78th Leg., ch. 143, Sec. 2, eff. Sept. 1, 2003;  
Acts 2003, 78th Leg., ch. 609, Sec. 17, eff. Sept. 1, 2003; Acts  
2003, 78th Leg., ch. 1276, Sec. 9.006(o), eff. Sept. 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 880 (H.B. 1973), Sec. 5, eff. June 15, 2007.

Sec. 155.103. MILITARY LIMITED VOLUNTEER LICENSE. (a) The board shall adopt rules relating to the issuance of a military limited volunteer license under this section.

(b) The board may issue a military limited volunteer license to practice medicine to an applicant who:

(1) is licensed and in good standing, or was licensed and retired in good standing, as a physician in another state;

(2) is or was authorized as a physician to treat personnel enlisted in a branch of the United States armed forces or veterans;  
and



(3) meets any other requirement prescribed by board rule.

(c) The board may not issue a license under this section to an applicant who:

(1) holds a medical license that:

(A) is currently under active investigation; or

(B) is or was subject to a disciplinary order or action or to denial by another jurisdiction;

(2) holds a license to prescribe, dispense, administer, supply, or sell a controlled substance that:

(A) is currently under active investigation; or

(B) is or was subject to a disciplinary order or action or to denial by another jurisdiction; or

(3) has been convicted of, is on deferred adjudication community supervision or deferred disposition for, or is under active investigation for the commission of:

(A) a felony; or

(B) a misdemeanor involving moral turpitude.

(d) A physician may practice medicine under a license issued under this section only at a clinic that primarily treats indigent patients. The physician may not receive compensation for medical services rendered at the clinic.

(e) A military limited volunteer license holder is subject to board rules, including rules regarding disciplinary action, license registration and renewal, and continuing medical education.

Added by Acts 2013, 83rd Leg., R.S., Ch. 185 (S.B. 61), Sec. 2, eff. September 1, 2013.

Sec. 155.104. TEMPORARY LICENSES. (a) The board may adopt rules and set fees relating to granting temporary licenses and extending the expiration dates of temporary licenses. The board by rule shall set a time limit for the term of a temporary license.

(b) The board may issue a faculty temporary license to practice medicine to a physician as provided by this section. The physician:

(1) must hold a current medical license that is unrestricted and not subject to a disciplinary order or probation in another state or a Canadian province or have completed at least three years of postgraduate residency;

(2) may not hold a medical license in another state or a

Canadian province that has any restrictions, disciplinary orders, or probation;

(3) must pass the Texas medical jurisprudence examination; and

(4) must hold a salaried faculty position equivalent to at least the level of assistant professor and be working full-time at one of the following institutions:

- (A) The University of Texas Medical Branch at Galveston;
- (B) The University of Texas Southwestern Medical Center;
- (C) The University of Texas Health Science Center at Houston;
- (D) The University of Texas Health Science Center at San Antonio;
- (E) The University of Texas Health Center at Tyler;
- (F) The University of Texas M. D. Anderson Cancer Center;
- (G) Texas A&M University College of Medicine;
- (H) the Schools of Medicine at Texas Tech University Health Sciences Center;
- (I) Baylor College of Medicine;
- (J) the University of North Texas Health Science Center at Fort Worth;
- (K) an institutional sponsor of a graduate medical education program accredited by the Accreditation Council for Graduate Medical Education; or
- (L) a nonprofit health corporation certified under Section 162.001 and affiliated with a program described by Paragraph (K).

(c) A physician is eligible for a temporary license under Subsection (b) if the physician holds a faculty position of at least the level of assistant professor and works at least part-time at an institution listed in Subsection (b)(4) and:

(1) the physician is on active duty in the United States armed forces; and

(2) the physician's practice under the temporary license will fulfill critical needs of the citizens of this state.

(d) A physician who is issued a temporary license under Subsection (b) must sign an oath on a form prescribed by the board

swearing that the physician:

(1) has read and is familiar with this subtitle and board rules;

(2) will abide by the requirements of this subtitle and board rules while practicing under the physician's temporary license; and

(3) will be subject to the disciplinary procedures of the board.

(e) A physician holding a temporary license under Subsection (b) and the physician's institution must file affidavits with the board affirming acceptance of the terms and limits imposed by the board on the medical activities of the physician.

(f) A temporary license issued under Subsection (b) is valid for one year.

(g) The holder of a temporary license issued under Subsection (b) is limited to the teaching confines of the applying institution as a part of the physician's duties and responsibilities assigned by the institution and may not practice medicine outside of the setting of the institution or an affiliate of the institution. The physician may participate in the full activities of the department of any hospital for which the physician's institution has full responsibility for clinical, patient care, and teaching activities.

(h) The application for a temporary license under Subsection (b) must be made by the chairman of the department of the institution in which the physician teaches, or the person holding the equivalent position at the institution where the physician teaches, and must contain the information and documentation requested by the department. The application must be endorsed by the dean of the medical school or the president of the institution.

(i) Three years in a teaching faculty position at an institution listed in Subsection (b)(4) may be treated as equivalent to three years of an approved postgraduate residency program if, at the conclusion of the three-year period, the physician presents recommendations on the physician's behalf from the chief administrative officer and the president of the institution.

(j) A physician who holds a temporary license issued under Subsection (b) and who wishes to receive a permanent unrestricted license must meet the requirements for issuance of a permanent unrestricted license, including any examination requirements.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.028(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.25, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 792 (S.B. 1225), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 179 (H.B. 1844), Sec. 16, eff. September 1, 2013.

Sec. 155.105. PHYSICIAN-IN-TRAINING PERMIT. (a) The board as provided by board rule may issue a physician-in-training permit to a physician not otherwise licensed by the board who is participating in a graduate medical education training program approved by the board.

(b) A physician-in-training permit does not authorize the performance of a medical act by the permit holder unless the act is performed:

(1) as a part of the graduate medical education training program; and

(2) under the supervision of a physician.

(c) The board has jurisdiction to discipline a permit holder whose permit has expired if the violation of the law occurred during the time the permit was valid. If an investigation is open when the permit expires, the permit shall be executory and the board may retain jurisdiction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(o), eff. Sept. 1, 2001.

Sec. 155.106. CERTIFICATION OF LICENSE TO OTHER STATES. On the request of a license holder, the board shall issue a certificate that endorses the license issued by the board to other states. The board shall charge a fee for the issuance of the certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 155.107. CERTIFICATION OF EXAMINATION GRADES. On the request of a license holder, the board shall issue certification of state board examination grades to the Federation of State Medical Boards of the United States. The board shall charge a reasonable fee for the issuance.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.023(c), eff. Sept. 1, 2001.

#### **SUBCHAPTER D. ISSUANCE OF NEW OR DUPLICATE LICENSE**

Sec. 155.151. DUPLICATE LICENSE. (a) If a license issued under this subtitle is lost or destroyed, the license holder may apply to the board for a duplicate license. The application must be on a form prescribed by the board, accompanied by an affidavit of the loss or destruction that states that the applicant is the person to whom the license was issued and other information concerning the loss or destruction of the license as required by the board.

(b) On payment of a fee set by the board, the board shall issue a duplicate license to the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 155.152. ISSUANCE OF NEW LICENSE ON CHANGE OF NAME. The board may issue a new license to a license holder if the license holder changes the license holder's name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

### **CHAPTER 156. REGISTRATION OF PHYSICIANS**

#### **SUBCHAPTER A. RENEWAL AND REGISTRATION**

Sec. 156.001. REGISTRATION REQUIREMENTS AND PROCEDURES. (a) Each person licensed to practice medicine in this state must register with the board every two years. The initial registration permit shall be issued with the license. The board by rule may adopt a system under which licenses expire on various dates during the year.

(b) Except as provided by Section 156.002, the application for registration must be accompanied by a registration permit fee in an amount set by the board regardless of whether the person is

practicing medicine in this state.

(c) A license holder may renew the registration permit by submitting to the board, on or before the expiration date of the registration permit, the required renewal application and registration renewal fee. Each registration permit renewal application must include:

(1) the license holder's name, mailing address, and, if one is available, address for receipt of electronic mail;

(2) the primary place at which the license holder is engaged in the practice of medicine; and

(3) other necessary information as prescribed by board rule.

(d) If the license holder is licensed to practice medicine by another state or country or by the uniformed services of the United States, the registration renewal application must include a description of any investigation the license holder knows is in progress and any sanction imposed by or disciplinary matter pending in the state, country, or service regarding the license holder.

(e) In addition to the information required by Subsection (c), a license holder shall submit to the board with the registration permit renewal application information not reported on a license application or a previous permit renewal application relating to a felony conviction, a conviction for a Class A or Class B misdemeanor, or a deferred adjudication for a felony offense or Class A or Class B misdemeanor offense for:

(1) Medicare, Medicaid or insurance fraud;

(2) the Texas Controlled Substances Act or intoxication or alcoholic beverage offenses;

(3) sexual or assaultive offenses; and

(4) tax fraud or evasion.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(p), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 12, eff. June 10, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.26, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 880 (H.B. 1973), Sec. 4, eff. June 15, 2007.

Sec. 156.002. EXEMPTION FOR CERTAIN PHYSICIANS. (a) The board by rule may exempt a retired physician from the registration permit fee requirement.

(b) A physician licensed by the board whose only practice is voluntary charity care, as defined by board rule, is exempt from the registration permit fee requirement.

(c) A retired physician whose only practice is voluntary medical care for a disaster relief organization is exempt from the registration permit fee requirement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(q), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 13, eff. June 10, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 246 (H.B. 655), Sec. 4, eff. May 30, 2005.

Acts 2005, 79th Leg., Ch. 1096 (H.B. 2158), Sec. 1, eff. September 1, 2005.

Sec. 156.003. STAGGERED RENEWAL SYSTEM. (a) The board by rule may adopt a system under which registration permits expire on various dates during the two-year registration period.

(b) For the registration period in which the expiration date is changed, registration permit fees shall be prorated. On renewal of the registration on the new expiration date, the total registration permit fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(r), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 14, eff. June 10, 2003.

Sec. 156.0035. RENEWAL OF CONTROLLED SUBSTANCE REGISTRATION.

(a) The board shall accept the renewal application and fee submitted by a physician under Section 481.0645, Health and Safety Code, for a registration under Subchapter C, Chapter 481, Health and Safety Code.

(b) The board by rule shall adopt a procedure for submitting a registration renewal application and remitting the registration fee to the Department of Public Safety.

(c) The board shall coordinate a physician's controlled

substance registration renewal with the registration required under this chapter so that the times of registration, payment, and notice are the same and provide a minimum of administrative burden to the board and to physicians.

Added by Acts 2013, 83rd Leg., R.S., Ch. 956 (H.B. 1803), Sec. 5, eff. January 1, 2014.

Sec. 156.004. NOTICE OF EXPIRATION. (a) At least 60 days before the date on which a physician's registration permit expires, the board shall send to each physician at the physician's last known address according to the board's records:

(1) a registration permit renewal application notice; and  
(2) a renewal notice for the physician's registration with the Department of Public Safety under Subchapter C, Chapter 481, Health and Safety Code.

(b) The board shall provide for a 30-day grace period for renewing the registration permit from the date of the expiration of the permit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(s), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 15, eff. June 10, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 956 (H.B. 1803), Sec. 6, eff. January 1, 2014.

Sec. 156.005. RENEWAL OF CERTAIN REGISTRATION PERMITS. (a) If a person's registration permit has been expired for 90 days or less, the person may renew the permit by submitting to the board the required registration renewal application, the registration renewal fee, and a \$75 penalty fee.

(b) If the person's registration permit has been expired for longer than 90 days but less than one year, the person may renew the permit by submitting to the board the required registration renewal application, the registration renewal fee, and a \$150 penalty fee.

(c) If the person's registration permit has been expired for one year or longer, the person's license is automatically canceled, unless an investigation is pending, and the person may not renew the



registration permit.

(d) A physician whose license is automatically canceled may obtain a new license by complying with the requirements, fees, and procedures for obtaining a new license. The board may issue a new license without examination to a person whose license is automatically canceled for less than two years.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(t), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 16, eff. June 10, 2003.

Sec. 156.006. EMERGENCY CONTACT INFORMATION. (a) Each license holder shall submit to the board telephone numbers, fax numbers, and e-mail addresses, if available and as appropriate, that the board may use to contact the license holder in an emergency.

(b) A license holder who receives an initial registration permit shall provide the information required under Subsection (a) not later than the 30th day after the date the permit is issued. Each license holder who applies to renew a registration permit shall submit the information required under Subsection (a) with the renewal application.

(c) A license holder shall report to the board any change in the information required under Subsection (a) not later than the 45th day after the date of the change.

(d) The information provided by a license holder under this section is confidential and is not subject to disclosure under Chapter 552, Government Code. The board may not publish, release, or make available information provided by a license holder under this section except as provided by Subsection (e).

(e) In the event of a public health emergency declared or invoked by the governor, the Department of State Health Services, or a federal agency, the board may publish, release, or make available information provided by a license holder under this section for the sole purpose of disseminating information to:

- (1) a license holder;
- (2) a designated city, county, state, or federal public health or emergency management official; or
- (3) the Federation of State Medical Boards.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 1,

eff. September 1, 2009.

Sec. 156.007. ISSUANCE OF REGISTRATION PERMIT. (a) On receipt of a registration renewal application and all required fees, the board, after ascertaining from the records of the board or from other sources considered reliable by the board that the applicant is a physician in this state and meets all other requirements for registration, shall issue to the applicant a registration permit certifying that the applicant has filed the application, has paid the registration permit fee for the registration period, and has completed the requirements for registration.

(b) The filing of the registration renewal application, the payment of the required fees, and the issuance of the permit do not entitle the permit holder to practice medicine in this state unless:

- (1) the permit holder has been previously licensed as a physician by the board, as prescribed by law;
- (2) the license to practice medicine is in effect;
- (3) the permit holder has met the continuing medical education requirements; and
- (4) the permit holder has submitted a current complete physician profile.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(u), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 17, eff. June 10, 2003.

Sec. 156.008. PRACTICING MEDICINE WITHOUT REGISTRATION PROHIBITED. (a) Practicing medicine after the expiration of the 30-day grace period under Section 156.004 following expiration of a registration permit that has not been renewed for the current registration period as provided by this subchapter has the same effect as, and is subject to all penalties of, practicing medicine without a license.

(b) In a prosecution for the unlawful practice of medicine, the receipt showing payment of the registration fee required by this chapter does not constitute evidence that the receipt holder is lawfully entitled to practice medicine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 753, Sec. 1, eff. June 13, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 18, eff. June 10, 2003.

Sec. 156.009. INACTIVE STATUS. The board may adopt rules and set reasonable fees relating to placing license holders on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 19, eff. June 10, 2003.

#### **SUBCHAPTER B. CONTINUING MEDICAL EDUCATION REQUIREMENTS**

Sec. 156.051. REPORTING PROGRAM; RULES; EXEMPTION. (a) The board by rule shall adopt, monitor, and enforce a reporting program for the continuing medical education of license holders. The board shall adopt and administer rules that:

(1) establish the number of hours of continuing medical education the board determines appropriate as a prerequisite to the registration of a license under this subtitle;

(2) require at least one-half of the hours of continuing medical education established under Subdivision (1) to be board approved; and

(3) adopt a process to assess a license holder's participation in continuing medical education courses.

(b) In approving continuing medical education hours under Subsection (a)(2), the board shall consider the standards of:

(1) the American Medical Association adopted by that association for its Physician's Recognition Award; or

(2) the American Osteopathic Association.

(c) The board shall permit the hours that are not subject to board approval under Subsection (a)(2) to consist of self-study or equivalent self-directed continuing medical education according to guidelines determined by the board.

(d) This section does not apply to a license holder who is exempt by rule from paying the registration fee under Section 156.002(a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 20, eff. June 10, 2003.

Sec. 156.052. PRESUMPTION OF COMPLIANCE FOR CERTAIN LICENSE HOLDERS. A license holder is presumed to be in compliance with the requirements of this subchapter if, during the 36 months preceding the date of the required registration, the license holder becomes board certified or recertified by a specialty board approved by the American Board of Medical Specialties or the American Osteopathic Association Bureau of Osteopathic Specialists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 21, eff. June 10, 2003.

Sec. 156.053. TEMPORARY EXEMPTION. (a) The board may temporarily exempt a license holder from the continuing medical education requirement on the basis of:

- (1) catastrophic illness;
- (2) military service outside this state for longer than one year;
- (3) medical practice and residence outside the United States for longer than one year; or
- (4) good cause shown on the written application of the license holder that provides evidence satisfactory to the board that the license holder is unable to comply with the requirement.

(b) A temporary exemption granted under Subsection (a) may not exceed one year but may be renewed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 22, eff. June 10, 2003.

Sec. 156.054. AUTHORITY OF BOARD TO REQUIRE ADDITIONAL HOURS. This subchapter does not prevent the board from taking disciplinary action with respect to a license holder or license applicant by requiring additional hours of continuing medical education, including education in specific course subjects.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 156.055. CONTINUING EDUCATION IN PAIN TREATMENT. A physician licensed under this subtitle who submits an application for

renewal of a license that designates a direct patient care practice and whose practice includes treating patients for pain is encouraged to include continuing medical education in pain treatment among the hours of continuing medical education completed to comply with Section 156.051(a)(2).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 156.056. CERTAIN VOLUNTEER SERVICES. (a) In this section, "practice serving a medically underserved population" has the meaning assigned by Section 157.051.

(b) The board by rule shall permit a license holder to complete half of any informal continuing medical education hours required under this subchapter by providing volunteer medical services at a practice serving a medically underserved population other than a site that is a primary practice site of the license holder.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.029(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 10, eff. November 1, 2013.

Sec. 156.057. CONTINUING EDUCATION IN FORENSIC EVIDENCE COLLECTION. (a) A physician licensed under this subtitle who submits an application for renewal of a license to practice medicine and whose practice includes treating patients in an emergency room setting may complete two hours of continuing medical education relating to forensic evidence.

(b) The board shall adopt rules to establish the content of continuing medical education relating to forensic evidence collection. The board may adopt other rules to implement this section.

Added by Acts 2005, 79th Leg., Ch. 782 (S.B. 39), Sec. 1, eff. September 1, 2005.

Sec. 156.059. CONTINUING EDUCATION IN TICK-BORNE DISEASES. (a)

A physician licensed under this subtitle who submits an application for renewal of a license to practice medicine and whose practice includes the treatment of tick-borne diseases is encouraged to include continuing medical education in the treatment of tick-borne diseases among the hours of continuing medical education completed for purposes of rules adopted under Section 156.051(a)(2).

(b) The board shall adopt rules to establish the content of and approval requirements for continuing medical education relating to the treatment of tick-borne diseases. In adopting rules, the board shall seek input from affected parties and review relevant courses, including courses that have been approved in other states. Rules adopted under this section must provide for the identification and approval of accredited continuing medical education courses that represent an appropriate spectrum of relevant medical clinical treatment relating to tick-borne diseases.

(c) If relevant, the board shall consider a physician's participation in a continuing medical education course approved under Subsection (b) if:

(1) the physician is being investigated by the board regarding the physician's selection of clinical care for the treatment of tick-borne diseases; and

(2) the physician completed the course not more than two years before the start of the investigation.

(d) The board may adopt other rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1092 (S.B. 1360), Sec. 2, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1306 (H.B. 2975), Sec. 2, eff. September 1, 2011.

**CHAPTER 157. AUTHORITY OF PHYSICIAN TO DELEGATE CERTAIN MEDICAL ACTS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 157.001. GENERAL AUTHORITY OF PHYSICIAN TO DELEGATE. (a) A physician may delegate to a qualified and properly trained person acting under the physician's supervision any medical act that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician:

(1) the act:

(A) can be properly and safely performed by the person to whom the medical act is delegated;

(B) is performed in its customary manner; and

(C) is not in violation of any other statute; and

(2) the person to whom the delegation is made does not represent to the public that the person is authorized to practice medicine.

(b) The delegating physician remains responsible for the medical acts of the person performing the delegated medical acts.

(c) The board may determine whether:

(1) an act constitutes the practice of medicine, not inconsistent with this chapter; and

(2) a medical act may be properly or safely delegated by physicians.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 157.002. GENERAL DELEGATION OF ADMINISTRATION AND PROVISION OF DANGEROUS DRUGS. (a) In this section:

(1) "Administering" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(2) "Provision" means the supply of one or more unit doses of a drug, medicine, or dangerous drug.

(b) A physician may delegate to any qualified and properly trained person acting under the physician's supervision the act of administering or providing dangerous drugs in the physician's office, as ordered by the physician, that are used or required to meet the immediate needs of the physician's patients. The administration or provision of the dangerous drugs must be performed in compliance with laws relating to the practice of medicine and state and federal laws relating to those dangerous drugs.

(c) A physician may also delegate to any qualified and properly trained person acting under the physician's supervision the act of administering or providing dangerous drugs through a facility licensed by the Texas State Board of Pharmacy, as ordered by the physician, that are used or required to meet the immediate needs of the physician's patients. The administration of those dangerous drugs must be in compliance with laws relating to the practice of

medicine, professional nursing, and pharmacy and state and federal drug laws. The provision of those dangerous drugs must be in compliance with:

(1) laws relating to the practice of medicine, professional nursing, and pharmacy;

(2) state and federal drug laws; and

(3) rules adopted by the Texas State Board of Pharmacy.

(d) In the provision of services and the administration of therapy by public health departments, as officially prescribed by the Texas Department of Health for the prevention or treatment of specific communicable diseases or health conditions for which the Texas Department of Health is responsible for control under state law, a physician may delegate to any qualified and properly trained person acting under the physician's supervision the act of administering or providing dangerous drugs, as ordered by the physician, that are used or required to meet the needs of the patients. The provision of those dangerous drugs must be in compliance with laws relating to the practice of medicine, professional nursing, and pharmacy. An order for the prevention or treatment of a specific communicable disease or health condition for which the Texas Department of Health is responsible for control under state law may not be inconsistent with this chapter and may not be used to perform an act or duty that requires the exercise of independent medical judgment.

(e) The administration or provision of the drugs may be delegated through a physician's order, a standing medical order, a standing delegation order, or another order defined by the board.

(f) Subsections (b) and (c) do not authorize a physician or a person acting under the supervision of a physician to keep a pharmacy, advertised or otherwise, for the retail sale of dangerous drugs, other than as authorized under Section 158.003, without complying with the applicable laws relating to the dangerous drugs.

(g) A drug or medicine provided under Subsection (b) or (c) must be supplied in a suitable container labeled in compliance with applicable drug laws. A qualified and trained person, acting under the supervision of a physician, may specify at the time of the provision of the drug the inclusion on the container of the date of the provision and the patient's name and address.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



Sec. 157.003. EMERGENCY CARE. The authority to delegate medical acts to a properly qualified person as provided by this subchapter applies to emergency care provided by emergency medical personnel certified by the Texas Department of Health.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 157.004. DELEGATION REGARDING CERTAIN CARE FOR NEWBORNS; LIABILITY. (a) It is the policy of this state that the prevention of ophthalmia neonatorum in newborn infants is of paramount importance for the protection of the health of the children of this state.

(b) The authority to delegate medical acts to a midwife under Chapter 203 applies to the possession and administration of eye prophylaxis for the prevention of ophthalmia neonatorum.

(c) A physician who issues a standing delegation order to a midwife under Chapter 203 is not liable in connection with an act performed under that standing delegation order if the midwife provides proof of licensure under that chapter before the order is issued.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. [1535](#)), Sec. 53, eff. September 1, 2005.

Sec. 157.005. PERFORMANCE OF DELEGATED ACT NOT PRACTICING WITHOUT MEDICAL LICENSE. A person to whom a physician delegates the performance of a medical act is not considered to be practicing medicine without a license by performing the medical act unless the person acts with knowledge that the delegation and the action taken under the delegation is a violation of this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 157.006. LIMITATION ON BOARD RULES REGARDING DELEGATION.

The board shall promote a physician's exercise of professional judgment to decide which medical acts may be safely delegated by not adopting rules containing, except as absolutely necessary, global prohibitions or restrictions on the delegation of medical acts.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 157.007. APPLICABILITY OF OTHER LAWS. An act delegated by a physician under this chapter must comply with other applicable laws.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER B. DELEGATION TO ADVANCED PRACTICE REGISTERED NURSES AND PHYSICIAN ASSISTANTS**

Sec. 157.051. DEFINITIONS. In this subchapter:

(1) "Advanced practice registered nurse" has the meaning assigned to that term by Section 301.152. The term includes an advanced nurse practitioner and advanced practice nurse.

(2) "Controlled substance" has the meaning assigned to that term by Section 481.002, Health and Safety Code.

(3) "Dangerous drug" has the meaning assigned to that term by Section 483.001, Health and Safety Code.

(4) "Device" has the meaning assigned by Section 551.003, and includes durable medical equipment.

(5) "Health professional shortage area" means:

(A) an urban or rural area of this state that:

(i) is not required to conform to the geographic boundaries of a political subdivision but is a rational area for the delivery of health services;

(ii) the secretary of health and human services determines has a health professional shortage; and

(iii) is not reasonably accessible to an adequately served area;

(B) a population group that the secretary of health and human services determines has a health professional shortage; or

(C) a public or nonprofit private medical facility or other facility that the secretary of health and human services determines has a health professional shortage, as described by 42

U.S.C. Section 254e(a)(1).

(6) "Hospital" means a facility that:

(A) is:

(i) a general hospital or a special hospital, as those terms are defined by Section 241.003, Health and Safety Code, including a hospital maintained or operated by the state; or

(ii) a mental hospital licensed under Chapter 577, Health and Safety Code; and

(B) has an organized medical staff.

(7) "Medication order" has the meanings assigned by Section 551.003 of this code and Section 481.002, Health and Safety Code.

(8) "Nonprescription drug" has the meaning assigned by Section 551.003.

(9) "Physician assistant" means a person who holds a license issued under Chapter 204.

(10) "Physician group practice" means an entity through which two or more physicians deliver health care to the public through the practice of medicine on a regular basis and that is:

(A) owned and operated by two or more physicians; or

(B) a freestanding clinic, center, or office of a nonprofit health organization certified by the board under Section 162.001(b) that complies with the requirements of Chapter 162.

(11) "Practice serving a medically underserved population" means:

(A) a practice in a health professional shortage area;

(B) a clinic designated as a rural health clinic under 42 U.S.C. Section 1395x(aa);

(C) a public health clinic or a family planning clinic under contract with the Health and Human Services Commission or the Department of State Health Services;

(D) a clinic designated as a federally qualified health center under 42 U.S.C. Section 1396d(1)(2)(B);

(E) a county, state, or federal correctional facility;

(F) a practice:

(i) that either:

(a) is located in an area in which the Department of State Health Services determines there is an insufficient number of physicians providing services to eligible clients of federally, state, or locally funded health care programs; or

(b) is a practice that the Department of State Health Services determines serves a disproportionate number of clients eligible to participate in federally, state, or locally funded health care programs; and

(ii) for which the Department of State Health Services publishes notice of the department's determination in the Texas Register and provides an opportunity for public comment in the manner provided for a proposed rule under Chapter 2001, Government Code; or

(G) a practice at which a physician was delegating prescriptive authority to an advanced practice registered nurse or physician assistant on or before March 1, 2013, based on the practice qualifying as a site serving a medically underserved population.

(12) "Prescribe or order a drug or device" means prescribing or ordering a drug or device, including the issuing of a prescription drug order or a medication order.

(13) "Prescription drug" has the meaning assigned by Section 551.003.

(14) "Prescriptive authority agreement" means an agreement entered into by a physician and an advanced practice registered nurse or physician assistant through which the physician delegates to the advanced practice registered nurse or physician assistant the act of prescribing or ordering a drug or device.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 88, Sec. 1, eff. May 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.27, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 2, eff. November 1, 2013.

Sec. 157.0511. DELEGATION OF PRESCRIBING AND ORDERING DRUGS AND DEVICES. (a) A physician's authority to delegate the prescribing or ordering of a drug or device under this subchapter is limited to:

- (1) nonprescription drugs;
- (2) dangerous drugs; and
- (3) controlled substances to the extent provided by

Subsections (b) and (b-1).

(b) Except as provided by Subsection (b-1), a physician may delegate the prescribing or ordering of a controlled substance only if:

(1) the prescription is for a controlled substance listed in Schedule III, IV, or V as established by the commissioner of the Department of State Health Services under Chapter 481, Health and Safety Code;

(2) the prescription, including a refill of the prescription, is for a period not to exceed 90 days;

(3) with regard to the refill of a prescription, the refill is authorized after consultation with the delegating physician and the consultation is noted in the patient's chart; and

(4) with regard to a prescription for a child less than two years of age, the prescription is made after consultation with the delegating physician and the consultation is noted in the patient's chart.

(b-1) A physician may delegate the prescribing or ordering of a controlled substance listed in Schedule II as established by the commissioner of the Department of State Health Services under Chapter 481, Health and Safety Code, only:

(1) in a hospital facility-based practice under Section 157.054, in accordance with policies approved by the hospital's medical staff or a committee of the hospital's medical staff as provided by the hospital bylaws to ensure patient safety, and as part of the care provided to a patient who:

(A) has been admitted to the hospital for an intended length of stay of 24 hours or greater; or

(B) is receiving services in the emergency department of the hospital; or

(2) as part of the plan of care for the treatment of a person who has executed a written certification of a terminal illness, has elected to receive hospice care, and is receiving hospice treatment from a qualified hospice provider.

(b-2) The board shall adopt rules that require a physician who delegates the prescribing or ordering of a drug or device to register with the board the name and license number of the physician assistant or advanced practice registered nurse to whom a delegation is made. The board may develop and use an electronic online delegation registration process for registration under this subsection.

(c) This subchapter does not modify the authority granted by

law for a licensed registered nurse or physician assistant to administer or provide a medication, including a controlled substance listed in Schedule II as established by the commissioner of the Department of State Health Services under Chapter 481, Health and Safety Code, that is authorized by a physician under a physician's order, standing medical order, standing delegation order, or protocol.

Added by Acts 2003, 78th Leg., ch. 88, Sec. 2, eff. May 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.28, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 746 (S.B. 532), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 3, eff. November 1, 2013.

Sec. 157.0512. PRESCRIPTIVE AUTHORITY AGREEMENT. (a) A physician may delegate to an advanced practice registered nurse or physician assistant, acting under adequate physician supervision, the act of prescribing or ordering a drug or device as authorized through a prescriptive authority agreement between the physician and the advanced practice registered nurse or physician assistant, as applicable.

(b) A physician and an advanced practice registered nurse or physician assistant are eligible to enter into or be parties to a prescriptive authority agreement only if:

(1) if applicable, the Texas Board of Nursing has approved the advanced practice registered nurse's authority to prescribe or order a drug or device as authorized under this subchapter;

(2) the advanced practice registered nurse or physician assistant:

(A) holds an active license to practice in this state as an advanced practice registered nurse or physician assistant, as applicable, and is in good standing in this state; and

(B) is not currently prohibited by the Texas Board of Nursing or the Texas Physician Assistant Board, as applicable, from executing a prescriptive authority agreement; and

(3) before executing the prescriptive authority agreement,

the physician and the advanced practice registered nurse or physician assistant disclose to the other prospective party to the agreement any prior disciplinary action by the board, the Texas Board of Nursing, or the Texas Physician Assistant Board, as applicable.

(c) Except as provided by Subsection (d), the combined number of advanced practice registered nurses and physician assistants with whom a physician may enter into a prescriptive authority agreement may not exceed seven advanced practice registered nurses and physician assistants or the full-time equivalent of seven advanced practice registered nurses and physician assistants.

(d) Subsection (c) does not apply to a prescriptive authority agreement if the prescriptive authority is being exercised in:

- (1) a practice serving a medically underserved population;
- or
- (2) a facility-based practice in a hospital under Section 157.054.

(e) A prescriptive authority agreement must, at a minimum:

- (1) be in writing and signed and dated by the parties to the agreement;
- (2) state the name, address, and all professional license numbers of the parties to the agreement;
- (3) state the nature of the practice, practice locations, or practice settings;
- (4) identify the types or categories of drugs or devices that may be prescribed or the types or categories of drugs or devices that may not be prescribed;
- (5) provide a general plan for addressing consultation and referral;
- (6) provide a plan for addressing patient emergencies;
- (7) state the general process for communication and the sharing of information between the physician and the advanced practice registered nurse or physician assistant to whom the physician has delegated prescriptive authority related to the care and treatment of patients;
- (8) if alternate physician supervision is to be utilized, designate one or more alternate physicians who may:
  - (A) provide appropriate supervision on a temporary basis in accordance with the requirements established by the prescriptive authority agreement and the requirements of this subchapter; and

(B) participate in the prescriptive authority quality assurance and improvement plan meetings required under this section; and

(9) describe a prescriptive authority quality assurance and improvement plan and specify methods for documenting the implementation of the plan that includes the following:

(A) chart review, with the number of charts to be reviewed determined by the physician and advanced practice registered nurse or physician assistant; and

(B) periodic face-to-face meetings between the advanced practice registered nurse or physician assistant and the physician at a location determined by the physician and the advanced practice registered nurse or physician assistant.

(f) The periodic face-to-face meetings described by Subsection (e)(9)(B) must:

(1) include:

(A) the sharing of information relating to patient treatment and care, needed changes in patient care plans, and issues relating to referrals; and

(B) discussion of patient care improvement; and

(2) be documented and occur:

(A) except as provided by Paragraph (B):

(i) at least monthly until the third anniversary of the date the agreement is executed; and

(ii) at least quarterly after the third anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet; or

(B) if during the seven years preceding the date the agreement is executed the advanced practice registered nurse or physician assistant for at least five years was in a practice that included the exercise of prescriptive authority with required physician supervision:

(i) at least monthly until the first anniversary of the date the agreement is executed; and

(ii) at least quarterly after the first anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the



Internet.

(g) The prescriptive authority agreement may include other provisions agreed to by the physician and advanced practice registered nurse or physician assistant.

(h) If the parties to the prescriptive authority agreement practice in a physician group practice, the physician may appoint one or more alternate supervising physicians designated under Subsection (e)(8), if any, to conduct and document the quality assurance meetings in accordance with the requirements of this subchapter.

(i) The prescriptive authority agreement need not describe the exact steps that an advanced practice registered nurse or physician assistant must take with respect to each specific condition, disease, or symptom.

(j) A physician, advanced practice registered nurse, or physician assistant who is a party to a prescriptive authority agreement must retain a copy of the agreement until the second anniversary of the date the agreement is terminated.

(k) A party to a prescriptive authority agreement may not by contract waive, void, or nullify any provision of this section or Section 157.0513.

(l) In the event that a party to a prescriptive authority agreement is notified that the individual has become the subject of an investigation by the board, the Texas Board of Nursing, or the Texas Physician Assistant Board, the individual shall immediately notify the other party to the prescriptive authority agreement.

(m) The prescriptive authority agreement and any amendments must be reviewed at least annually, dated, and signed by the parties to the agreement. The prescriptive authority agreement and any amendments must be made available to the board, the Texas Board of Nursing, or the Texas Physician Assistant Board not later than the third business day after the date of receipt of request, if any.

(n) The prescriptive authority agreement should promote the exercise of professional judgment by the advanced practice registered nurse or physician assistant commensurate with the advanced practice registered nurse's or physician assistant's education and experience and the relationship between the advanced practice registered nurse or physician assistant and the physician.

(o) This section shall be liberally construed to allow the use of prescriptive authority agreements to safely and effectively utilize the skills and services of advanced practice registered

nurses and physician assistants.

(p) The board may not adopt rules pertaining to the elements of a prescriptive authority agreement that would impose requirements in addition to the requirements under this section. The board may adopt other rules relating to physician delegation under this chapter.

(q) The board, the Texas Board of Nursing, and the Texas Physician Assistant Board shall jointly develop responses to frequently asked questions relating to prescriptive authority agreements not later than January 1, 2014. This subsection expires January 1, 2015.

Added by Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 4, eff. November 1, 2013.

Sec. 157.0513. PRESCRIPTIVE AUTHORITY AGREEMENT: INFORMATION.

(a) The board, the Texas Board of Nursing, and the Texas Physician Assistant Board shall jointly develop a process:

(1) to exchange information regarding the names, locations, and license numbers of each physician, advanced practice registered nurse, and physician assistant who has entered into a prescriptive authority agreement;

(2) by which each board shall immediately notify the other boards when a license holder of the board becomes the subject of an investigation involving the delegation and supervision of prescriptive authority, as well as the final disposition of any such investigation; and

(3) by which each board shall maintain and share a list of the board's license holders who have been subject to a final adverse disciplinary action for an act involving the delegation and supervision of prescriptive authority.

(b) If the board, the Texas Board of Nursing, or the Texas Physician Assistant Board receives a notice under Subsection (a)(2), the board that received notice may open an investigation against a license holder of the board who is a party to a prescriptive authority agreement with the license holder who is under investigation by the board that provided notice under Subsection (a)(2).

(c) The board shall maintain and make available to the public a searchable online list of physicians, advanced practice registered

nurses, and physician assistants who have entered into a prescriptive authority agreement authorized under Section 157.0512 and identify the physician, advanced practice registered nurse, or physician assistant with whom each physician, advanced practice registered nurse, and physician assistant has entered into a prescriptive authority agreement.

(d) The board shall collaborate with the Texas Board of Nursing and the Texas Physician Assistant Board to maintain and make available to the public a list of physicians, advanced practice registered nurses, and physician assistants who are prohibited from entering into or practicing under a prescriptive authority agreement.

Added by Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 4, eff. November 1, 2013.

Sec. 157.0514. PRESCRIPTIVE AUTHORITY AGREEMENT: INSPECTIONS. If the board receives a notice under Section 157.0513(a)(2), the board or an authorized board representative may enter, with reasonable notice and at a reasonable time, unless the notice would jeopardize an investigation, a site where a party to a prescriptive authority agreement practices to inspect and audit any records or activities relating to the implementation and operation of the agreement. To the extent reasonably possible, the board and the board's authorized representative shall conduct any inspection or audit under this section in a manner that minimizes disruption to the delivery of patient care.

Added by Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 4, eff. November 1, 2013.

Sec. 157.054. PRESCRIBING AT FACILITY-BASED PRACTICE SITES.

(a) One or more physicians licensed by the board may delegate, to one or more physician assistants or advanced practice registered nurses acting under adequate physician supervision whose practice is facility-based at a hospital or licensed long-term care facility, the administration or provision of a drug and the prescribing or ordering of a drug or device if each of the delegating physicians is:

(1) the medical director or chief of medical staff of the facility in which the physician assistant or advanced practice

registered nurse practices;

(2) the chair of the facility's credentialing committee;

(3) a department chair of a facility department in which the physician assistant or advanced practice registered nurse practices; or

(4) a physician who consents to the request of the medical director or chief of medical staff to delegate the prescribing or ordering of a drug or device at the facility in which the physician assistant or advanced practice registered nurse practices.

(a-1) The limits on the number of advanced practice registered nurses or physician assistants to whom a physician may delegate under Section 157.0512 do not apply to a physician under Subsection (a) whose practice is facility-based under this section, provided that the physician is not delegating in a freestanding clinic, center, or practice of the facility.

(b) A physician's authority to delegate under Subsection (a) is limited as follows:

(1) the delegation must be made under a physician's order, standing medical order, standing delegation order, or another order or protocol developed in accordance with policies approved by the facility's medical staff or a committee of the facility's medical staff as provided by the facility bylaws;

(2) the delegation must occur in the facility in which the physician is the medical director, the chief of medical staff, the chair of the credentialing committee, a department chair, or a physician who consents to delegate under Subsection (a)(4);

(3) the delegation may not permit the prescribing or ordering of a drug or device for the care or treatment of the patients of any other physician without the prior consent of that physician; and

(4) delegation in a long-term care facility must be by the medical director and is limited to the prescribing or ordering of a drug or device to not more than seven advanced practice registered nurses or physician assistants or their full-time equivalents.

(b-1) A facility-based physician may not delegate at more than one hospital or more than two long-term care facilities under this section unless approved by the board. The facility-based physician may not be prohibited from delegating the prescribing or ordering of drugs or devices under Section 157.0512 at other practice locations, including hospitals or long-term care facilities, provided that the

delegation at those locations complies with all the requirements of Section 157.0512.

(c) Physician supervision of the prescribing or ordering of a drug or device must conform to what a reasonable, prudent physician would find consistent with sound medical judgment but may vary with the education and experience of the particular advanced practice registered nurse or physician assistant. A physician shall provide continuous supervision, but the constant physical presence of the physician is not required.

(d) An alternate physician may provide appropriate supervision on a temporary basis as defined and established by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 88, Sec. 5, eff. May 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 746 (S.B. 532), Sec. 3, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 5, eff. November 1, 2013.

Sec. 157.055. ORDERS AND PROTOCOLS. A protocol or other order shall be defined in a manner that promotes the exercise of professional judgment by the advanced practice registered nurse and physician assistant commensurate with the education and experience of that person. Under this section, an order or protocol used by a reasonable and prudent physician exercising sound medical judgment:

(1) is not required to describe the exact steps that an advanced practice registered nurse or a physician assistant must take with respect to each specific condition, disease, or symptom; and

(2) may state the types or categories of medications that may be prescribed or the types or categories of medications that may not be prescribed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 6, eff. November 1, 2013.

Sec. 157.056. PRESCRIPTION INFORMATION. The following

information must be provided on each prescription subject to this subchapter:

- (1) the patient's name and address;
- (2) the drug to be dispensed;
- (3) directions to the patient regarding the taking of the drug and the dosage;
- (4) the intended use of the drug, if appropriate;
- (5) the name, address, and telephone number of the physician;
- (6) the name, address, telephone number, and identification number of the registered nurse or physician assistant completing or signing the prescription drug order;
- (7) the date; and
- (8) the number of refills permitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 157.057. ADDITIONAL IMPLEMENTATION METHODS. The board may adopt additional methods to implement:

- (1) a physician's prescription; or
- (2) the delegation of prescriptive authority.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 7, eff. November 1, 2013.

Sec. 157.058. DELEGATION TO CERTIFIED REGISTERED NURSE ANESTHETIST. (a) In a licensed hospital or ambulatory surgical center, a physician may delegate to a certified registered nurse anesthetist the ordering of drugs and devices necessary for the nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by the physician.

(b) The physician's order for anesthesia or anesthesia-related services is not required to specify a drug, dose, or administration technique.

(c) Pursuant to the physician's order and in accordance with facility policies or medical staff bylaws, the nurse anesthetist may select, obtain, and administer those drugs and apply the medical

devices appropriate to accomplish the order and maintain the patient within a sound physiological status.

(d) This section shall be liberally construed to permit the full use of safe and effective medication orders to use the skills and services of certified registered nurse anesthetists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 157.059. DELEGATION REGARDING CERTAIN OBSTETRICAL SERVICES. (a) In this section, "provide" means to supply, for a term not to exceed 48 hours, one or more unit doses of a controlled substance for the immediate needs of a patient.

(b) A physician may delegate to a physician assistant offering obstetrical services and certified by the board as specializing in obstetrics or an advanced practice registered nurse recognized by the Texas Board of Nursing as a nurse midwife the act of administering or providing controlled substances to the physician assistant's or nurse midwife's clients during intrapartum and immediate postpartum care.

(c) The physician may not delegate:

- (1) the use of a prescription sticker or the use or issuance of an official prescription form; or
- (2) the authority to issue an electronic prescription under Section 481.075, Health and Safety Code.

(d) The delegation of authority to administer or provide controlled substances under Subsection (b) must be under a physician's order, medical order, standing delegation order, prescriptive authority agreement, or protocol that requires adequate and documented availability for access to medical care.

(e) The physician's orders, medical orders, standing delegation orders, prescriptive authority agreements, or protocols must require the reporting of or monitoring of each client's progress, including complications of pregnancy and delivery and the administration and provision of controlled substances by the nurse midwife or physician assistant to the clients of the nurse midwife or physician assistant.

(f) The authority of a physician to delegate under this section is limited to:

- (1) seven nurse midwives or physician assistants or their full-time equivalents; and
- (2) the designated facility at which the nurse midwife or

physician assistant provides care.

(g) The controlled substance must be supplied in a suitable container that is labeled in compliance with the applicable drug laws and must include:

- (1) the patient's name and address;
- (2) the drug to be provided;
- (3) the name, address, and telephone number of the physician;
- (4) the name, address, and telephone number of the nurse midwife or physician assistant; and
- (5) the date.

(h) This section does not authorize a physician, physician assistant, or nurse midwife to operate a retail pharmacy as defined under Subtitle J.

(i) This section authorizes a physician to delegate the act of administering or providing a controlled substance to a nurse midwife or physician assistant but does not require physician delegation of:

- (1) further acts to a nurse midwife; or
- (2) the administration of medications by a physician assistant or registered nurse other than as provided by this section.

(j) This section does not limit the authority of a physician to delegate the prescribing or ordering of a controlled substance under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 88, Sec. 7, eff. May 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 33, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 746 (S.B. 532), Sec. 6, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1228 (S.B. 594), Sec. 7, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 8, eff. November 1, 2013.

Sec. 157.060. PHYSICIAN LIABILITY FOR DELEGATED ACT. Unless the physician has reason to believe the physician assistant or advanced practice registered nurse lacked the competency to perform



the act, a physician is not liable for an act of a physician assistant or advanced practice registered nurse solely because the physician signed a standing medical order, a standing delegation order, or another order or protocol, or entered into a prescriptive authority agreement, authorizing the physician assistant or advanced practice registered nurse to administer, provide, prescribe, or order a drug or device.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 9, eff. November 1, 2013.

#### **SUBCHAPTER C. DELEGATION TO PHARMACISTS**

Sec. 157.101. DELEGATION TO PHARMACIST. (a) In this section, "pharmacist" has the meaning assigned by Section 551.003.

(b) A physician may delegate to a properly qualified and trained pharmacist acting under adequate physician supervision the performance of specific acts of drug therapy management authorized by the physician through the physician's order, standing medical order, standing delegation order, or other order or protocol as defined by board rule.

(b-1) A delegation under Subsection (b) may include the implementation or modification of a patient's drug therapy under a protocol, including the authority to sign a prescription drug order for dangerous drugs, if:

(1) the delegation follows a diagnosis, initial patient assessment, and drug therapy order by the physician;

(2) the pharmacist practices in a hospital, hospital-based clinic, or an academic health care institution;

(3) the hospital, hospital-based clinic, or academic health care institution in which the pharmacist practices has bylaws and a medical staff policy that permit a physician to delegate to a pharmacist the management of a patient's drug therapy;

(4) the pharmacist provides the name, address, and telephone number of the pharmacist and of the delegating physician on each prescription signed by the pharmacist; and

(5) the pharmacist provides a copy of the protocol to the Texas State Board of Pharmacy.

(c) Physician supervision is considered to be adequate for the purposes of this section if a delegating physician:

(1) is responsible for the formulation or approval of the physician's order, standing medical order, standing delegation order, or other order or protocol and periodically reviews the order or protocol and the services provided to a patient under the order or protocol;

(2) has established a physician-patient relationship with each patient who is provided drug therapy management by a delegated pharmacist;

(3) is geographically located so as to be able to be physically present daily to provide medical care and supervision;

(4) receives, as appropriate, a periodic status report on each patient, including any problem or complication encountered; and

(5) is available through direct telecommunication for consultation, assistance, and direction.

(d) This section does not restrict the use of a preestablished health care program or restrict a physician from authorizing the provision of patient care by use of a preestablished health care program if the patient is institutionalized and the care is to be delivered in a licensed hospital with an organized medical staff that has authorized standing delegation orders, standing medical orders, or protocols.

(e) This section does not limit, expand, or change any provision of law relating to therapeutic drug substitution or administration of medication, including Section 554.004.

(f) The board by rule shall establish the minimum content of a written order or protocol. The order or protocol may not permit the delegation of medical diagnosis.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 271 (S.B. 381), Sec. 1, eff. September 1, 2009.

**CHAPTER 158. AUTHORITY OF PHYSICIAN TO PROVIDE CERTAIN DRUGS AND SUPPLIES**

Sec. 158.001. PROVISION OF DRUGS AND OTHER SUPPLIES. (a) A physician licensed under this subtitle may supply a patient with any

drug, remedy, or clinical supply necessary to meet the patient's immediate needs.

(b) This section does not permit a physician to operate a retail pharmacy without complying with Chapter 558.

(c) This chapter does not prohibit a physician from supplying to a patient, free of charge, a drug provided to the physician by a drug manufacturer for an indigent pharmaceutical program if, in the physician's opinion, it is advantageous to the patient, in adhering to a course of treatment prescribed by the physician, to receive the drug.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 700, Sec. 1, eff. June 13, 2001.

Sec. 158.002. PROVISION OF FREE SAMPLES. (a) This chapter does not prohibit a physician from supplying a pharmaceutical sample to a patient free of charge if, in the physician's opinion, it is advantageous to the patient, in adhering to a course of treatment prescribed by the physician, to receive the sample.

(b) A pharmaceutical sample provided under this section must be:

(1) provided to the physician from the manufacturer free of charge and delivered to a patient free of any direct or indirect charge;

(2) prepackaged by the original manufacturer and not repackaged; and

(3) marked on the immediate container to indicate that it is a sample or recorded in records that indicate it is a sample.

(c) Each state and federal labeling and recordkeeping requirement must be followed and documented. A record maintained under Subsection (b)(3) must be accessible as provided under state and federal law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 158.003. DISPENSING OF DANGEROUS DRUGS IN CERTAIN RURAL AREAS. (a) In this section, "reimbursement for cost" means an additional charge, separate from that imposed for the physician's professional services, that includes the cost of the drug product and

all other actual costs to the physician incidental to providing the dispensing service. The term does not include a separate fee imposed for the act of dispensing the drug itself.

(b) This section applies to an area located in a county with a population of 5,000 or less, or in a municipality or an unincorporated town with a population of less than 2,500, that is within a 15-mile radius of the physician's office and in which a pharmacy is not located. This section does not apply to a municipality or an unincorporated town that is adjacent to a municipality with a population of 2,500 or more.

(c) A physician who practices medicine in an area described by Subsection (b) may:

(1) maintain a supply of dangerous drugs in the physician's office to be dispensed in the course of treating the physician's patients; and

(2) be reimbursed for the cost of supplying those drugs without obtaining a license under Chapter 558.

(d) A physician who dispenses dangerous drugs under Subsection (c) shall:

(1) comply with each labeling provision under Subtitle J applicable to that class of drugs; and

(2) oversee compliance with packaging and recordkeeping provisions applicable to that class of drugs.

(e) A physician who desires to dispense dangerous drugs under this section shall notify both the Texas State Board of Pharmacy and the board that the physician practices in an area described by Subsection (b). The physician may continue to dispense dangerous drugs in the area until the Texas State Board of Pharmacy determines, after notice and hearing, that the physician no longer practices in an area described by Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **CHAPTER 159. PHYSICIAN-PATIENT COMMUNICATION**

Sec. 159.001. DEFINITIONS. In this chapter:

(1) "Billing record" means a record that describes charges for services provided to a patient by a physician.

(2) "Medical record" does not include a billing record.

(3) "Patient" means a person who, to receive medical care,

consults with or is seen by a physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 984, Sec. 1, eff. June 15, 2001.

Sec. 159.002. CONFIDENTIAL COMMUNICATIONS. (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(d) The prohibitions of this chapter continue to apply to a confidential communication or record relating to a patient regardless of when the patient receives the services of a physician, except for medical records at least 75 years old that are requested for historical research purposes.

(e) The privilege of confidentiality may be claimed by the patient or by the physician. The physician may claim the privilege of confidentiality only on behalf of the patient. The physician's authority to claim the privilege is presumed in the absence of evidence to the contrary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 462 (S.B. 1907), Sec. 3, eff. September 1, 2011.

Sec. 159.003. EXCEPTIONS TO CONFIDENTIALITY IN COURT OR ADMINISTRATIVE PROCEEDINGS. (a) An exception to the privilege of confidentiality in a court or administrative proceeding exists:

- (1) in a proceeding brought by a patient against a physician, including:
  - (A) a malpractice proceeding; or
  - (B) a criminal proceeding or license revocation proceeding in which the patient is a complaining witness and disclosure is relevant to a claim or defense of the physician;
- (2) if the patient or a person authorized to act on the patient's behalf submits a written consent to the release of confidential information as provided by Section 159.005;
- (3) in a proceeding to substantiate and collect on a claim for medical services provided to the patient;
- (4) in a civil action or administrative proceeding, if relevant, brought by the patient or a person on the patient's behalf, if the patient or person is attempting to recover monetary damages for a physical or mental condition including the patient's death;
- (5) in a disciplinary investigation or proceeding conducted under this subtitle, if the board protects the identity of any patient whose billing or medical records are examined other than a patient:
  - (A) for whom an exception exists under Subdivision (1);or
  - (B) who has submitted written consent to the release of the billing or medical records as provided by Section 159.005;
- (6) in a criminal investigation of a physician in which the board is participating, or assisting in the investigation or proceeding by providing certain billing or medical records obtained from the physician, if the board protects the identity of a patient whose billing or medical records are provided in the investigation or proceeding other than a patient:
  - (A) for whom an exception exists under Subdivision (1);or
  - (B) who has submitted written consent to the release of the billing or medical records as provided by Section 159.005;
- (7) in an involuntary civil commitment proceeding, proceeding for court-ordered treatment, or probable cause hearing under Chapter 462, 574, or 593, Health and Safety Code;
- (8) if the patient's physical or mental condition is relevant to the execution of a will;
- (9) if the information is relevant to a proceeding brought under Section 159.009;

(10) in a criminal prosecution in which the patient is a victim, witness, or defendant;

(11) to satisfy a request for billing or medical records of a deceased or incompetent person under Section 74.051(e), Civil Practice and Remedies Code; or

(12) to a court or a party to an action under a court order or court subpoena.

(b) This section does not authorize the release of confidential information to investigate or substantiate criminal charges against a patient.

(c) Records or communications are not discoverable under Subsection (a)(10) until the court in which the prosecution is pending makes an in camera determination as to the relevancy of the records or communications or any portion of the records or communications. That determination does not constitute a determination as to the admissibility of the information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 984, Sec. 2, eff. June 15, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 139 (H.B. 742), Sec. 1, eff. September 1, 2005.

Sec. 159.004. EXCEPTIONS TO CONFIDENTIALITY IN OTHER SITUATIONS. An exception to the privilege of confidentiality in a situation other than a court or administrative proceeding, allowing disclosure of confidential information by a physician, exists only with respect to the following:

(1) a governmental agency, if the disclosure is required or authorized by law;

(2) medical or law enforcement personnel, if the physician determines that there is a probability of:

(A) imminent physical injury to the patient, the physician, or another person; or

(B) immediate mental or emotional injury to the patient;

(3) qualified personnel for research or for a management audit, financial audit, or program evaluation, but the personnel may not directly or indirectly identify a patient in any report of the

research, audit, or evaluation or otherwise disclose identity in any manner;

(4) those parts of the medical records reflecting specific services provided if necessary in the collection of fees for medical services provided by a physician, professional association, or other entity qualified to provide or arrange for medical services;

(5) a person who has consent, as provided by Section 159.005;

(6) a person, corporation, or governmental agency involved in the payment or collection of fees for medical services provided by a physician;

(7) another physician or other personnel acting under the direction of the physician who participate in the diagnosis, evaluation, or treatment of the patient;

(8) an official legislative inquiry regarding state hospitals or state schools, if:

(A) information or a record that identifies a patient or client is not released for any purpose unless proper consent to the release is given by the patient; and

(B) only records created by the state hospital or school or its employees are included; or

(9) health care personnel of a penal or other custodial institution in which the patient is detained if the disclosure is for the sole purpose of providing health care to the patient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 984, Sec. 3, eff. June 15, 2001.

Sec. 159.005. CONSENT FOR RELEASE OF CONFIDENTIAL INFORMATION.

(a) Consent for the release of confidential information must be in writing and signed by:

(1) the patient;

(2) a parent or legal guardian of the patient if the patient is a minor;

(3) a legal guardian of the patient if the patient has been adjudicated incapacitated to manage the patient's personal affairs;

(4) an attorney ad litem appointed for the patient, as authorized by:

(A) Subtitle C, Title 7, Health and Safety Code;



- (B) Subtitle D, Title 7, Health and Safety Code;
- (C) Chapter XIII, Texas Probate Code; or
- (D) Chapter 107, Family Code; or

(5) a personal representative of the patient if the patient is deceased.

(b) The written consent must specify:

- (1) the billing records, medical records, or other information to be covered by the release;
- (2) the reasons or purposes for the release; and
- (3) the person to whom the information is to be released.

(c) The patient, or other person authorized to consent, is entitled to withdraw the consent to the release of any information. Withdrawal of consent does not affect any information disclosed before the written notice of the withdrawal.

(d) A patient may not bring an action against a physician for a disclosure made by the physician in good faith reliance on an authorized consent if the physician did not have written notice that the authorization was revoked.

(e) A person who receives information made confidential by this subtitle may disclose the information only to the extent consistent with the authorized purposes for which consent to release the information is obtained.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 984, Sec. 4, eff. June 15, 2001.

Sec. 159.006. INFORMATION FURNISHED BY PHYSICIAN. (a) Unless the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient, a physician who receives a written consent for release of information as provided by Section 159.005 shall furnish copies of the requested billing or medical records, or a summary or narrative of the records, including records received from a physician or other health care provider involved in the care or treatment of the patient.

(b) The physician may delete confidential information about another patient or a family member of the patient who has not consented to the release.

(c) In accordance with Section 159.005, on receipt of a written request by a subsequent or consulting physician of a patient of the

requested physician, the requested physician shall furnish a copy of the complete billing or medical records of the patient to the subsequent or consulting physician. The duty to provide billing or medical records to a subsequent or consulting physician may not be nullified by contract.

(d) A physician shall provide the information requested under this section not later than the 15th business day after the date of receipt of the written consent for release under Subsection (a) or the written request under Subsection (c).

(e) If the physician denies the request, in whole or in part, the physician shall:

(1) furnish the patient with a written statement, signed and dated, providing the reason for the denial; and

(2) place a copy of the statement denying the request in the patient's:

(A) billing records, if the request was for billing records; or

(B) medical records, if the request was for medical records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 984, Sec. 5, eff. June 15, 2001.

Sec. 159.0061. APPOINTMENT OF CUSTODIAN OF PHYSICIAN'S RECORDS.

(a) The board by rule shall establish conditions under which the board may temporarily or permanently appoint a person as a custodian of a physician's billing or medical records. In adopting rules under this section, the board shall consider the death of a physician, the mental or physical incapacitation of a physician, and the abandonment of billing or medical records by a physician.

(b) The rules adopted under this section must provide for:

(1) the release of the billing or medical records by an appointed custodian in compliance with this chapter; and

(2) a fee charged by the appointed custodian that is in addition to the copying fee governed by Section 159.008.

Added by Acts 2001, 77th Leg., ch. 984, Sec. 6, eff. June 15, 2001.

Sec. 159.007. MEDIUM BY WHICH INFORMATION IS PROVIDED. A

person who is authorized to provide a copy of a record or a summary or narrative of the record to another person under this chapter may provide the copy, summary, or narrative on paper or using any other appropriate medium to which the person who is to provide and the person who is to receive the copy, summary, or narrative agree.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 159.008. PHYSICIAN FEES FOR INFORMATION. (a) Except as provided by Subsection (b), a physician:

(1) may charge a reasonable fee, as prescribed by board rule, for copying billing or medical records; and

(2) is not required to permit examination or copying of the records until the fee is paid unless there is a medical emergency.

(b) A physician may not charge a fee for copying billing or medical records under Subsection (a) to the extent the fee is prohibited under Subchapter M, Chapter 161, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 984, Sec. 7, eff. June 15, 2001.

Sec. 159.009. INJUNCTION; CAUSE OF ACTION FOR UNAUTHORIZED RELEASE OF CONFIDENTIAL INFORMATION. (a) A person aggrieved by a violation of this chapter relating to the unauthorized release of confidential and privileged communications may petition the district court of the county in which the person resides, or in the case of a nonresident of the state, the district court of Travis County, for appropriate injunctive relief. The petition takes precedence over all civil matters on the docketed court except those matters to which equal precedence on the docket is granted by law.

(b) The aggrieved person may prove a cause of action for civil damages.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 159.010. NOTICE OF BENEFITS UNDER STATE CHILD HEALTH PLAN. A physician who provides Medicaid health care services to a pregnant woman shall inform the woman of the health benefits for which the

woman or the woman's child may be eligible under the state child health plan under Chapter 62, Health and Safety Code.

Added by Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 24, eff. September 1, 2005.

**CHAPTER 160. REPORT AND CONFIDENTIALITY REQUIREMENTS**

**SUBCHAPTER A. REQUIREMENTS RELATING TO MEDICAL PEER REVIEW**

Sec. 160.001. APPLICATION OF FEDERAL LAW. The Health Care Quality Improvement Act of 1986 (42 U.S.C. Section 11101 et seq.) applies to a professional review action or medical peer review conducted by a professional review body or medical peer review committee in this state on or after September 1, 1987.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.002. REPORT OF MEDICAL PEER REVIEW. (a) A medical peer review committee or health care entity shall report in writing to the board the results and circumstances of a medical peer review that:

(1) adversely affects the clinical privileges of a physician for a period longer than 30 days;

(2) accepts a physician's surrender of clinical privileges either:

(A) while the physician is under an investigation by the medical peer review committee relating to possible incompetence or improper professional conduct; or

(B) in return for not conducting an investigation or proceeding relating to possible incompetence or improper professional conduct; or

(3) adversely affects the membership of a physician in a professional society or association, if the medical peer review is conducted by that society or association.

(b) The duty to report under this section may not be nullified through contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.003. REPORT BY CERTAIN PRACTITIONERS. (a) This section applies to:

- (1) a medical peer review committee in this state;
- (2) a physician licensed in this state or otherwise lawfully practicing medicine in this state;
- (3) a physician engaged in graduate medical education or training;
- (4) a medical student;
- (5) a physician assistant or acupuncturist licensed in this state or otherwise lawfully practicing in this state; and
- (6) a physician assistant student or acupuncturist student.

(b) A person or committee subject to this section shall report relevant information to the board relating to the acts of a physician in this state if, in the opinion of the person or committee, that physician poses a continuing threat to the public welfare through the practice of medicine.

(c) The duty to report under this section may not be nullified through contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.004. REPORT REGARDING CERTAIN IMPAIRED PHYSICIANS.

(a) This section applies to:

- (1) a committee of a professional medical society or association operating under written bylaws approved by the policymaking body or governing board of the society or association and composed primarily of physicians;
- (2) the staff of that committee; or
- (3) a district or local intervenor participating in a program established to aid physicians whose ability to practice medicine is impaired, or reasonably believed to be impaired, by drug or alcohol abuse or mental or physical illness.

(b) A person or committee subject to this section:

- (1) may report to the board or to a health care entity in which an affected physician has clinical privileges the name of the impaired physician together with pertinent information relating to that impairment; and
- (2) shall report to the board and any known health care entity in which the physician has clinical privileges if the person

or committee determines that, through the practice of medicine, the physician poses a continuing threat to the public welfare.

(c) Except as otherwise provided by this subtitle, each proceeding and record of a person described by Subsection (a) is confidential, and any communication made to the person or committee is privileged from disclosure in the manner provided under this subchapter for information submitted by a medical peer review committee. This confidentiality and privilege from disclosure applies to all information developed under this section, including information developed before September 1, 1991.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.005. REPORT CONFIDENTIAL; COMMUNICATION NOT PRIVILEGED. (a) A report made under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code.

(b) In a proceeding brought under this chapter or Chapter 158, 159, or 162, evidence may not be excluded on the ground that it consists of a privileged communication unless it is a communication between attorney and client.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.006. BOARD CONFIDENTIALITY. (a) A record, report, or other information received and maintained by the board under this subchapter or Subchapter B, including any material received or developed by the board during an investigation or hearing and the identity of, and reports made by, a physician performing or supervising compliance monitoring for the board, is confidential. The board may disclose this information only:

(1) in a disciplinary hearing before the board or State Office of Administrative Hearings or in a subsequent trial or appeal of a board action or order;

(2) to the physician licensing or disciplinary authority of another jurisdiction, to a local, state, or national professional medical society or association, or to a medical peer review committee located inside or outside this state that is concerned with granting, limiting, or denying a physician hospital privileges;

(3) under a court order;

(4) to qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any physician or other individual is first deleted; or

(5) to the division of workers' compensation of the Texas Department of Insurance as provided by Section 413.0514, Labor Code.

(b) Any known hospital suspension of a physician for a term of 30 days or longer relating to the physician's competence and a disciplinary order of the board against a physician are not confidential.

(c) A record or report disclosed by the board under this subchapter, a record or report received, maintained, or developed by the board, a medical peer review committee, a member of the committee, or a health care entity, and a record or report received or maintained by the State Office of Administrative Hearings under this subchapter are not available for discovery or court subpoena and may not be introduced into evidence in any action for damages, including a medical professional liability action that arises out of the provision of or failure to provide a medical or health care service.

(d) Medical peer review documents remain confidential at the board and at the State Office of Administrative Hearings. If medical peer review documents are admitted into evidence for any purpose at a proceeding before the State Office of Administrative Hearings, the documents must be admitted under seal to protect the confidentiality of the records as provided by this section and Section 160.007. In the event that a decision of the board or the State Office of Administrative Hearings is appealed to district court or other court, the confidentiality protections relating to the medical peer review committee documents shall continue.

(e) The confidentiality requirements of this section do not apply to records used by a medical peer review committee, including a patient's medical records or records made or maintained in the regular course of business, if the records are not considered confidential under this chapter or any other law and are otherwise available to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1201, Sec. 1, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 963, Sec. 5, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.102, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.29, eff. September 1, 2005.

Sec. 160.007. CONFIDENTIALITY RELATING TO MEDICAL PEER REVIEW COMMITTEE. (a) Except as otherwise provided by this subtitle, each proceeding or record of a medical peer review committee is confidential, and any communication made to a medical peer review committee is privileged.

(b) If a judge makes a preliminary finding that a proceeding or record of a medical peer review committee or a communication made to the committee is relevant to an anticompetitive action, or to a civil rights proceeding brought under 42 U.S.C. Section 1983, the proceeding, record, or communication is not confidential to the extent it is considered relevant.

(c) A record or proceeding of a medical peer review committee or a written or oral communication made to the committee may be disclosed to:

- (1) another medical peer review committee;
- (2) an appropriate state or federal agency;
- (3) a national accreditation body;
- (4) the board; or
- (5) the state board of registration or licensing of physicians of another state.

(d) If a medical peer review committee takes action that could result in censure, suspension, restriction, limitation, revocation, or denial of membership or privileges in a health care entity, the affected physician shall be provided a written copy of the recommendation of the medical peer review committee and a copy of the final decision, including a statement of the basis for the decision. Disclosure to the affected physician of confidential peer review committee information relevant to the matter under review does not constitute waiver of the confidentiality requirements established under this subtitle.

(e) Unless disclosure is required or authorized by law, a record or determination of or a communication to a medical peer review committee is not subject to subpoena or discovery and is not admissible as evidence in any civil judicial or administrative



proceeding without waiver of the privilege of confidentiality executed in writing by the committee. The evidentiary privileges created by this subtitle may be invoked by a person or organization in a civil judicial or administrative proceeding unless the person or organization secures a waiver of the privilege executed in writing by the chair, vice chair, or secretary of the affected medical peer review committee.

(f) If, under Sections 160.008(a) and (b), a person participating in peer review, a medical peer review committee, or a health care entity named as a defendant in a civil action filed as a result of participation in peer review may use otherwise confidential information in the defendant's own defense, a plaintiff in the proceeding may disclose a record or determination of or a communication to a medical peer review committee in rebuttal to information supplied by the defendant.

(g) A person seeking access to privileged information must plead and prove waiver of the privilege. A member, employee, or agent of a medical peer review committee who provides access to an otherwise privileged communication or record in cooperation with a law enforcement authority in a criminal investigation is not considered to have waived any privilege established under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.008. USE OF CERTAIN CONFIDENTIAL INFORMATION. (a) This section applies to a person participating in peer review, a medical peer review committee, or a health care entity named as a defendant in a civil action filed as a result of participation in peer review.

(b) A defendant subject to this section may use otherwise confidential information obtained for legitimate internal business and professional purposes, including use in the defendant's own defense. Use of confidential information under this subsection does not constitute a waiver of the confidential and privileged nature of medical peer review committee proceedings.

(c) A defendant subject to this section may file a counterclaim in a pending action or may prove a cause of action in a subsequent action to recover defense costs, including court costs, attorney's

fees, and damages incurred as a result of the civil action, if the plaintiff's original action is determined to be frivolous or brought in bad faith.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.009. COMPLIANCE WITH SUBPOENA. (a) The governing body and medical staff of each health care entity and any other person shall comply with a subpoena for documents or information issued by the board under Section 153.007 or 204.308. The disclosure of documents or information under such a subpoena does not constitute a waiver of the privilege associated with medical peer review committee proceedings.

(b) Failure to comply with a subpoena under Subsection (a) constitutes grounds for disciplinary action against the person or entity by the appropriate licensing board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.010. IMMUNITY FROM CIVIL LIABILITY. (a) The following are immune from civil liability:

(1) a person who, in good faith, reports or furnishes information to a medical peer review committee or the board;

(2) a member, employee, or agent of the board, a medical peer review committee, or a medical organization committee, or a medical organization district or local intervenor, who takes an action or makes a recommendation within the scope of the functions of the board, committee, or intervenor program, if that member, employee, agent, or intervenor acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to that person; and

(3) a member or employee of the board or any person who assists the board in carrying out its duties or functions provided by law.

(b) A cause of action does not accrue against a member, agent, or employee of a medical peer review committee or against a health care entity from any act, statement, determination or recommendation made, or act reported, without malice, in the course of medical peer review.

(c) A person, medical peer review committee, or health care entity that, without malice, participates in medical peer review or furnishes records, information, or assistance to a medical peer review committee or the board is immune from any civil liability arising from that act.

(d) A person or health care entity required to report to the board may not be found liable in a civil action for failure to report to the board unless the failure was committed knowingly or wilfully, except that the appropriate state licensing body may take action against a licensed person or entity for not reporting as required under this subtitle.

(e) A member of an expert panel under Section 154.056(e) and a person serving as a consultant to the board are immune from suit and judgment and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding, or other action taken without fraud or malice in the course of performing the person's duties in evaluating a medical competency case. The attorney general shall represent a member of an expert panel or consultant in any suit resulting from a duty provided by the person in good faith to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.30, eff. September 1, 2005.

Sec. 160.011. NOT STATE ACTION. The reporting or assistance provided for in this subchapter does not constitute state action on the reporting or assisting medical peer review committee or its parent organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.012. DISCIPLINE OR DISCRIMINATION PROHIBITED. (a) A person may not suspend, terminate, or otherwise discipline or discriminate against a person who reports to the board under this subtitle.

(b) A person has a cause of action against a health care entity, or an owner or employee of a health care entity, that

suspends or terminates the employment of the person or otherwise disciplines or discriminates against the person for reporting to the board under Section 160.002, 160.003, or 160.004. The person may recover:

(1) the greater of:

(A) actual damages, including damages for mental anguish regardless of whether other injury is shown; or

(B) \$1,000;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(c) In addition to amounts recovered under Subsection (b), a person whose employment is suspended or terminated in violation of this section is entitled to:

(1) either:

(A) reinstatement in the person's former position; or

(B) severance pay in an amount equal to three months of the person's most current salary; and

(2) compensation for wages lost during the period of suspension or termination.

(d) A person who brings an action under this section has the burden of proof. It is a rebuttable presumption that the person's employment was suspended or terminated for reporting an act that imperils the welfare of a patient if:

(1) the person is suspended or terminated not later than the 90th day after the date of making a report in good faith; and

(2) the board or a court determines that the reported case made the subject of the cause of action was a case in which the person was required to report under Section 160.002, 160.003, or 160.004.

(e) An action under this section may be brought in the district court of the county in which:

(1) the plaintiff resides;

(2) the plaintiff was employed by the defendant; or

(3) the defendant conducts business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.013. EXPUNGEMENT OF REPORT MADE IN BAD FAITH. If a

court makes a final determination that a report or complaint made to the board was made in bad faith, the complaint shall be expunged from the physician's or applicant's individual historical record.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.014. ACTION BY HEALTH CARE ENTITY NOT PRECLUDED. The filing of a report with the board under this subchapter, or an investigation or disposition by the board, does not in itself preclude any action by a health care entity to suspend, restrict, or revoke the privileges or membership of the physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.015. IMMUNITY OF HOSPITAL DISTRICT OR HOSPITAL AUTHORITY. This subchapter does not impose liability or waive immunity for a hospital district or hospital authority that has common law, statutory, or other immunity.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.031(a), eff. Sept. 1, 2001.

#### **SUBCHAPTER B. REQUIREMENTS RELATING TO INSURERS**

Sec. 160.051. DEFINITIONS. In this subchapter:

- (1) "Commissioner" means the commissioner of insurance.
- (2) "Insurer" means an insurer or other entity that provides medical professional liability insurance covering a physician in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.052. REPORT FROM INSURER OR PHYSICIAN. (a) Each insurer shall submit to the board the report or other information described by Section 160.053 at the time prescribed. The insurer shall provide the report or information with respect to:

- (1) a complaint filed against an insured in a court, if the complaint seeks damages relating to the insured's conduct in

providing or failing to provide a medical or health care service;  
and

(2) settlement of a claim without the filing of a lawsuit or settlement of a lawsuit made on behalf of the insured involving damages relating to the insured's conduct in providing or failing to provide a medical or health care service.

(b) A physician practicing medicine in this state shall report the information required under Section 160.053 if the physician:

(1) does not carry or is not covered by medical professional liability insurance; or

(2) is insured by a nonadmitted carrier or other entity providing medical liability insurance that is not reporting under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 23, eff. June 10, 2003.

Sec. 160.053. CONTENTS OF REPORT; ADDITIONAL INFORMATION. (a) Not later than the 30th day after the date an insurer receives from an insured a complaint filed in a lawsuit, a settlement of a claim without the filing of a lawsuit, or a settlement of a lawsuit against the insured, the insurer shall furnish to the board:

(1) the name of the insured and the insured's Texas medical license number;

(2) the policy number;

(3) a copy of the complaint or settlement; and

(4) a copy of any expert report filed under Section 74.351, Civil Practice and Remedies Code.

(b) The board, in consultation with the commissioner, shall adopt rules for reporting additional information as the board requires. In adopting the rules, the board shall consider other claim reports required under state and federal statutes in determining the information to be reported, form of the report, and frequency of reporting. The rules adopted by the board under this subsection must require that the following additional information be reported:

(1) the date of a judgment, dismissal, or settlement;

(2) whether an appeal has been taken and by which party;

and

(3) the amount of the settlement or judgment against the insured.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 24, eff. June 10, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 140 (H.B. 743), Sec. 1, eff. September 1, 2005.

Sec. 160.054. REPORT NOT EVIDENCE. In the trial of an action against a physician based on the physician's conduct in providing or failing to provide a medical or health care service, a report or other information submitted to the board under this subchapter and the fact that the report or information has been submitted to the board may not be offered in evidence or used in any manner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.055. SANCTIONS FOR FAILURE TO REPORT. The commissioner may impose sanctions authorized by Chapter 82, Insurance Code, on an insurer who fails to report information as required by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.543, eff. Sept. 1, 2003.

Sec. 160.056. CIVIL LIABILITY. A person or entity is not liable for any action taken by the person or entity under this subchapter, and a cause of action does not arise against that person or entity, if the person or entity is:

- (1) an insurer reporting under this subchapter;
- (2) an agent or employee of that insurer; or
- (3) a member, employee, or representative of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. REQUIREMENTS RELATING TO CERTAIN CONVICTIONS OR**

**ADJUDICATIONS**

Sec. 160.101. REPORT BY COURT TO DEPARTMENT OF PUBLIC SAFETY.

(a) This section applies to a person known to be a physician who is licensed or otherwise lawfully practicing in this state or applying to be licensed and who is convicted of or placed on deferred adjudication for:

- (1) a felony;
- (2) a Class A or Class B misdemeanor;
- (3) a Class C misdemeanor involving moral turpitude;
- (4) a violation of a state or federal narcotics or controlled substances law; or
- (5) an offense involving fraud or abuse under the Medicare or Medicaid program.

(b) Not later than the 30th day after the date a person described by Subsection (a) is convicted of an offense listed in that subsection or is placed on deferred adjudication for an offense listed in that subsection, the clerk of the court in which the person is convicted or placed on deferred adjudication shall prepare and forward to the Department of Public Safety the information required by Chapter 60, Code of Criminal Procedure.

(c) The duty of a clerk to prepare and forward information under Subsection (b) is not affected by:

- (1) any subsequent appeal of the conviction for the offense reported; or
- (2) any subsequent dismissal of proceedings related to the placement on deferred adjudication for the offense reported.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.032(a), eff. Sept. 1, 2001.

Sec. 160.102. REPORT BY COURT TO BOARD. Not later than the 30th day after the date a court finds that a physician is mentally ill or mentally incompetent, the clerk of the court of record in which the finding is entered shall prepare and forward to the board a certified abstract of record, regardless of whether the adjudication or finding is subsequently withheld or appealed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



**CHAPTER 162. REGULATION OF PRACTICE OF MEDICINE**  
**SUBCHAPTER A. REGULATION BY BOARD OF CERTAIN NONPROFIT HEALTH**  
**CORPORATIONS**

Sec. 162.001. CERTIFICATION BY BOARD. (a) The board by rule shall certify a health organization that:

(1) applies for certification on a form approved by the board; and

(2) presents proof satisfactory to the board that the organization meets the requirements of Subsection (b) or (c).

(b) The board shall approve and certify a health organization that:

(1) is a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) organized to:

(A) conduct scientific research and research projects in the public interest in the field of medical science, medical economics, public health, sociology, or a related area;

(B) support medical education in medical schools through grants and scholarships;

(C) improve and develop the capabilities of individuals and institutions studying, teaching, and practicing medicine;

(D) deliver health care to the public; or

(E) instruct the general public in medical science, public health, and hygiene and provide related instruction useful to individuals and beneficial to the community;

(2) is organized and incorporated solely by persons licensed by the board; and

(3) has as its directors and trustees persons who are:

(A) licensed by the board; and

(B) actively engaged in the practice of medicine.

(c) The board shall certify a health organization to contract with or employ physicians licensed by the board if the organization:

(1) is a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Sec. 501(c)(3)); and

(2) is organized and operated as:

(A) a migrant, community, or homeless health center under the authority of and in compliance with 42 U.S.C. Section 254b or 254c; or

(B) a federally qualified health center under 42 U.S.C. Section 1396d(1)(2)(B).

(c-4) The board shall certify a health organization to contract with or employ physicians licensed by the board if the organization:

(1) is a hospital district:

(A) recognized by a federal agency as a public entity eligible to receive a grant related to a community or federally qualified health center described by Subdivision (2); and

(B) created in a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003; and

(2) is organized and operated as:

(A) a migrant, community, or homeless health center under the authority of and in compliance with 42 U.S.C. Section 254b or 254c; or

(B) a federally qualified health center under 42 U.S.C. Section 1396d(1)(2)(B).

(c-5) This section applies to a hospital district described by Subsection (c-4) only in relation to the hospital district's operations as a community or federally qualified health center described by Subsection (c-4)(2).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 601 (H.B. 1924), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 164 (S.B. 1107), Sec. 8, eff. September 1, 2007.

Sec. 162.002. LIMITATION ON PHYSICIAN FEES. A physician who provides professional medical services for a health organization certified under Section 162.001(c) shall provide those services free of charge, or at a reduced fee commensurate with the patient's ability to pay, in compliance with 42 U.S.C. Section 254b or 254c.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.0021. INTERFERENCE WITH PHYSICIAN'S PROFESSIONAL JUDGMENT PROHIBITED. A health organization certified under Section 162.001(b) may not interfere with, control, or otherwise direct a physician's professional judgment in violation of this subchapter or any other provision of law, including board rules.

Added by Acts 2011, 82nd Leg., R.S., Ch. 670 (S.B. 1661), Sec. 1, eff. September 1, 2011.

Sec. 162.0022. HEALTH ORGANIZATION POLICIES. (a) A health organization certified under Section 162.001(b) shall adopt, maintain, and enforce policies to ensure that a physician employed by the health organization exercises independent medical judgment when providing care to patients.

(b) The policies adopted under this section must include policies relating to:

- (1) credentialing;
- (2) quality assurance;
- (3) utilization review; and
- (4) peer review.

(c) The policies adopted under this section, including any amendments to the policies, must be developed by the board of directors or board of trustees, as applicable, of the health organization and approved by an affirmative vote.

(d) The policies of the health organization must be drafted and interpreted in a manner that reserves the sole authority to engage in the practice of medicine to a physician participating in the health organization, regardless of the physician's employment status with the health organization.

Added by Acts 2011, 82nd Leg., R.S., Ch. 670 (S.B. 1661), Sec. 1, eff. January 1, 2012.

Sec. 162.0023. DISCIPLINARY ACTION RESTRICTION. A physician employed by a health organization certified under Section 162.001(b) retains independent medical judgment in providing care to patients, and the health organization may not discipline the physician for

reasonably advocating for patient care.

Added by Acts 2011, 82nd Leg., R.S., Ch. 670 (S.B. 1661), Sec. 1, eff. September 1, 2011.

Sec. 162.0024. CONTRACTUAL WAIVER PROHIBITED. (a) The requirements of this subchapter may not be voided or waived by contract.

(b) Notwithstanding Subsection (a), a member of a health organization certified under Section 162.001(b) may establish ethical and religious directives and a physician may contractually agree to comply with those directives.

Added by Acts 2011, 82nd Leg., R.S., Ch. 670 (S.B. 1661), Sec. 1, eff. September 1, 2011.

Sec. 162.003. REFUSAL TO CERTIFY; REVOCATION; PENALTY. On a determination that a health organization is established, organized, or operated in violation of or with the intent to violate this subtitle, the board may:

(1) refuse to certify the health organization on application for certification by the organization under Section 162.001;

(2) revoke a certification made under Section 162.001 to that organization; or

(3) impose an administrative penalty against the health organization under Subchapter A, Chapter 165.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 670 (S.B. 1661), Sec. 2, eff. September 1, 2011.

#### **SUBCHAPTER B. AUTHORITY TO FORM CERTAIN ENTITIES**

Sec. 162.051. AUTHORITY TO FORM CERTAIN JOINTLY OWNED ENTITIES.

(a) Except as provided by Section 165.155, a physician and an

optometrist or therapeutic optometrist may, for a purpose described by Subsection (b), organize, jointly own, and manage any legal entity, including:

(1) a partnership under the Texas Revised Partnership Act (Article 6132b-1.01 et seq., Vernon's Texas Civil Statutes);

(2) a limited partnership under the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes);  
and

(3) a limited liability company under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes).

(b) An entity authorized under Subsection (a) may:

(1) own real property, other physical facilities, or equipment for the delivery of health care services or management;

(2) lease, rent, or otherwise acquire the use of real property, other physical facilities, or equipment for the delivery of health care services or management; or

(3) employ or otherwise use a person who is not a physician, optometrist, or therapeutic optometrist for the delivery of health care services or management.

(c) Only a physician, optometrist, or therapeutic optometrist may own an interest in an entity authorized under Subsection (a). This subsection does not prohibit an entity from making one or more payments to an owner's estate following the owner's death under an agreement with the owner or as otherwise authorized or required by law.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.052. NOTICE OF CERTAIN OWNERSHIP INTERESTS. (a) In this section, "niche hospital" has the meaning assigned by Section 105.002.

(b) A physician shall notify the Department of State Health Services of any ownership interest held by the physician in a niche hospital.

(c) Subsection (b) does not apply to an ownership interest in publicly available shares of a registered investment company, such as a mutual fund, that owns publicly traded equity securities or debt obligations issued by a niche hospital or an entity that owns the

niche hospital.

(d) The board, in consultation with the Department of State Health Services, shall adopt rules governing the form and content of the notice required by Subsection (b).

Added by Acts 2005, 79th Leg., Ch. 836 (S.B. 872), Sec. 2, eff. September 1, 2005.

Sec. 162.053. JOINTLY OWNED ENTITIES WITH PHYSICIAN ASSISTANTS.

(a) A physician who jointly owns an entity with a physician assistant shall report annually to the board the ownership interest and other information required by board rule.

(b) The board shall assess a fee for processing each report required by Subsection (a).

(c) A report filed under Subsection (a) is public information for purposes of Chapter 552, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 782 (H.B. 2098), Sec. 4, eff. June 17, 2011.

**SUBCHAPTER C. ANESTHESIA IN OUTPATIENT SETTING**

Sec. 162.101. DEFINITION. In this subchapter, "outpatient setting" means a facility, clinic, center, office, or other setting that is not part of a licensed hospital or a licensed ambulatory surgical center.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.102. RULES. (a) The board by rule shall establish the minimum standards for anesthesia services provided in an outpatient setting by a person licensed by the board.

(b) The rules adopted under this section must be designed to protect the health, safety, and welfare of the public and include requirements relating to:

(1) general anesthesia, regional anesthesia, and monitored anesthesia care;

(2) patient evaluation, diagnosis, counseling, and

preparation;

(3) patient monitoring to be performed and equipment to be used during a procedure and during post-procedure monitoring;

(4) emergency procedures, drugs, and equipment, including education, training, and certification of personnel, as appropriate, and including protocols for transfers to a hospital;

(5) the documentation necessary to demonstrate compliance with this subchapter; and

(6) the period in which protocols or procedures covered by rules of the board shall be reviewed, updated, or amended.

(c) The board shall cooperate with the Texas Board of Nursing in the adoption of rules under this subchapter to eliminate, to the extent possible, conflicts between the rules adopted by each board.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 34, eff. September 1, 2007.

Sec. 162.103. APPLICABILITY. Rules adopted by the board under this subchapter do not apply to:

(1) an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used in a total dosage amount that does not exceed 50 percent of the recommended maximum safe dosage per outpatient visit;

(2) a licensed hospital, including an outpatient facility of the hospital that is located separate from the hospital;

(3) a licensed ambulatory surgical center;

(4) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. Section 479a-1 or as listed under a successor federal statute or regulation;

(5) a facility maintained or operated by a state or local governmental entity;

(6) a clinic directly maintained or operated by the United States; or

(7) an outpatient setting accredited by:

- (A) The Joint Commission relating to ambulatory surgical centers;
- (B) the American Association for Accreditation of Ambulatory Surgery Facilities; or
- (C) the Accreditation Association for Ambulatory Health Care.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.31, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 596 (S.B. 978), Sec. 1, eff. September 1, 2013.

Sec. 162.104. REGISTRATION REQUIRED. (a) The board shall require each physician who administers anesthesia or performs a surgical procedure for which anesthesia services are provided in an outpatient setting to register with the board on a form prescribed by the board and to pay a fee to the board in an amount established by the board.

(b) The board shall coordinate the registration required under this section with the registration required under Chapter 156 so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimum of administrative burden to the board and to physicians.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 25, eff. June 10, 2003.

Sec. 162.105. COMPLIANCE WITH ANESTHESIA RULES. (a) A physician who practices medicine in this state and who administers anesthesia or performs a surgical procedure for which anesthesia services are provided in an outpatient setting shall comply with the rules adopted under this subchapter.

(b) The board may require a physician to submit and comply with a corrective action plan to remedy or address any current or potential deficiencies with the physician's provision of anesthesia



in an outpatient setting in accordance with this subtitle or rules of the board.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.106. INSPECTIONS. (a) The board may conduct inspections to enforce this subchapter, including inspections of an office site and of documents of a physician's practice that relate to the provision of anesthesia in an outpatient setting. The board may contract with another state agency or qualified person to conduct the inspections.

(b) Unless it would jeopardize an ongoing investigation, the board shall provide at least five business days' notice before conducting an on-site inspection under this section.

(c) This section does not require the board to make an on-site inspection of a physician's office.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.107. REQUESTS FOR INSPECTION AND ADVISORY OPINION.

(a) The board may consider a request by a physician for an on-site inspection. The board, on payment of a fee established by the board, may conduct the inspection and issue an advisory opinion.

(b) An advisory opinion issued by the board under this section is not binding on the board. Except as provided by Subsection (c), the board may take any action under this subtitle relating to the situation addressed by the advisory opinion that the board considers appropriate.

(c) A physician who requests and relies on an advisory opinion of the board may use the opinion as mitigating evidence in an action or proceeding to impose an administrative penalty or assess a civil penalty under this subtitle. On receipt of proof of reliance on an advisory opinion, the board or court, as appropriate, shall consider the reliance and mitigate imposition of an administrative penalty or assessment of a civil penalty accordingly.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept.

1, 2001.

**SUBCHAPTER D. PHYSICIAN CREDENTIALING**

Sec. 162.151. DEFINITIONS. In this subchapter:

- (1) "Core credentials data" means:
- (A) name and other demographic data;
  - (B) professional education;
  - (C) professional training;
  - (D) licenses; and
  - (E) Educational Commission for Foreign Medical

Graduates certification.

(2) "Credentials verification organization" means an organization that is certified or accredited and organized to collect, verify, maintain, store, and provide to health care entities a health care practitioner's verified credentials data, including all corrections, updates, and modifications to that data. For purposes of this subdivision, "certified" or "accredited" includes certification or accreditation by a nationally recognized accreditation organization.

- (3) "Health care entity" means:

(A) a health care facility or other health care organization licensed or certified to provide approved medical and allied health services in this state;

(B) an entity licensed by the Texas Department of Insurance as a prepaid health care plan or health maintenance organization or as an insurer to provide coverage for health care services through a network of providers; or

(C) a health care provider entity accepting delegated credentialing functions from a health maintenance organization.

(4) "Physician" means a holder of or applicant for a license under this subtitle as a medical doctor or doctor of osteopathy.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.152. ASSOCIATIONS. Each provision of this subchapter that applies to a health care entity also applies to an association

that represents federally qualified health centers. For purposes of this section, "federally qualified health center" has the meaning assigned by 42 U.S.C. Section 1396d(1)(2)(B), as amended.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.153. STANDARDIZED CREDENTIALS VERIFICATION PROGRAM.

(a) The board shall develop standardized forms and guidelines for and administer:

(1) the collection, verification, correction, updating, modification, maintenance, and storage of information relating to physician credentials; and

(2) the release of that information to health care entities or designated credentials verification organizations authorized by the physician to receive that information.

(b) Except as provided by Subsection (c), a physician whose core credentials data is submitted to the board is not required to resubmit the data when applying for practice privileges with a health care entity.

(c) A physician shall:

(1) provide to the board any correction, update, or modification of the physician's core credentials data not later than the 30th day after the date the data on file is no longer accurate; and

(2) resubmit the physician's core credentials data annually if the physician did not submit a correction, update, or modification during the preceding year.

(d) A health care entity that employs, contracts with, or credentials physicians must use the board to obtain core credentials data for items for which the board is designated or accepted as a primary source by a national accreditation organization. A health care entity may act through its designated credentials verification organization.

(e) This section does not restrict the authority of a health care entity to approve or deny an original or renewal application for hospital staff membership, clinical privileges, or managed care network participation.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept.

1, 2001.

Sec. 162.154. FURNISHING OF DATA TO HEALTH CARE ENTITY. Not later than the 15th business day after the date the board receives a request for the data, the board shall make available to a health care entity or its designated credentials verification organization all core credentials data it collects on a physician, including any correction, update, or modification of that data, if authorized by the physician.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.155. REVIEW OF DATA BY PHYSICIAN. (a) Before releasing a physician's core credentials data from its data bank for the first time, the board shall provide to the affected physician 15 business days to review the data and request reconsideration or resolution of errors in or omissions from the data. The board shall include with the data any change or clarification made by the physician.

(b) The board shall notify a physician of any change to the physician's core credentials data when a change is made or initiated by a person other than the physician.

(c) A physician may request to review the physician's core credentials data collected at any time after the initial release of information. The board is not required to hold, release, or modify any information because of the request.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.156. DATA DUPLICATION PROHIBITED. (a) A health care entity may not collect or attempt to collect duplicate core credentials data from a physician if the information is already on file with the board. This section does not restrict the right of a health care entity to request additional information not included in the core credentials data on file with the board that is necessary for the entity to credential the physician. A health care entity or

its designated credentials verification organization may collect any additional information required by the health care entity's credentialing process from a primary source of that information.

(b) A state agency may not collect or attempt to collect duplicate core credentials data from a physician if the information is already on file with the board. This section does not restrict the right of a state agency to request additional information not included in the core credentials data on file with the board that the agency considers necessary for its specific credentialing purposes.

(c) The board by rule may except from Subsections (a) and (b) a request for core credentials data that is necessary for a health care entity to provide temporary privileges during the credentialing process.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.157. IMMUNITY. A health care entity or its designated credentials verification organization is immune from liability arising from its reliance on data furnished by the board under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.158. RULES. The board shall adopt rules as necessary to develop and implement the standardized credentials verification program established by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.159. CONFIDENTIALITY. The information collected, maintained, or stored by the board under this subchapter is privileged and confidential and not subject to discovery, subpoena, or other means of legal compulsion for its release or to disclosure under Chapter 552, Government Code, except as otherwise provided by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.160. USE OF INDEPENDENT CONTRACTOR. The board may contract with an independent contractor to collect, verify, maintain, store, or release information. The contract must provide for board oversight and for the confidentiality of the information. If the board contracts with an independent entity that is not a governmental unit to carry out this subchapter, the independent entity is not immune from liability.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.161. FEES. (a) The board shall prescribe and assess fees in amounts necessary to cover its cost of operating under and administering this subchapter.

(b) The board may waive a fee for a state agency that is required to obtain core credentials data from the board and that Section 162.156 prohibits from collecting duplicate data.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.162. GIFTS, GRANTS, AND DONATIONS. In addition to any fees paid to the board or money appropriated to the board, the board may receive and accept a gift, grant, donation, or other thing of value from any source, including the United States or a private source.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

#### **SUBCHAPTER E. EMPLOYMENT OF PHYSICIAN BY PRIVATE MEDICAL SCHOOL**

Sec. 162.201. EMPLOYMENT OF PHYSICIAN PERMITTED. A private nonprofit medical school that is certified under Section 162.203, that is accredited by the Liaison Committee on Medical Education, and

that was appropriated funds by the legislature in the 75th Legislature, Regular Session, 1997, may retain, in fulfilling its educational mission, all or part of the professional income generated by a physician for medical services if the physician is employed as a faculty member of the school and provides medical services as part of the physician's responsibilities.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.202. COMMITTEE ESTABLISHED BY SCHOOL. (a) A private medical school subject to this subchapter shall establish a committee consisting of at least five actively practicing physicians who provide care in the clinical program of the private medical school. The committee shall approve existing policies, or adopt new policies if none exist, to ensure that a physician whose professional income is retained under Section 162.201 is exercising the physician's independent medical judgment in providing care to patients in the school's clinical programs.

(b) The policies adopted under this section must include policies relating to credentialing, quality assurance, utilization review, peer review, medical decision-making, governance of the committee, and due process.

(c) Each member of a committee under this section shall provide to the board biennially a signed and verified statement indicating that the member:

(1) is licensed by the board;

(2) will exercise independent medical judgment in all committee matters, specifically in matters relating to credentialing, quality assurance, utilization review, peer review, medical decision-making, and due process;

(3) will exercise the member's best efforts to ensure compliance with the private medical school's policies that are adopted or established by the committee; and

(4) shall report immediately to the board any action or event that the member reasonably and in good faith believes constitutes a compromise of the independent judgment of a physician in caring for a patient in the private medical school's clinical program or in carrying out the member's duties as a committee member.

(d) The board shall adopt rules requiring the disclosure of financial conflicts of interest by a committee member.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.203. CERTIFICATION OF SCHOOL BY BOARD. (a) A private school that retains a physician's professional income under Section 162.201 must be certified by the board as being in compliance with this subchapter.

(b) The board shall prescribe an application form to be provided to the school and may adopt rules as necessary to administer this subchapter.

(c) The board may prescribe and assess a fee for the certification of a school and for investigation and review of the school in an amount not to exceed the fee assessed on an organization described by Section 162.001.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.204. BIENNIAL REPORT. A private medical school certified under Section 162.203 shall provide to the board a biennial report certifying that the school is in compliance with this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.205. SUSPENSION OR REVOCATION OF CERTIFICATION. If the board determines at any time that a private medical school certified under Section 162.203 has failed to comply with this subchapter, the board may suspend or revoke the school's certification.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.



Sec. 162.206. LIMITATION ON SCHOOL'S AUTHORITY. A private medical school's authority to retain a physician's professional income does not apply to a physician providing care in a facility owned or operated by the school that is established outside the school's historical geographical service area as it existed June 19, 1999.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.207. APPLICATION OF SUBCHAPTER. This subchapter does not:

- (1) affect the reporting requirements under Section 160.003; or
- (2) apply to a private medical school certified under this subchapter if all or substantially all of the school's assets are sold.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

### **CHAPTER 163. DISTRICT REVIEW COMMITTEES**

Sec. 163.001. DEFINITIONS. In this chapter:

- (1) "Committee" means a district review committee.
- (2) "District" means a district established under Section 163.002.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 163.002. DESIGNATION OF DISTRICTS. (a) The board shall designate:

- (1) the number of districts; and
- (2) the geographic area of a district composed of various counties.

(b) The board may revise, as it considers appropriate and after a public hearing, the number of districts and the designation of the counties located in a district.

(c) If the number of districts or a county's designation in a

district is revised, the board shall follow the same procedure that applied to the initial designation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 163.003. COMMITTEE. (a) A committee consists of seven members appointed by the governor, as follows:

(1) three physician members who are doctors of medicine (M.D.);

(2) one physician member who is a doctor of osteopathic medicine (D.O.); and

(3) three public members.

(b) A member must:

(1) have resided in the district for longer than three years before the date of the appointment; and

(2) meet the qualifications for:

(A) physician members of the board under Section 152.002, if the member is a physician member; or

(B) public members of the board under Section 152.002, if the member is a public member.

(c) A member of the committee serves a six-year term.

(d) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

(e) A member of the committee is entitled to receive a per diem for actual duty in the same manner provided for board members.

(f) A member of a committee is subject to law and the rules of the board, including Sections 152.004, 152.006, and 152.010, as if the committee member were a member of the board, except that a committee member is not subject to Chapter 572, Government Code. The training program a committee member must complete under Section 152.010 shall be an abbreviated version of the program under that section that is limited to training relevant to serving on a committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.32, eff. September 1, 2005.

Sec. 163.004. BOARD RULES REGARDING COMMITTEES. The board may adopt rules reasonably necessary to implement this chapter relating to:

- (1) per diem and expenses of committee members;
- (2) matters to be heard or considered by a committee;
- (3) the conduct of committee hearings;
- (4) the authority the board may delegate to a committee;

and

(5) other matters regarding the actions, duties, and responsibilities of a committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 163.0045. ASSISTANCE TO BOARD. The board may request members of a committee to participate in an informal meeting under Section 164.003. A physician committee member who participates in an informal meeting on a complaint relating to medical competency must have the qualifications of a member of an expert panel under Section 154.056(e).

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.33, eff. September 1, 2005.

Sec. 163.005. COMMITTEE AUTHORITY LIMITED. A committee may not finally dispose of a complaint against a person licensed by the board or issue a final order or rule. The board shall finally dispose of each complaint against a person licensed by the board and has the sole authority to issue final orders and rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## **CHAPTER 164. DISCIPLINARY ACTIONS AND PROCEDURES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 164.001. DISCIPLINARY AUTHORITY OF BOARD; METHODS OF DISCIPLINE. (a) Except for good cause shown, the board, on determining a violation of this subtitle or a board rule or for any cause for which the board may refuse to admit a person to its examination or to issue or renew a license, including an initial

conviction or the initial finding of the trier of fact of guilt of a felony or misdemeanor involving moral turpitude, shall:

- (1) revoke or suspend a license;
- (2) place on probation a person whose license is suspended;

or

- (3) reprimand a license holder.

(b) Except as otherwise provided by Sections 164.057 and 164.058, the board, on determining that a person committed an act described by Sections 164.051 through 164.054, shall enter an order to:

- (1) deny the person's application for a license or other authorization to practice medicine;
- (2) administer a public reprimand;
- (3) suspend, limit, or restrict the person's license or other authorization to practice medicine, including:
  - (A) limiting the practice of the person to or excluding one or more specified activities of medicine; or
  - (B) stipulating periodic board review;
- (4) revoke the person's license or other authorization to practice medicine;
- (5) require the person to submit to care, counseling, or treatment of physicians designated by the board as a condition for:
  - (A) the issuance or renewal of a license or other authorization to practice medicine; or
  - (B) continued practice under a license;
- (6) require the person to participate in an educational or counseling program prescribed by the board;
- (7) require the person to practice under the direction of a physician designated by the board for a specified period;
- (8) require the person to perform public service considered appropriate by the board; or
- (9) assess an administrative penalty against the person as provided by Section 165.001.

(c) Notwithstanding Subsection (b), the board shall revoke, suspend, or deny a physician's license if the board determines that, through the practice of medicine, the physician poses a continuing threat to the public welfare.

(d) In addition to any other disciplinary action authorized by this section, the board may issue a written reprimand to a license holder who violates this subtitle or require that a license holder

who violates this subtitle participate in continuing education programs. The board shall specify the continuing education programs to be attended and the number of hours that must be completed by the license holder to fulfill the requirements of this subsection.

(e) For any sanction imposed under this chapter as the result of a hearing conducted by the State Office of Administrative Hearings, that office shall use the schedule of sanctions adopted by board rule.

(f) The board by rule shall adopt a schedule of the disciplinary sanctions that the board may impose under this subchapter. In adopting the schedule of sanctions, the board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

(g) In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the board shall consider whether the person:

- (1) is being disciplined for multiple violations of this subtitle or a rule or order adopted under this subtitle; or
- (2) has previously been the subject of disciplinary action by the board.

(h) In the case of a person described by:

(1) Subsection (g)(1), the board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and

(2) Subsection (g)(2), the board shall consider revoking the person's license if the person has repeatedly been the subject of disciplinary action by the board.

(i) If the board chooses not to revoke the license of a person described by Subsection (g)(2), the board shall consider taking a more severe disciplinary action than the disciplinary action previously taken.

(j) In determining the appropriate disciplinary action, including the amount of any administrative penalty to impose, the board shall consider whether the violation relates directly to patient care or involves only an administrative violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 26, eff. June 10, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.34, eff. September 1, 2005.

Sec. 164.0015. REMEDIAL PLAN. (a) In addition to the authority under Sections 164.001 and 164.002, the board may issue and establish the terms of a remedial plan to resolve the investigation of a complaint relating to this subtitle.

(b) A remedial plan may not contain a provision that:

(1) revokes, suspends, limits, or restricts a person's license or other authorization to practice medicine; or

(2) assesses an administrative penalty against a person.

(c) A remedial plan may not be imposed to resolve a complaint:

(1) concerning:

(A) a patient death;

(B) the commission of a felony; or

(C) a matter in which the physician engaged in inappropriate sexual behavior or contact with a patient or became financially or personally involved with a patient in an inappropriate manner; or

(2) in which the appropriate resolution may involve a restriction on the manner in which a license holder practices medicine.

(d) The board may not issue a remedial plan to resolve a complaint against a license holder if the license holder has previously entered into a remedial plan with the board for the resolution of a different complaint relating to this subtitle.

(e) The board may assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering this plan.

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 600 (S.B. 227), Sec. 1, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1349 (H.B. 680), Sec. 4, eff. September 1, 2011.

Sec. 164.002. BOARD DISPOSITION OF COMPLAINTS, CONTESTED CASES, AND OTHER MATTERS. (a) Unless precluded by law, the board may dispose of any complaint or matter relating to this subtitle or of any contested case by a stipulation, agreed settlement, or consent order.

(b) The board shall dispose of a complaint, contested case, or other matter in writing. If appropriate, the affected physician shall sign the writing.

(c) An agreed disposition is a disciplinary order for purposes of reporting under this subtitle and of administrative hearings and proceedings by state and federal regulatory agencies regarding the practice of medicine. An agreed disposition or a remedial plan under Section 164.0015 is public information.

(d) In civil litigation, an agreed disposition or a remedial plan under Section 164.0015 is a settlement agreement under Rule 408, Texas Rules of Evidence. This subsection does not apply to a license holder who has previously entered into an agreed disposition with the board of a different disciplinary matter or whose license the board is seeking to revoke.

(e) The board may not dismiss a complaint solely on the grounds that the case has not been scheduled for an informal meeting within the time required by Section 164.003(b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.35, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 600 (S.B. 227), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1349 (H.B. 680), Sec. 5, eff. September 1, 2011.

Sec. 164.0025. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS.

(a) The board may delegate to a committee of board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations. The disposition determined by the committee must be approved by the board at a public meeting.

(b) A complaint delegated under this section shall be referred

for informal proceedings under Section 164.003 if:

- (1) the committee of employees determines that the complaint should not be dismissed or settled;
  - (2) the committee is unable to reach an agreed settlement;
- or
- (3) the affected physician requests that the complaint be referred for informal proceedings.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.36, eff. September 1, 2005.

Sec. 164.003. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

- (1) informal disposition of a contested case under Section 2001.056, Government Code; and
- (2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must require that:

- (1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled not later than the 180th day after the date the board's official investigation of the complaint is commenced as provided by Section 154.057(b), unless good cause is shown by the board for scheduling the informal meeting after that date;
- (2) the board give notice to the license holder of the time and place of the meeting not later than the 45th day before the date the meeting is held;
- (3) the complainant and the license holder be provided an opportunity to be heard;
- (4) at least one of the board members or district review committee members participating in the informal meeting as a panelist be a member who represents the public;
- (5) the board's legal counsel or a representative of the attorney general be present to advise the board or the board's staff; and
- (6) a member of the board's staff be at the meeting to present to the board's representative the facts the staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing.



(c) An affected physician is entitled to:

(1) reply to the staff's presentation; and

(2) present the facts the physician reasonably believes the physician could prove by competent evidence or qualified witnesses at a hearing.

(d) After ample time is given for the presentations, the board representative shall recommend that the investigation be closed or shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) If the license holder has previously been the subject of disciplinary action by the board, the board shall schedule the informal meeting as soon as practicable but not later than the deadline prescribed by Subsection (b)(1).

(f) The notice required by Subsection (b)(2) must be accompanied by a written statement of the nature of the allegations and the information the board intends to use at the meeting. If the board does not provide the statement or information at that time, the license holder may use that failure as grounds for rescheduling the informal meeting. If the complaint includes an allegation that the license holder has violated the standard of care, the notice must include a copy of the report by the expert physician reviewer. The license holder must provide to the board the license holder's rebuttal at least 15 business days before the date of the meeting in order for the information to be considered at the meeting.

(g) The board by rule shall define circumstances constituting good cause for purposes of Subsection (b)(1), including the extended illness of a board investigator and an expert physician reviewer's delinquency in reviewing and submitting a report to the board.

(h) Section 164.007(c) applies to the board's investigation file used in an informal meeting under this section.

(i) On request by a physician under review, the board shall make a recording of the informal settlement conference proceeding. The recording is a part of the investigative file and may not be released to a third party unless authorized under this subtitle. The board may charge the physician a fee to cover the cost of recording the proceeding.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 27, eff. June 10, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.37, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1349 (H.B. 680), Sec. 6, eff. September 1, 2011.

Sec. 164.0031. BOARD REPRESENTATION IN INFORMAL PROCEEDINGS.

(a) In an informal meeting under Section 164.003 or an informal hearing under Section 164.103, at least two panelists shall be appointed to determine whether an informal disposition is appropriate. At least one of the panelists must be a physician.

(b) Notwithstanding Subsection (a) and Section 164.003(b)(4), an informal proceeding may be conducted by one panelist if the affected physician waives the requirement that at least two panelists conduct the informal proceeding. If the physician waives that requirement, the panelist may be either a physician or a member who represents the public.

(c) The panel requirements described by Subsection (a) do not apply to an informal proceeding conducted by the board under Section 164.003 to show compliance with an order of the board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.38, eff. September 1, 2005.

Sec. 164.0032. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) A board member or district review committee member that serves as a panelist at an informal meeting under Section 164.003 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a board employee at any time.

(b) Board employees shall present a summary of the allegations against the affected physician and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) A board attorney shall act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask

questions of participants in the informal meeting to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the board, keep the proceedings focused on the case being discussed, and ensure that the board's employees and the affected physician have an opportunity to present information related to the case. During the panel's deliberations, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the board.

(d) The panel and board employees shall provide an opportunity for the affected physician and the physician's authorized representative to reply to the board employees' presentation and to present oral and written statements and facts that the physician and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected physician, the physician's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the board attorney serving as counsel to the panel may be present during the deliberations.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected physician has violated a statute or board rule, the panel may recommend board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected physician and the physician's authorized representative. The physician may accept the proposed settlement within the time established by the panel at the informal meeting. If the physician rejects the proposed settlement or does not act within the required time, the board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

(h) If the board rejects the panel's recommendation for settlement or dismissal, the board shall notify the physician and state in the board's minutes the reason for rejecting the recommendation and specify further action to be considered. In determining the appropriate further action to be taken, the board

shall consider previous attempts to resolve the matter.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.38, eff. September 1, 2005.

Sec. 164.0035. DISMISSAL OF BASELESS COMPLAINT. If, during the 180-day period prescribed by Section 164.003(b)(1), the board determines that the complaint is a baseless or unfounded complaint, the board shall dismiss the complaint and include a statement in the records of the complaint that the reason for the dismissal is because the complaint was baseless or unfounded. The board shall adopt rules that establish criteria for determining that a complaint is baseless or unfounded.

Added by Acts 2003, 78th Leg., ch. 202, Sec. 28, eff. June 10, 2003.

Sec. 164.0036. NOTICE REGARDING CERTAIN COMPLAINTS. (a) If an informal meeting is not scheduled for a complaint before the 180th day after the date the board's official investigation of the complaint is commenced under Section 154.057(b), the board shall provide notice to all parties to the complaint. The notice must include an explanation of the reason why the informal meeting has not been scheduled. The notice under this subsection is not required if the notice would jeopardize an investigation.

(b) The board must include in its annual report to the legislature information about any complaint for which notice is required under Subsection (a), including the reason for failing to schedule the informal meeting before the 180-day deadline. The information provided under this subsection must also list any complaint in which the investigation has extended beyond the first anniversary of the date the complaint was filed with the board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.39, eff. September 1, 2005.

Sec. 164.004. COMPLIANCE WITH DUE PROCESS REQUIREMENTS. (a) Except in the case of a suspension under Section 164.059 or under the terms of an agreement between the board and a license holder, a

revocation, suspension, involuntary modification, or other disciplinary action relating to a license is not effective unless, before board proceedings are instituted:

(1) the board gives notice, in a manner consistent with the notice requirements under Section 154.053, to the affected license holder of the facts or conduct alleged to warrant the intended action; and

(2) the license holder is given an opportunity to show compliance with all requirements of law for the retention of the license, at the license holder's option, either in writing or through personal appearance at an informal meeting with one or more representatives of the board.

(b) If the license holder chooses to personally appear and an informal meeting is held, the board's staff and the board's representatives are subject to the ex parte provisions of Chapter 2001, Government Code, with regard to contacts with board members and administrative law judges concerning the case.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.005. INITIATION OF CHARGES; FORMAL COMPLAINT. (a) In this section, "formal complaint" means a written statement made by a credible person under oath that is filed and presented by a board representative charging a person with having committed an act that, if proven, could affect the legal rights or privileges of a license holder or other person under the board's jurisdiction.

(b) Unless otherwise specified, a proceeding under this subtitle or other applicable law and a charge against a license holder may be instituted by an authorized representative of the board.

(c) A charge must be in the form of a written affidavit that:

(1) is filed with the board's records custodian or assistant records custodian; and

(2) details the nature of the charge as required by this subtitle or other applicable law.

(d) The board president or a designee shall ensure a copy of the charges is served on the respondent or the respondent's counsel of record.

(e) The president or designee shall notify the State Office of

Administrative Hearings of a formal complaint.

(f) A formal complaint must allege with reasonable certainty each specific act relied on by the board to constitute a violation of a specific statute or rule. The formal complaint must be specific enough to:

(1) enable a person of common understanding to know what is meant by the formal complaint; and

(2) give the person who is the subject of the formal complaint notice of each particular act alleged to be a violation of a specific statute or rule.

(g) The board shall adopt rules to promote discovery by each party to a contested case.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.006. SERVICE OF NOTICE. (a) Service of process to notify the respondent of a hearing about the charges against the person must be served in accordance with Chapter 2001, Government Code.

(b) If service described by Subsection (a) is impossible or cannot be effected, the board shall publish once a week for two successive weeks a notice of the hearing in a newspaper published in the county of the last known place of practice in this state of the person, if known.

(c) If the license holder is not currently practicing in this state as evidenced by information in the board files, or if the last county of practice is unknown, the notice shall be published in a newspaper in Travis County.

(d) If publication of notice is used, the date of hearing may not be earlier than the 10th day after the date of the last publication.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.007. ADMINISTRATIVE HEARINGS; CONFIDENTIALITY ISSUES.

(a) The board by rule shall adopt procedures governing formal disposition of a contested case under Chapter 2001, Government Code. A formal hearing shall be conducted by an administrative law judge employed by the State Office of Administrative Hearings. After

receiving the administrative law judge's findings of fact and conclusions of law, the board shall dispose of the contested case by issuing a final order based on the administrative law judge's findings of fact and conclusions of law.

(a-1) Notwithstanding Section 2001.058(e), Government Code, the board may not change a finding of fact or conclusion of law or vacate or modify an order of the administrative law judge. The board may obtain judicial review of any finding of fact or conclusion of law issued by the administrative law judge as provided by Section 2001.058(f)(5), Government Code. For each case, the board has the sole authority and discretion to determine the appropriate action or sanction, and the administrative law judge may not make any recommendation regarding the appropriate action or sanction.

(b) Notwithstanding this subtitle or other law, the board may employ, retain, and compensate:

(1) attorneys, consultants, and other professionals as necessary and appropriate to serve as board consultants or special counsel to prosecute complaints filed with the board on behalf of the hearings division and investigating division; and

(2) court reporters and other staff necessary to prepare for or represent the board in the hearings authorized by this section.

(c) Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board.

(d) Not later than the 30th day after the date of receipt of a written request from a license holder who is the subject of a formal complaint initiated and filed under Section 164.005 or from the license holder's counsel of record, and subject to any other privilege or restriction set forth by rule, statute, or legal precedent, and unless good cause is shown for delay, the board shall

provide the license holder with access to all information in its possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint. The board is not required to provide:

- (1) a board investigative report or memorandum;
- (2) the identity of a nontestifying complainant; or
- (3) attorney-client communications, attorney work product, or other materials covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(e) Furnishing information under Subsection (d) does not constitute a waiver of privilege or confidentiality under this subtitle or other applicable law.

(f) Investigative information in the possession of the board or an employee or agent relating to discipline of a license holder may be disclosed to:

- (1) the appropriate licensing authority of:
  - (A) another state; or
  - (B) a territory or country in which the license holder is licensed or has applied for a license; or
- (2) a medical peer review committee reviewing an application for privileges or the qualifications of the license holder with respect to retaining privileges.

(g) If investigative information in the possession of the board or its employees or agents indicates that a crime may have been committed, the board shall report the information to the appropriate law enforcement agency.

(h) The board shall cooperate with and assist a law enforcement agency conducting a criminal investigation of a license holder by providing information that is relevant to the criminal investigation to the investigating agency. Information disclosed by the board to an investigative agency remains confidential and may not be disclosed by the investigating agency except as necessary to further the investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1201, Sec. 2, eff. June 15, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.40, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1349 (H.B. 680), Sec. 7, eff.



September 1, 2011.

Sec. 164.0071. HEARINGS ON CERTAIN COMPLAINTS. (a) In a formal hearing described by Section 164.007 in which the sole basis for disciplinary action is the basis described by Section 164.051(a)(7), the board shall provide evidence from the board's investigation that shows the basis for the board's findings required by that subdivision.

(b) In any formal hearing described by Section 164.007, information obtained as a result of peer review may not be used as evidence except as the basis for the opinion of an expert witness called by the board. When admitted into evidence, this information shall be admitted under seal to protect the confidentiality of the documents. In the event that a decision of the board or the State Office of Administrative Hearings is appealed to a district court or other court, the confidentiality protections relating to the medical peer review committee documents shall continue.

(c) A member of a peer review committee is not subject to subpoena and may not be compelled to provide evidence in a formal hearing.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.41, eff. September 1, 2005.

Sec. 164.008. RIGHT TO COUNSEL. In a hearing involving a disciplinary action under this subtitle, the respondent is entitled to appear personally, by counsel, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.009. JUDICIAL REVIEW. A person whose license to practice medicine has been revoked or who is subject to other disciplinary action by the board may appeal to a Travis County district court not later than the 30th day after the date the board decision is final.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.010. MONITORING OF LICENSE HOLDER. (a) The board by rule shall develop a system to monitor compliance with the requirements of this subtitle of license holders who are the subject of disciplinary action.

(b) Rules adopted under this section must include procedures to:

(1) monitor for compliance a license holder ordered by the board to perform certain acts; and

(2) identify and monitor license holders who are the subject of disciplinary action and who present a continuing threat to the public welfare through the practice of medicine.

(c) The board shall immediately investigate:

(1) a violation of a disciplinary order by a license holder described by Subsection (a); or

(2) a complaint filed against a license holder described by Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 29, eff. June 10, 2003.

Sec. 164.011. LICENSE STATUS PENDING APPEAL. (a) The board's decision on a disciplinary matter may not be enjoined or stayed except on application to the appropriate court after notice to the board.

(b) A person may not practice medicine or deliver health care services in violation of a disciplinary order or action of the board while an appeal is pending unless the order or action is stayed by the appropriate court.

(c) A stay or injunction may not be granted if the license holder's continued practice presents a danger to the public. A stay or injunction may not be granted for a term that exceeds 120 days.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 30, eff. June 10, 2003.

#### **SUBCHAPTER B. LICENSE DENIAL AND DISCIPLINARY ACTIONS**

Sec. 164.051. GROUNDS FOR DENIAL OR DISCIPLINARY ACTION. (a) The board may refuse to admit a person to its examination or refuse to issue a license to practice medicine and may take disciplinary

action against a person if the person:

- (1) commits an act prohibited under Section 164.052;
  - (2) is convicted of, or is placed on deferred adjudication community supervision or deferred disposition for:
    - (A) a felony; or
    - (B) a misdemeanor involving moral turpitude;
  - (3) commits or attempts to commit a direct or indirect violation of a rule adopted under this subtitle, either as a principal, accessory, or accomplice;
  - (4) is unable to practice medicine with reasonable skill and safety to patients because of:
    - (A) illness;
    - (B) drunkenness;
    - (C) excessive use of drugs, narcotics, chemicals, or another substance; or
    - (D) a mental or physical condition;
  - (5) is found by a court judgment to be of unsound mind;
  - (6) fails to practice medicine in an acceptable professional manner consistent with public health and welfare;
  - (7) is removed, suspended, or is subject to disciplinary action taken by the person's peers in a local, regional, state, or national professional medical association or society, or is disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if the board finds that the action:
    - (A) was based on unprofessional conduct or professional incompetence that was likely to harm the public; and
    - (B) was appropriate and reasonably supported by evidence submitted to the board;
  - (8) is subject to repeated or recurring meritorious health care liability claims that in the board's opinion evidence professional incompetence likely to injure the public; or
  - (9) except as provided by Subsection (d), holds a license to practice medicine subject to disciplinary action by another state, or subject to disciplinary action by the uniformed services of the United States, based on acts by the person that are prohibited under Section 164.052 or are similar to acts described by this subsection.
- (b) Action taken by a professional medical association, society, or hospital medical staff under Subsection (a)(7) does not constitute state action.

(c) A certified copy of the record of another state that takes action described by Subsection (a)(9) or (d) is conclusive evidence of that action.

(d) The board shall revoke a license issued under this subtitle if the license holder held a license to practice medicine in another state that has been revoked by the licensing authority in that state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 31, eff. June 10, 2003.

Sec. 164.052. PROHIBITED PRACTICES BY PHYSICIAN OR LICENSE APPLICANT. (a) A physician or an applicant for a license to practice medicine commits a prohibited practice if that person:

(1) submits to the board a false or misleading statement, document, or certificate in an application for a license;

(2) presents to the board a license, certificate, or diploma that was illegally or fraudulently obtained;

(3) commits fraud or deception in taking or passing an examination;

(4) uses alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;

(5) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public;

(6) uses an advertising statement that is false, misleading, or deceptive;

(7) advertises professional superiority or the performance of professional service in a superior manner if that advertising is not readily subject to verification;

(8) purchases, sells, barter, or uses, or offers to purchase, sell, barter, or use, a medical degree, license, certificate, or diploma, or a transcript of a license, certificate, or diploma in or incident to an application to the board for a license to practice medicine;

(9) alters, with fraudulent intent, a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma;

(10) uses a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma that has

been:

- (A) fraudulently purchased or issued;
- (B) counterfeited; or
- (C) materially altered;

(11) impersonates or acts as proxy for another person in an examination required by this subtitle for a medical license;

(12) engages in conduct that subverts or attempts to subvert an examination process required by this subtitle for a medical license;

(13) impersonates a physician or permits another to use the person's license or certificate to practice medicine in this state;

(14) directly or indirectly employs a person whose license to practice medicine has been suspended, canceled, or revoked;

(15) associates in the practice of medicine with a person:

(A) whose license to practice medicine has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of medicine in this state or elsewhere;

(16) performs or procures a criminal abortion, aids or abets in the procuring of a criminal abortion, attempts to perform or procure a criminal abortion, or attempts to aid or abet the performance or procurement of a criminal abortion;

(17) directly or indirectly aids or abets the practice of medicine by a person, partnership, association, or corporation that is not licensed to practice medicine by the board;

(18) performs an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy unless:

(A) the abortion is necessary to prevent the death of the woman;

(B) the viable unborn child has a severe, irreversible brain impairment; or

(C) the woman is diagnosed with a significant likelihood of suffering imminent severe, irreversible brain damage or imminent severe, irreversible paralysis;

(19) performs an abortion on an unemancipated minor without the written consent of the child's parent, managing conservator, or legal guardian or without a court order, as provided by Section 33.003 or 33.004, Family Code, authorizing the minor to consent to the abortion, unless the physician concludes that on the basis of the

physician's good faith clinical judgment, a condition exists that complicates the medical condition of the pregnant minor and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function and that there is insufficient time to obtain the consent of the child's parent, managing conservator, or legal guardian; or

(20) performs or induces or attempts to perform or induce an abortion in violation of Subchapter C, Chapter 171, Health and Safety Code.

(b) For purposes of Subsection (a)(12), conduct that subverts or attempts to subvert the medical licensing examination process includes, as prescribed by board rules, conduct that violates:

- (1) the security of the examination materials;
- (2) the standard of test administration; or
- (3) the accreditation process.

(c) The board shall adopt the forms necessary for physicians to obtain the consent required for an abortion to be performed on an unemancipated minor under Subsection (a). The form executed to obtain consent or any other required documentation must be retained by the physician until the later of the fifth anniversary of the date of the minor's majority or the seventh anniversary of the date the physician received or created the documentation for the record.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.42, eff. September 1, 2005.

Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 6, eff. October 29, 2013.

Sec. 164.053. UNPROFESSIONAL OR DISHONORABLE CONDUCT. (a) For purposes of Section 164.052(a)(5), unprofessional or dishonorable conduct likely to deceive or defraud the public includes conduct in which a physician:

- (1) commits an act that violates any state or federal law if the act is connected with the physician's practice of medicine;
- (2) fails to keep complete and accurate records of purchases and disposals of:

(A) drugs listed in Chapter 481, Health and Safety Code; or

(B) controlled substances scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

(3) writes prescriptions for or dispenses to a person who:

(A) is known to be an abuser of narcotic drugs, controlled substances, or dangerous drugs; or

(B) the physician should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs;

(4) writes false or fictitious prescriptions for:

(A) dangerous drugs as defined by Chapter 483, Health and Safety Code; or

(B) controlled substances scheduled in Chapter 481, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

(5) prescribes or administers a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed;

(6) prescribes, administers, or dispenses in a manner inconsistent with public health and welfare:

(A) dangerous drugs as defined by Chapter 483, Health and Safety Code; or

(B) controlled substances scheduled in Chapter 481, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

(7) violates Section 311.0025, Health and Safety Code;

(8) fails to supervise adequately the activities of those acting under the supervision of the physician; or

(9) delegates professional medical responsibility or acts to a person if the delegating physician knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts.

(b) A complaint, indictment, or conviction of a violation of law is not necessary for the enforcement of Subsection (a)(1). Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine is sufficient for the board's action.

(c) Subsection (a)(3) does not apply to a person the physician is treating for:

(1) the person's use of narcotics after the physician notifies the board in writing of the name and address of the person being treated; or

(2) intractable pain under the Intractable Pain Treatment Act (Article 4495c, Revised Statutes).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.034(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 32, eff. June 10, 2003.

Sec. 164.054. ADDITIONAL REQUIREMENTS REGARDING DRUG RECORDS.

(a) Each physician shall keep a record of the physician's purchase and disposal of drugs and controlled substances described by Section 164.053(a)(2) that includes:

(1) the date of purchase and the date of the sale or disposal of the drugs and controlled substances by the physician;

(2) the name and address of the person receiving the drugs or controlled substances; and

(3) the reason for the disposing or dispensing of the drugs or controlled substances to the person.

(b) Failure to keep the records required by this section for a reasonable time constitutes grounds for revoking, canceling, suspending, or placing on probation the physician's license.

(c) The board or its representative may enter and inspect a physician's place of practice during reasonable business hours to:

(1) verify the accuracy of the records; and

(2) perform an inventory of the prescription drugs on hand.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.055. PROHIBITED ACTS REGARDING ABORTION. (a) The board shall take an appropriate disciplinary action against a physician who violates Section 170.002 or Chapter 171, Health and Safety Code. The board shall refuse to admit to examination or refuse to issue a license or renewal license to a person who violates that section or chapter.

(b) The sanctions provided by Subsection (a) are in addition to any other grounds for refusal to admit persons to examination under this subtitle or to issue a license or renew a license to practice



medicine under this subtitle. The criminal penalties provided by Section 165.152 do not apply to a violation of Section 170.002 or Subchapter C, Chapter 171, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 10, eff. September 1, 2011.

Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 7, eff. October 29, 2013.

Sec. 164.0551. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING SONOGRAM BEFORE ABORTION. A physician shall comply with Subchapter B, Chapter 171, Health and Safety Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 11, eff. September 1, 2011.

Sec. 164.056. PHYSICAL OR MENTAL EXAMINATION; HEARING. (a) In enforcing Section 164.051(a)(4), the board, on probable cause, shall request the affected physician or applicant to submit to a mental or physical examination by physicians designated by the board. The board shall adopt guidelines, in conjunction with persons interested in or affected by this section, to enable the board to evaluate circumstances in which a physician or applicant may be required to submit to an examination for mental or physical health conditions, alcohol and substance abuse, or professional behavior problems.

(b) If the affected physician refuses to submit to the examination, the board shall issue an order requiring the physician to show cause why the physician should not be required to submit to the examination and shall schedule a hearing on the order not later than the 30th day after the date on which notice is served on the physician. The physician shall be notified by either personal service or certified mail with return receipt requested.

(c) At the hearing, the physician and the physician's attorney are entitled to present testimony and other evidence showing that the physician should not be required to submit to the examination. After a hearing, the board shall issue an order either requiring the

physician to submit to the examination or withdrawing the request for examination.

(d) The board shall refer a physician or applicant with a physical or mental health condition to the most appropriate medical specialist for evaluation. The board may not require a physician or applicant to submit to an examination by a physician having a specialty specified by the board unless medically indicated. The board may not require a physician or applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the physician or applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

(e) The guidelines adopted under this section do not impair or remove the board's power to make an independent licensing decision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.43, eff. September 1, 2005.

Sec. 164.057. REQUIRED SUSPENSION OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a physician's license on proof that the physician has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal Code; or

(E) a misdemeanor under Section 25.071, Penal Code; or

(2) subject to an initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code;

(B) Section 485.033, Health and Safety Code; or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection

(a), the board shall revoke the physician's license.

(c) The board shall revoke the license of a physician placed on deferred adjudication community supervision for an offense under:

(1) Section 22.011(a)(2), Penal Code (sexual assault of a child);

(2) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child); or

(3) Section 21.11, Penal Code (indecenty with a child).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 33, eff. June 10, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 883 (S.B. 263), Sec. 1, eff. September 1, 2011.

Sec. 164.058. REQUIRED SUSPENSION OF LICENSE OF INCARCERATED PHYSICIAN. Regardless of the offense, the board shall suspend the license of a physician serving a prison term in a state or federal penitentiary during the term of the incarceration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.059. TEMPORARY SUSPENSION OR RESTRICTION OF LICENSE.

(a) The president of the board shall appoint a three-member disciplinary panel consisting of board members to determine whether a person's license to practice medicine should be temporarily suspended or restricted.

(b) If the disciplinary panel determines from the evidence presented to the panel that a person licensed to practice medicine would, by the person's continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend or restrict the license of that person.

(c) A license may be suspended or restricted by a disciplinary panel under this section without notice or hearing if:

(1) the board immediately provides notice of the suspension or restriction to the license holder; and

(2) a hearing on the temporary suspension or restriction before a disciplinary panel of the board is scheduled for the earliest possible date after 10 days' notice of hearing.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

(e) After the hearing before the disciplinary panel described by Subsection (c), if the disciplinary panel affirms the temporary suspension or restriction of the license holder's license, the board shall schedule an informal compliance meeting that meets the requirements of Section 2001.054(c), Government Code, and Section 164.004 of this code to be held as soon as practicable, unless the license holder waives the informal meeting or an informal meeting has already been held with regard to the issues that are the basis for the temporary suspension or restriction.

(f) If the license holder is unable to show compliance at the informal meeting described by Subsection (e) regarding the issues that are the basis for the temporary suspension or restriction, a board representative shall file a formal complaint under Section 164.005 as soon as practicable.

(g) If, after the hearing described by Subsection (c), the disciplinary panel does not temporarily suspend or restrict the license holder's license, the facts that were the basis for the temporary suspension or restriction may not be the sole basis of another proceeding to temporarily suspend or restrict the license holder's license. The board may use those same facts in a subsequent investigation to obtain new information that may be the basis for the temporary suspension or restriction of the license holder's license. For purposes of this subsection, facts that are the basis for the temporary suspension or restriction of a license holder's license include facts presented to the disciplinary panel and facts presented by the board or a representative of the board at the time evidence was presented to the disciplinary panel.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 34, eff. June 10, 2003.

Sec. 164.0595. TEMPORARY SUSPENSION OR RESTRICTION OF LICENSE FOR CERTAIN ARRESTS. (a) A disciplinary panel appointed under Section 164.059 may suspend or restrict the license of a person arrested for an offense under:

- (1) Section 22.011(a)(2), Penal Code (sexual assault of a child);
  - (2) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child);
  - (3) Section 21.02, Penal Code (continuous sexual abuse of a young child or children); or
  - (4) Section 21.11, Penal Code (indecent with a child).
- (b) Before suspending or restricting a license under this section, the disciplinary panel must determine that the person arrested for an offense listed in Subsection (a) is the same person who holds a license issued by the board.
- (c) A suspension or restriction under this section remains in effect until the final disposition of the case.
- (d) Sections 164.059(c), (d), (e), (f), and (g) apply to a suspension or restriction under this section.
- (e) The board shall adopt rules to implement this section, including rules regarding evidence that serves as proof of final disposition of a case.

Added by Acts 2011, 82nd Leg., R.S., Ch. 883 (S.B. 263), Sec. 2, eff. September 1, 2011.

Sec. 164.060. REPORT OF BOARD ACTIONS. (a) Not later than the first working day after the date a board order is issued taking disciplinary action against a physician, the board shall report the action to the appropriate health care facilities and hospitals, if known by the board.

(b) Not later than the 30th day after the date the board takes disciplinary action against a physician, the board shall report that action, in writing, to:

- (1) the appropriate health care facilities and hospitals, if not previously notified in writing;
- (2) professional societies of physicians in this state;
- (3) the entity responsible for the administration of Medicare and Medicaid in this state;
- (4) the United States Secretary of Health and Human Services or the secretary's designee; and
- (5) the complainant.

(c) If the board, during its review of a complaint against a

physician, discovers an act or omission that may constitute a felony, a misdemeanor involving moral turpitude, a violation of state or federal narcotics or controlled substance laws, an offense involving fraud or abuse under the Medicare or Medicaid programs, or a violation of the workers' compensation laws under Subtitle A, Title 5, Labor Code, the board shall immediately report that act or omission to the appropriate prosecuting and regulatory authorities.

(d) Notwithstanding Subsection (c), the board may exercise discretion in the case of an impaired physician who is actively participating in board-approved or sanctioned care, counseling, or treatment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 35, eff. June 10, 2003.

Sec. 164.061. SURRENDER OF LICENSE. (a) The board may accept the voluntary surrender of a license.

(b) A surrendered license may not be returned unless the board determines, under board rules, that the license holder is competent to resume practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. PROBATION OF LICENSE**

Sec. 164.101. PROBATION. (a) The board on majority vote may probate an order canceling, revoking, or suspending a license or imposing any other method of discipline if the probationer conforms to each order, condition, and rule the board establishes as a term of probation.

(b) At the time probation is granted the board shall establish the term of the probationary period.

(c) If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board;  
or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to

the board in the areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.102. PERSONS INELIGIBLE FOR PROBATION. (a) The board may not grant probation to a physician who constitutes, through the practice of medicine, a continuing threat to the public welfare.

(b) Except on an express determination, based on substantial evidence, that granting probation is in the best interests of the public and of the person whose license has been suspended, revoked, or canceled, the board may not grant probation to a person whose license has been canceled, revoked, or suspended because of a felony conviction under:

- (1) Chapter 481 or 483, Health and Safety Code;
- (2) Section 485.033, Health and Safety Code;
- (3) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or
- (4) any of the following sections of the Penal Code:
  - (A) Section 22.011(a)(2) (sexual assault of a child);
  - (B) Section 22.021(a)(1)(B) (aggravated sexual assault of a child);
  - (C) Section 21.02 (continuous sexual abuse of a young child or children); or
  - (D) Section 21.11 (indecent with a child).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 883 (S.B. 263), Sec. 3, eff. September 1, 2011.

Sec. 164.103. RESCISSION OF PROBATION. (a) At any time during a probation term, on a showing of adequate grounds, the board may hold a hearing and, on proof of a violation of the probation order, may:

- (1) rescind the probation and enforce the board's original order; and
- (2) impose any disciplinary action permitted under Section 164.001 in addition to or instead of enforcing the original order.

(b) The board shall revoke or suspend a probationer's license

if the board determines that the probationer constitutes, through the practice of medicine, a continuing threat to the public welfare.

(c) A hearing to rescind probation is subject to the requirements established under this chapter for other charges.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. LICENSE REINSTATEMENT**

Sec. 164.151. APPLICATION FOR LICENSE REINSTATEMENT. (a) On application, the board may reissue a license to practice medicine to a person whose license has been canceled, revoked, or suspended.

(b) The application must be:

- (1) accompanied by the fees set by the board; and
- (2) made in the manner and form and under the conditions

required by the board.

(c) In addition to the other requirements imposed under this subchapter, to be eligible for reinstatement or reissuance of a license an applicant must prove that the reinstatement or reissuance is in the best interests of:

- (1) the public; and
- (2) the person whose license has been canceled, revoked, or

suspended.

(d) A decision by the board to deny an application to reinstate or reissue a license is subject to judicial review in the manner provided by Section 164.009.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.152. APPLICATION PERIOD. (a) A person may not apply for reinstatement of a license that was revoked before the first anniversary of the date on which the revocation was issued or became final.

(b) If the board denies the application for reinstatement, the applicant may not reapply more frequently than annually.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.153. CERTAIN PERSONS INELIGIBLE FOR REINSTATEMENT.



Except on an express determination based on substantial evidence contained in an investigative report indicating that reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been canceled, revoked, or suspended, the board may not reinstate or reissue a license to a person whose license has been canceled, revoked, or suspended because of a felony conviction under:

- (1) Chapter 481 or 483, Health and Safety Code;
- (2) Section 485.033, Health and Safety Code; or
- (3) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.154. EFFECT OF LICENSE REINSTATEMENT ON CERTAIN PROSECUTIONS OR PENALTIES. If a physician has had charges filed against the physician during a period in which the physician's license was not in force or was suspended, revoked, or canceled, or if penalties have been incurred by the physician during that period, the reinstatement of the physician's license does not abate the prosecution or penalties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER E. OTHER ACTIONS**

Sec. 164.201. REVIEW BY BOARD IF THREE OR MORE MALPRACTICE CLAIMS. The board shall review the medical competency of a physician against whom three or more expert reports under Section 74.351, Civil Practice and Remedies Code, have been filed in three separate lawsuits within a five-year period in the same manner as if a complaint against the physician had been made to the board under Section 154.051.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 36, eff. June 10, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 141 (H.B. 744), Sec. 1, eff. September 1, 2005.

Sec. 164.206. REFUND. (a) Subject to Subsection (b), the board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under Chapter 165.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this subtitle. The board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.46, eff. September 1, 2005.

## **CHAPTER 165. PENALTIES**

### **SUBCHAPTER A. ADMINISTRATIVE PENALTIES**

Sec. 165.001. IMPOSITION OF ADMINISTRATIVE PENALTY. The board by order may impose an administrative penalty against a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.002. PROCEDURE. (a) The board by rule shall prescribe the procedure by which it may impose an administrative penalty.

(b) A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.035, eff. Sept. 1, 2001.

Sec. 165.003. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.004. NOTICE OF VIOLATION AND PENALTY. (a) If the board by order determines that a violation has occurred and imposes an administrative penalty, the board shall notify the affected person of the board's order.

(b) The notice must include a statement of the right of the person to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.005. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order imposing the administrative penalty is final, the person shall:

(1) pay the penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until

all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.006. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.007. DETERMINATION BY COURT. (a) If on appeal the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.008. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the administrative penalty is reduced or not

imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest is paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. INJUNCTIVE RELIEF AND OTHER ENFORCEMENT PROVISIONS**

Sec. 165.051. INJUNCTION AUTHORITY. In addition to any other action authorized by law, the board may institute an action in its own name to enjoin a violation of this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.052. CEASE AND DESIST ORDER. (a) If it appears to the board that a person who is not licensed under this subtitle is violating this subtitle, a rule adopted under this subtitle, or another state statute or rule relating to the practice of medicine, the board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.48, eff. September 1, 2005.

#### **SUBCHAPTER C. CIVIL PENALTIES**

Sec. 165.101. CIVIL PENALTY. (a) If it appears that a person

is in violation of or is threatening to violate this subtitle or a rule or order adopted by the board, the attorney general may institute an action for a civil penalty of \$1,000 for each violation.

(b) Each day a violation continues constitutes a separate violation.

(c) An action filed under this section must be filed in a district court in Travis County or the county in which the violation occurred.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.102. LIMITATION ON CIVIL PENALTY. The attorney general may not institute an action for a civil penalty against a person described by Section 151.053 or 151.054 if the person is not in violation of or threatening to violate this subtitle or a rule or order adopted by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.103. RECOVERY OF EXPENSES BY ATTORNEY GENERAL; DEPOSIT. (a) The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this subchapter, including:

- (1) court costs;
- (2) reasonable attorney's fees;
- (3) investigative costs;
- (4) witness fees; and
- (5) deposition expenses.

(b) A civil penalty recovered by the attorney general under this subchapter shall be deposited in the general revenue fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. CRIMINAL PENALTIES**

Sec. 165.151. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subtitle or a rule of the board.

(b) If another penalty is not specified for the offense, an

offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.152. PRACTICING MEDICINE IN VIOLATION OF SUBTITLE.

(a) A person commits an offense if the person practices medicine in this state in violation of this subtitle.

(b) Each day a violation continues constitutes a separate offense.

(c) An offense under Subsection (a) is a felony of the third degree.

(d) On final conviction of an offense under this section, a person forfeits all rights and privileges conferred by virtue of a license issued under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 37, eff. June 10, 2003.

Sec. 165.153. CRIMINAL PENALTIES FOR ADDITIONAL HARM. (a) A person commits an offense if the person practices medicine without a license or permit and causes another person:

- (1) physical or psychological harm; or
- (2) financial harm.

(b) An offense under Subsection (a)(1) is a felony of the third degree.

(c) An offense under Subsection (a)(2) is a state jail felony.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.1535. PERFORMING SURGERY WHILE INTOXICATED. (a) In this section, "intoxicated" has the meaning assigned by Section 49.01, Penal Code.

(b) A person commits an offense if the person is licensed or regulated under this subtitle, performs surgery on a patient while intoxicated, and, by reason of that conduct, places the patient at a substantial and unjustifiable risk of harm.

(c) An offense under this section is a state jail felony.

(d) It is an affirmative defense to prosecution under this

section that the actor performed the surgery in an emergency. In this subsection, "emergency" means a condition or circumstance in which a reasonable person with education and training similar to that of the actor would assume that the person on whom the surgery was performed was in imminent danger of serious bodily injury or death.

Added by Acts 2003, 78th Leg., ch. 565, Sec. 1, eff. Sept. 1, 2003.

Sec. 165.154. TAMPERING WITH GOVERNMENTAL RECORD; PERJURY OFFENSES. (a) A person commits an offense if the person makes a false statement:

- (1) in the person's application for a license; or
- (2) under oath to obtain a license or to secure the registration of a license to practice medicine.

(b) An offense under this section:

- (1) constitutes tampering with a governmental record or perjury as provided by the Penal Code; and
- (2) shall be punished on conviction as provided by that code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.155. SOLICITATION OF PATIENTS; PENALTY. (a) A physician commits an offense if the physician employs or agrees to employ, pays or promises to pay, or rewards or promises to reward any person, firm, association, partnership, or corporation for securing or soliciting a patient or patronage.

(b) Each payment, reward, or fee or agreement to pay or accept a reward or fee constitutes a separate offense.

(c) A physician commits an offense if the physician accepts or agrees to accept a payment or other thing of value for securing or soliciting patronage for another physician.

(d) This section does not prohibit advertising except that which:

- (1) is false, misleading, or deceptive; or
- (2) advertises professional superiority or the performance of professional service in a superior manner and which is not readily subject to verification.

(e) An offense under this section is a Class A misdemeanor.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.156. MISREPRESENTATION REGARDING ENTITLEMENT TO PRACTICE MEDICINE. A person, partnership, trust, association, or corporation commits an offense if the person, partnership, trust, association, or corporation, through the use of any letters, words, or terms affixed on stationery or on advertisements, or in any other manner, indicates that the person, partnership, trust, association, or corporation is entitled to practice medicine if the person, partnership, trust, association, or corporation is not licensed to do so.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.157. DUTY TO ASSIST IN CERTAIN PROSECUTIONS. (a) The board and the board's employees shall assist the local prosecuting officers of each county in the enforcement of:

- (1) state laws prohibiting the unlawful practice of medicine;
- (2) this subtitle; and
- (3) other matters.

(b) Except as otherwise provided by law, a prosecution is subject to the direction and control of the prosecuting officers. This subtitle does not deprive those officers of any authority vested by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.158. UNAUTHORIZED RELEASE OF CONFIDENTIAL INFORMATION. (a) A person commits an offense if the person unlawfully discloses confidential information described by Section 160.006 that is possessed by the board.

- (b) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.159. PRACTICING MEDICINE WITHOUT REGISTRATION. (a) A

person commits an offense if the person practices medicine without complying with the registration requirements imposed by this subtitle.

(b) An offense under Subsection (a) constitutes the offense of practicing medicine without a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.160. EFFECT ON CRIMINAL PROSECUTION. This subtitle does not bar a criminal prosecution for a violation of this subtitle or a rule adopted under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **CHAPTER 166. BILLING OF ANATOMIC PATHOLOGY SERVICES**

Sec. 166.001. DEFINITION. In this chapter, "anatomic pathology services" means:

(1) histopathology or surgical pathology, which is the gross and microscopic examination and histologic processing of organ tissue performed by a physician or under the supervision of a physician;

(2) cytopathology, which is the microscopic examination of cells from the following:

(A) fluids;

(B) aspirates;

(C) washings;

(D) brushings; or

(E) smears, including a Pap smear, performed by a physician or under the supervision of a physician;

(3) hematology, which is the microscopic evaluation of bone marrow aspirates and biopsies performed by a physician, or under the supervision of a physician, and peripheral blood smears when the attending or treating physician or technologist requests that a blood smear be reviewed by a pathologist;

(4) sub-cellular pathology and molecular pathology; or

(5) a blood-banking service performed by a pathologist.

Added by Acts 2007, 80th Leg., R.S., Ch. 144 (S.B. [1832](#)), Sec. 1, eff. September 1, 2007.

Sec. 166.002. ANATOMIC PATHOLOGY BILLING. Notwithstanding any other law, a person, including a physician and an entity, violates this subtitle and is subject to disciplinary action and penalties under this subtitle if the person:

(1) does not directly supervise or perform anatomic pathology services for a patient; and

(2) fails to disclose in the bill presented by the person to the patient or the insurer or other third party payor, or in an itemized statement to the patient:

(A) the name and address of the physician or laboratory that provided the anatomic pathology services; and

(B) the net amount paid or to be paid for each anatomic pathology service provided to the patient by the physician or laboratory.

Added by Acts 2007, 80th Leg., R.S., Ch. 144 (S.B. 1832), Sec. 1, eff. September 1, 2007.

#### **CHAPTER 167. TEXAS PHYSICIAN HEALTH PROGRAM**

Sec. 167.001. DEFINITIONS. In this chapter:

(1) "Committee" means the Physician Health and Rehabilitation Advisory Committee established under this chapter.

(2) "Governing board" means the governing board of the program.

(3) "Medical director" means a person appointed under Section 167.002 to oversee the program.

(4) "Physician assistant board" means the Texas Physician Assistant Board established under Chapter 204.

(5) "Program" means the Texas Physician Health Program established under this chapter.

(6) "Program participant" means a physician or physician assistant who receives services under the program.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.002. MEDICAL DIRECTOR. (a) The board shall appoint a

medical director for the program.

(b) The medical director must:

(1) be a physician licensed by the board; and

(2) have expertise in a field of medicine relating to disorders commonly affecting physicians or physician assistants, including substance abuse disorders.

(c) The medical director shall provide clinical and policy oversight for the program.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.003. GOVERNING BOARD. (a) The president of the board shall appoint persons to serve on the governing board of the program. The appointees shall include physicians, physician assistants, and other related professionals with experience addressing health conditions commonly found in the population of monitored physicians or physician assistants.

(b) The governing board shall:

(1) provide advice and counsel to the board; and

(2) establish policy and procedures for the operation and administration of the program.

(c) The board, with the advice and in consultation with the physician assistant board and Texas-based professional associations of physicians and physician assistants, shall adopt rules relating to the appointment of members to the governing board, including length of terms, procedures for filling a vacancy, and conflict-of-interest provisions.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.004. PHYSICIAN HEALTH AND REHABILITATION ADVISORY COMMITTEE. (a) The governing board shall appoint physicians to the Physician Health and Rehabilitation Advisory Committee who have experience in disorders commonly affecting physicians or physician assistants.

(b) The committee shall assist the governing board by making recommendations on the request of the governing board.

(c) The board, with the advice and in consultation with the physician assistant board and Texas-based professional associations of physicians and physician assistants, shall adopt rules relating to the appointment of members to the committee, including length of terms, procedures for filling a vacancy, and conflict-of-interest provisions.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.005. TEXAS PHYSICIAN HEALTH PROGRAM. (a) The Texas Physician Health Program is established to promote:

(1) physician and physician assistant wellness; and  
 (2) treatment of all health conditions that have the potential to compromise the physician's or physician assistant's ability to practice with reasonable skill and safety, including mental health issues, substance abuse issues, and addiction issues.

(b) The program is a confidential, nondisciplinary therapeutic program for physicians and physician assistants.

(c) The program is administratively attached to the board.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.006. RULES. The board, with the advice of and in consultation with the governing board, committee, and Texas-based professional associations of physicians and physician assistants, shall:

(1) adopt rules and policies as necessary to implement the program, including:

(A) policies for assessments under the program and guidelines for the validity of a referral to the program;

(B) policies and guidelines for initial contacts used to determine if there is a need for a physician or physician assistant to complete a clinically appropriate evaluation or to enter treatment, including policies and guidelines for arrangements for that evaluation or treatment; and

(C) policies and guidelines for interventions conducted under the program; and

(2) define applicable guidelines for the management of substance abuse disorders, psychiatric disorders, and physical illnesses and impairments.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.007. OPERATION OF PROGRAM. (a) The program must include provisions for:

(1) continuing care, monitoring, and case management of potentially impairing health conditions, including provisions for cooperation with the evaluating or treating facility;

(2) ongoing monitoring for relapse, including random drug testing, consultations with other physician health and rehabilitation committees, work site monitors, and treating health professionals, including mental health professionals; and

(3) other physician and physician assistant health and rehabilitation programs to operate under an agreement with the program, using established guidelines to ensure uniformity and credibility of services throughout this state.

(b) The program must ensure appropriate communications with the board, the physician assistant board, other state licensing boards, and physician health and rehabilitation programs.

(c) The program shall use physicians or other health care professional experts or consultants, as appropriate, when necessary to evaluate, recommend solutions for, or resolve a medical dispute.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.008. REFERRALS TO PROGRAM. (a) The program shall accept a self-referral from a physician or physician assistant and referrals from an individual, a physician health and rehabilitation committee, a physician assistant organization, a state physician health program, a hospital or hospital system licensed in this state, a residency program, the board, or the physician assistant board.

(b) A physician or physician assistant may refer the physician

or physician assistant to the program.

(c) The program may not accept a referral, except as provided by board rules, for a violation of the standard of care as a result of drugs or alcohol or boundary violations with a patient or a patient's family.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.009. REFERRAL BY BOARD OR PHYSICIAN ASSISTANT BOARD AS PREREQUISITE FOR ISSUING OR MAINTAINING A LICENSE. (a) The board or the physician assistant board, through an agreed order or after a contested proceeding, may make a referral to the program and require participation in the program by a specified physician or physician assistant as a prerequisite for issuing or maintaining a license under Chapter 155 or 204.

(b) The board or the physician assistant board may discipline a physician or physician assistant required to participate in the program under Subsection (a) who does not participate in the program.

(c) Each program participant is individually responsible for payment of the participant's own medical costs, including any required evaluations, primary treatment, and continuing care.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.010. CONFIDENTIALITY. (a) Each referral, proceeding, report, investigative file, record, or other information received, gathered, created, or maintained by the program or its employees, consultants, work site monitors, or agents relating to a physician or physician assistant is privileged and confidential and is not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other means of legal compulsion for release to any person except as provided by this chapter.

(b) Notwithstanding Subsection (a), the program may report to the board or the physician assistant board, as appropriate, the name and pertinent information relating to impairment of a physician or physician assistant.

(c) Notwithstanding Subsection (a), the program shall make a

report to the board or the physician assistant board, as appropriate, regarding a physician or physician assistant if the medical director or the governing board determines that the physician or physician assistant poses a continuing threat to the public welfare. If requested by the board or the physician assistant board, a report under this subsection must include all information in the possession or control of the program.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.011. FUNDING; FEES. (a) The Texas physician health program account is a special account in the general revenue fund. Funds in the account may be appropriated only to the board for administration of the program.

(b) The board by rule shall set and collect reasonable and necessary fees from program participants in amounts sufficient to offset, to the extent reasonably possible, the cost of administering this chapter.

(c) Each program participant shall pay an annual fee to partially offset the cost of participation and monitoring services.

(d) The board shall deposit fees collected under this section to the credit of the account established under Subsection (a).

(e) The board may grant a waiver to the fee imposed under Subsection (c). The board shall adopt rules relating to the issuance of a waiver under this subsection.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

## **CHAPTER 168. REGULATION OF PAIN MANAGEMENT CLINICS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 168.001. DEFINITION. In this chapter, "pain management clinic" means a publicly or privately owned facility for which a majority of patients are issued on a monthly basis a prescription for opioids, benzodiazepines, barbiturates, or carisoprodol, but not including suboxone.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd



Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

Sec. 168.002. EXEMPTIONS. This chapter does not apply to:

- (1) a medical or dental school or an outpatient clinic associated with a medical or dental school;
- (2) a hospital, including any outpatient facility or clinic of a hospital;
- (3) a hospice established under 40 T.A.C. Section 97.403 or defined by 42 C.F.R. Section 418.3;
- (4) a facility maintained or operated by this state;
- (5) a clinic maintained or operated by the United States;
- (6) a health organization certified by the board under Section 162.001;
- (7) a clinic owned or operated by a physician who treats patients within the physician's area of specialty and who personally uses other forms of treatment, including surgery, with the issuance of a prescription for a majority of the patients; or
- (8) a clinic owned or operated by an advanced practice nurse licensed in this state who treats patients in the nurse's area of specialty and who personally uses other forms of treatment with the issuance of a prescription for a majority of the patients.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 956 (H.B. 1803), Sec. 7, eff. January 1, 2014.

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

Sec. 168.051. ADOPTION OF RULES. The board shall adopt rules necessary to implement this chapter, including rules to address, for a pain management clinic:

- (1) the operation of the clinic;
- (2) personnel requirements for the clinic, including requirements for a physician who practices at a clinic;
- (3) standards to ensure quality of patient care;

- (4) certificate application and renewal procedures and requirements;
- (5) inspections and complaint investigations; and
- (6) patient billing procedures.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

Sec. 168.052. INSPECTIONS. The board may inspect a pain management clinic, including the documents of a physician practicing at the clinic, as necessary to ensure compliance with this chapter.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

Sec. 168.053. COMPLAINTS. The board shall investigate a complaint alleging a violation of this chapter or a rule adopted under this chapter by a pain management clinic certified under this chapter or a physician who owns or operates a clinic in the same manner as other complaints under this subtitle.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

#### **SUBCHAPTER C. CERTIFICATION OF CLINIC**

Sec. 168.101. CERTIFICATE REQUIRED. (a) A pain management clinic may not operate in this state unless the clinic is certified under this chapter.

(b) A certificate issued under this chapter is not transferable or assignable.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

Sec. 168.102. CERTIFICATE APPLICATION AND ISSUANCE. (a) A physician who owns or operates a pain management clinic shall apply for a certificate for the clinic under this chapter. A pain management clinic must be owned and operated by a medical director who is a physician who practices in this state under an unrestricted license.

(b) An applicant for a certificate under this chapter must submit an application to the board on a form prescribed by the board.

(c) The board shall issue a certificate if the board finds that the pain management clinic meets the requirements of this chapter and the standards adopted by the board under this chapter.

(d) If an applicant for a certificate under this chapter is under investigation by the board for a violation of this subtitle, board rules, or other law relating to the prescription, dispensation, administration, supply, or sale of a controlled substance, the board may not make a decision on the application until the board has reached a final decision on the matter under investigation.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 5, eff. September 1, 2013.

#### **SUBCHAPTER D. CERTIFICATE RENEWAL**

Sec. 168.151. EXPIRATION OF CERTIFICATE. (a) A certificate issued under this chapter expires on the second anniversary of the date it is issued.

(b) The board shall grant a 180-day grace period from the expiration date of a certificate to renew the certificate.

(c) The owner or operator of a pain management clinic for which a certificate has expired may not continue to operate the clinic until the clinic's certificate is renewed.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

Sec. 168.152. REQUIREMENTS FOR RENEWAL. (a) The owner or operator of a pain management clinic may apply to renew a certificate issued to the clinic under this chapter by:

(1) submitting a renewal application to the board on the form prescribed by the board before the expiration of the grace period under Section 168.151; and

(2) complying with any other requirements adopted by board rule.

(b) If a certificate is not renewed before the expiration of the grace period under Section 168.151, the pain management clinic must reapply for an original certificate to operate the clinic.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(14), eff. September 1, 2011.

#### **SUBCHAPTER E. REGULATION OF CLINICS; ENFORCEMENT**

Sec. 168.201. REGULATION OF PERSON AFFILIATED WITH CLINIC. (a) The owner or operator of a pain management clinic, an employee of the clinic, or a person with whom a clinic contracts for services may not:

(1) have been denied, by any jurisdiction, a license under which the person may prescribe, dispense, administer, supply, or sell a controlled substance;

(2) have held a license issued by any jurisdiction, under which the person may prescribe, dispense, administer, supply, or sell a controlled substance, that has been restricted; or

(3) have been subject to disciplinary action by any licensing entity for conduct that was a result of inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance.

(b) A pain management clinic may not be owned wholly or partly by a person who has been convicted of, pled nolo contendere to, or received deferred adjudication for:

(1) an offense that constitutes a felony; or

(2) an offense that constitutes a misdemeanor, the facts of

which relate to the distribution of illegal prescription drugs or a controlled substance as defined by Section 551.003(11).

(c) The owner or operator of a pain management clinic shall:

(1) be on-site at the clinic at least 33 percent of the clinic's total number of operating hours; and

(2) review at least 33 percent of the total number of patient files of the clinic, including the patient files of a clinic employee or contractor to whom authority for patient care has been delegated by the clinic.

(d) A person who owns or operates a pain management clinic is engaged in the practice of medicine.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 956 (H.B. 1803), Sec. 8, eff. January 1, 2014.

Sec. 168.202. DISCIPLINARY ACTION. (a) A violation of this chapter or a rule adopted under this chapter is grounds for disciplinary action, including a temporary suspension or restriction under Section 164.059, against a pain management clinic certified under this chapter or an owner or operator of a clinic certified under this chapter.

(b) A violation of this chapter may be enforced in the same manner as any other violation of this subtitle.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 6, eff. September 1, 2013.

## **SUBTITLE C. OTHER PROFESSIONS PERFORMING MEDICAL PROCEDURES**

### **CHAPTER 201. CHIROPRACTORS**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 201.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Chiropractic Examiners.

(2) "Chiropractor" means a person licensed to practice chiropractic by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.002. PRACTICE OF CHIROPRACTIC. (a) In this section:

(1) "Controlled substance" has the meaning assigned to that term by Section 481.002, Health and Safety Code.

(2) "Dangerous drug" has the meaning assigned to that term by Section 483.001, Health and Safety Code.

(3) "Incisive or surgical procedure" includes making an incision into any tissue, cavity, or organ by any person or implement. The term does not include the use of a needle for the purpose of drawing blood for diagnostic testing.

(4) "Surgical procedure" includes a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.

(b) A person practices chiropractic under this chapter if the person:

(1) uses objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body;

(2) performs nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system;

(3) represents to the public that the person is a chiropractor; or

(4) uses the term "chiropractor," "chiropractic," "doctor of chiropractic," "D.C.," or any derivative of those terms or initials in connection with the person's name.

(c) The practice of chiropractic does not include:

(1) incisive or surgical procedures;

(2) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription; or

(3) the use of x-ray therapy or therapy that exposes the body to radioactive materials.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 1, eff. September 1, 2005.

Sec. 201.003. APPLICATIONS AND EXEMPTIONS. (a) This chapter does not apply to a registered nurse licensed under Chapter 301, a vocational nurse licensed under Chapter 301, a person who provides spinal screening services as authorized by Chapter 37, Health and Safety Code, a physical therapist licensed under Chapter 453, or a massage therapist or a massage therapy instructor qualified and registered under Chapter 455 if:

(1) the person does not represent to the public that the person is a chiropractor or use the term "chiropractor," "chiropractic," "doctor of chiropractic," "D.C.," or any derivative of those terms or initials in connection with the person's name or practice; and

(2) the person practices strictly within the scope of the license or registration held in compliance with all laws relating to the license and registration.

(b) This chapter does not limit or affect the rights and powers of a physician licensed in this state to practice medicine.

(c) This section does not affect or prevent a student enrolled in a college of chiropractic in this state from engaging in all phases of clinical practice if the practice is:

(1) part of the curriculum; and

(2) conducted under the supervision of a licensed chiropractor or a licensed physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.014, eff. Feb. 1, 2004.

Sec. 201.004. APPLICATION OF SUNSET ACT. The Texas Board of Chiropractic Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 2, eff. September 1, 2005.

**SUBCHAPTER B. TEXAS BOARD OF CHIROPRACTIC EXAMINERS**

Sec. 201.051. BOARD; MEMBERSHIP. (a) The Texas Board of Chiropractic Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) six chiropractors who are reputable practicing chiropractors and who have resided in this state for at least five years preceding appointment; and

(2) three members who represent the public.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.052. MEMBERSHIP ELIGIBILITY. (a) A person is not eligible to serve as a member of the board if the person:

(1) is a member of the faculty or board of trustees of a chiropractic school or a doctor of chiropractic degree program;

(2) is a stockholder in a chiropractic school or college;  
or

(3) has a financial interest in a chiropractic school or college.

(b) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the board;

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

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or



reimbursement authorized by law for board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 802 (S.B. 776), Sec. 1, eff. June 15, 2007.

Sec. 201.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) Repealed by Acts 2005, 79th Leg., Ch. 1020, Sec. 36, eff. September 1, 2005.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 36, eff. September 1, 2005.

Sec. 201.054. TERMS; VACANCY. (a) Members of the board are

appointed for staggered six-year terms. The terms of one-third of the members expire on February 1 of each odd-numbered year.

(b) A person may not be appointed to serve more than two terms.

(c) If a vacancy occurs because of the death or resignation of a board member, the governor shall appoint a replacement to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.055. OFFICERS. (a) The governor shall designate a chiropractic member of the board as the board's president. The president serves in that capacity at the will of the governor.

(b) The board shall elect one of its members as vice president and one of its members as secretary-treasurer at the first board meeting after the biennial appointment of board members.

(c) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(31).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 285, Sec. 31(31), eff. Sept. 1, 2003.

Sec. 201.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Sections 201.051 and 201.052(b);

(2) does not maintain during service on the board the qualifications required by Sections 201.051 and 201.052(b);

(3) is ineligible for membership under Section 201.052 or 201.053;

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

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the

president of the board of the potential ground. The president shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the president, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 4, eff. September 1, 2005.

Sec. 201.057. PER DIEM; REIMBURSEMENT. (a) A board member is entitled to a per diem as set by the General Appropriations Act for each day the member engages in the business of the board.

(b) A member may not receive reimbursement for travel expenses, including expenses for meals and lodging, other than transportation expenses as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.058. MEETINGS. (a) The board shall hold regular meetings to examine applicants and transact business at least twice each year at the times and places determined by the board.

(b) A special meeting may be held at the call of three board members.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.060. BOARD SEAL. The seal of the board consists of a five-point star with the words, "The State of Texas," and the words, "Texas Board of Chiropractic Examiners," around the margin.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.061. TRAINING. (a) A person who is appointed to and

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

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

(1) this chapter and the board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 5, eff. September 1, 2005.

#### **SUBCHAPTER C. BOARD PERSONNEL**

Sec. 201.101. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 6, eff. September 1, 2005.

Sec. 201.102. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide as often as necessary to its members and employees information regarding their:

(1) qualifications for office or employment under this

chapter; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.103. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.104. EQUAL EMPLOYMENT OPPORTUNITY; REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel, that are in compliance with Chapter 21, Labor Code;

(2) a comprehensive analysis of the board workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of the significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must be:

(1) prepared to cover an annual period;

(2) updated annually;

(3) reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) filed with the governor.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. BOARD POWERS AND DUTIES**

Sec. 201.151. GENERAL POWERS AND DUTIES. The board shall administer the purposes of and enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.152. RULES. (a) The board may adopt rules and bylaws:

(1) necessary to:

(A) perform the board's duties; and

(B) regulate the practice of chiropractic; and

(2) relating to the board's proceedings and the board's examination of an applicant for a license to practice chiropractic.

(b) The board shall adopt rules for the enforcement of this chapter. The board shall issue all rules based on a vote of a majority of the board at a regular or special meeting. The issuance of a disciplinary action or disciplinary order of the board is not limited by this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. [972](#)), Sec. 7, eff. September 1, 2005.

Sec. 201.1525. RULES CLARIFYING SCOPE OF PRACTICE OF CHIROPRACTIC. The board shall adopt rules clarifying what activities are included within the scope of the practice of chiropractic and what activities are outside of that scope. The rules:

(1) must clearly specify the procedures that chiropractors may perform;

(2) must clearly specify any equipment and the use of that equipment that is prohibited; and

(3) may require a license holder to obtain additional training or certification to perform certain procedures or use certain equipment.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 8, eff. September 1, 2005.

Sec. 201.1526. DEVELOPMENT OF PROPOSED RULES REGARDING SCOPE OF PRACTICE OF CHIROPRACTIC. (a) This section applies to the process by which the board develops proposed rules under Section 201.1525 before the proposed rules are published in the Texas Register and before the board complies with the rulemaking requirements of Chapter 2001, Government Code. This section does not affect the duty of the board to comply with the rulemaking requirements of that law.

(b) The board shall establish methods under which the board, to the extent appropriate, will seek input early in the rule development process from the public and from persons who will be most affected by a proposed rule. Methods must include identifying persons who will be most affected and soliciting, at a minimum, the advice and opinions of those persons. Methods may include negotiated rulemaking, informal conferences, advisory committees, and any other appropriate method.

(c) A rule adopted by the board under Section 201.1525 may not be challenged on the grounds that the board did not comply with this section. If the board was unable to solicit a significant amount of advice and opinion from the public or from affected persons early in the rule development process, the board shall state in writing the reasons why the board was unable to do so.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 8, eff. September 1, 2005.

Sec. 201.153. FEES. (a) The board by rule shall set fees in amounts reasonable and necessary to cover the costs of administering this chapter. The board may not set a fee in an amount that is less

than the amount of that fee on September 1, 1993.

(b) Each of the following fees imposed under Subsection (a) is increased by \$200:

- (1) the fee for an annual renewal of a license;
- (2) the fee for issuance of a license to an out-of-state applicant;
- (3) the fee for an examination; and
- (4) the fee for a reexamination.

(c) For each \$200 fee increase collected under Subsection (b), \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 899, Sec. 2.

Sec. 201.154. CERTIFICATION FOR MANIPULATION UNDER ANESTHESIA PROHIBITED. Notwithstanding any other provision of this chapter, the board may not adopt a process to certify chiropractors to perform manipulation under anesthesia.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.155. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by that person.

(b) The board may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the use of a trade name in advertising by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



Sec. 201.1555. FRAUD. (a) The board shall strictly and vigorously enforce the provisions of this chapter prohibiting fraud.

(b) The board shall adopt rules to prevent fraud in the practice of chiropractic, including rules relating to:

(1) the filing of workers' compensation and insurance claims; and

(2) records required to be maintained in connection with the practice of chiropractic.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 9, eff. September 1, 2005.

Sec. 201.156. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

(1) adopt a form to standardize information concerning complaints made to the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

(c) The board by rule shall adopt procedures concerning:

(1) the retention of information files on license holders; and

(2) the expunction of files on license holders, including complaints, adverse reports, and other investigative information on license holders.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.157. IMMUNITY. In the absence of fraud, conspiracy, or malice, a member or employee of the board, a witness called to testify by the board, or a consultant or hearing officer is not liable in a civil action for any alleged injury, wrong, loss, or damage for any investigation, report, recommendation, statement, evaluation, finding, order, or award made in the course of performing the person's official duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.158. BOARD COMMITTEES. (a) The board may appoint committees from its own members.

(b) A committee appointed from the members of the board shall:

(1) consider matters referred to the committee relating to the enforcement of this chapter and the rules adopted by the board; and

(2) make recommendations to the board.

(c) The board may delegate to a committee of the board an authority granted to the board under Section 201.505(c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.159. RECORDS. (a) The board shall preserve a record of its proceedings in a register that contains:

(1) the name, age, place, and duration of residence of each applicant for a license;

(2) the amount of time spent by the applicant in the study of chiropractic in respective doctor of chiropractic degree programs; and

(3) other information the board desires to record.

(b) The register shall show whether an applicant was rejected or licensed.

(c) The information recorded in the register is prima facie evidence of the matters contained in the register. A certified copy of the register with the seal of the board is admissible as evidence in any court of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.051(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 802 (S.B. 776), Sec. 2, eff. June 15, 2007.

Sec. 201.160. PAYMENT OF OTHER EXPENSES. The board shall pay the necessary expenses of an employee of the board incurred in the performance of the employee's duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2003, 78th Leg., ch. 285, Sec. 24, eff. Sept. 1, 2003.

Sec. 201.161. APPROPRIATION FROM STATE TREASURY PROHIBITED. The legislature may not appropriate money, other than fees, from the state treasury for an expenditure made necessary by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.163. POLICY ON TECHNOLOGICAL SOLUTIONS. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 10, eff. September 1, 2005.

Sec. 201.164. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 10, eff. September 1, 2005.

**SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 201.201. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.202. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.203. COMPLAINTS. (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated by the board; or

(2) on a sign prominently displayed in the place of business of each person regulated by the board.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.204. RECORDS OF COMPLAINTS. (a) The board shall keep an information file about each complaint filed with the board. The board's information file must be kept current and contain a record for each complaint of:

- (1) each person contacted in relation to the complaint;
- (2) a summary of findings made at each step of the complaint process;
- (3) an explanation of the legal basis and reason for a complaint that is dismissed;
- (4) the schedule required under Section 201.205 and a notification of any change in the schedule; and
- (5) other relevant information.

(b) Except as provided by Subsection (c), if a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) If a written complaint that the board has authority to resolve is referred to the enforcement committee, the board at least semiannually and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.205. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this section must:

- (1) distinguish between categories of complaints;
- (2) require the board to prioritize complaints for purposes of determining the order in which they are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending;
- (3) ensure that a complaint is not dismissed without appropriate consideration;
- (4) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the

complaint explaining the action taken on the complaint;

(5) ensure that the person who filed the complaint has the opportunity to explain the allegations made in the complaint; and

(6) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(b) The board shall:

(1) dispose of a complaint in a timely manner; and

(2) establish a schedule for conducting each phase of the complaint process that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) The board shall notify the parties to the complaint of the projected time requirements for pursuing the complaint.

(d) The board shall notify the parties to the complaint of any change in the schedule not later than the seventh day after the date the change is made.

(e) The executive director shall notify the board of a complaint that is unresolved after the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 11, eff. September 1, 2005.

Sec. 201.206. CONFIDENTIALITY OF INVESTIGATION FILES. (a) The board's investigation files are confidential, privileged, and not subject to discovery, subpoena, or any other means of legal compulsion for release other than to the board or an employee or agent of the board.

(b) The board shall share information in investigation files, on request, with another state or federal regulatory agency or with a local, state, or federal law enforcement agency regardless of whether the investigation has been completed. The board is not required to disclose under this subsection information that is an attorney-client communication, an attorney work product, or other information protected by a privilege recognized by the Texas Rules of Civil

Procedure or the Texas Rules of Evidence.

(c) On the completion of the investigation and before a hearing under Section 201.505, the board shall provide to the license holder, subject to any other privilege or restriction set forth by rule, statute, or legal precedent, access to all information in the board's possession that the board intends to offer into evidence in presenting its case in chief at the contested case hearing on the complaint. The board is not required to provide:

- (1) a board investigative report or memorandum;
- (2) the identity of a nontestifying complainant; or
- (3) attorney-client communications, attorney work product, or other materials covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(d) Notwithstanding Subsection (a), the board may:

- (1) disclose a complaint to the affected license holder;

and

- (2) provide to a complainant the license holder's response to the complaint, if providing the response is considered by the board to be necessary to investigate the complaint.

(e) This section does not prohibit the board or another party in a disciplinary action from offering into evidence in a contested case under Chapter 2001, Government Code, a record, document, or other information obtained or created during an investigation.

Added by Acts 2003, 78th Leg., ch. 329, Sec. 1, eff. Sept. 1, 2003.

Sec. 201.207. INSPECTIONS. (a) The board, during reasonable business hours, may:

- (1) conduct an on-site inspection of a chiropractic facility to investigate a complaint filed with the board; and
- (2) examine and copy records of the chiropractic facility pertinent to the inspection or investigation.

(b) The board is not required to provide notice before conducting an inspection under this section.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 12, eff. September 1, 2005.

Sec. 201.208. COOPERATION WITH TEXAS DEPARTMENT OF INSURANCE.

(a) In this section, "department" means the Texas Department of Insurance.

(b) This section applies only to information held by or for the department or the board that relates to a person who is licensed or otherwise regulated by the department or the board.

(c) The department and the board, on request or on the department or board's own initiative, may share confidential information or information to which access is otherwise restricted by law. The department and the board shall cooperate with and assist each other when either agency is conducting an investigation by providing information that is relevant to the investigation. Except as provided by this section, confidential information that is shared under this section remains confidential under law, and legal restrictions on access to the information remain in effect unless the agency sharing the information approves use of the information by the receiving agency for enforcement purposes. The provision of information by the board to the department or by the department to the board under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(d) The department and the board shall develop and maintain a system for tracking investigations conducted by each agency with the cooperation and assistance of the other agency, including information on all disciplinary actions taken.

(e) The department and the board shall collaborate on taking appropriate disciplinary actions to the extent practicable.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 12, eff. September 1, 2005.

Sec. 201.209. INFORMATION ON STATUS OF CERTAIN INVESTIGATIONS. The board shall include in the annual financial report required by Section 2101.011, Government Code, information on all investigations conducted by the board with the cooperation and assistance of the Texas Department of Insurance and the Texas Workers' Compensation Commission during the preceding fiscal year.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 12, eff. September 1, 2005.



**SUBCHAPTER F. PEER REVIEW COMMITTEES**

Sec. 201.251. APPOINTMENT OF PEER REVIEW COMMITTEES; TERMS.

(a) The board shall appoint local chiropractic peer review committees. Members of a local chiropractic peer review committee serve staggered terms of three years, with as near to one-third of the members' terms as possible expiring December 31 of each year.

(b) The board may seek input from state chiropractic associations in selecting persons to appoint to a local peer review committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 13, eff. September 1, 2005.

Sec. 201.252. COMMITTEE MEMBER ELIGIBILITY. (a) Only a chiropractor who has completed a program of peer review training approved by the board is eligible to serve on a chiropractic peer review committee.

(b) A member of a local peer review committee may not be a consultant to or an employee of any company or carrier of health care insurance.

(c) The board shall establish requirements for peer review training programs that do not discriminate against any chiropractor. A peer review training program must include training in the investigation of complaints in accordance with this chapter and board rules.

(d) The board by rule shall adopt additional requirements for eligibility to serve on a chiropractic peer review committee, including a requirement that a member have:

(1) a clean disciplinary record; and

(2) an acceptable record regarding utilization review performed in accordance with Article 21.58A, Insurance Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 14, eff. September 1, 2005.

Sec. 201.253. EXECUTIVE PEER REVIEW COMMITTEE. (a) The board shall appoint an executive chiropractic peer review committee to direct the activities of the local committees. The executive peer review committee consists of six volunteer members. Members of the executive peer review committee serve staggered terms of three years, with one-third of the members' terms expiring December 31 of each year. The executive peer review committee shall elect a presiding officer from its members.

(b) The executive peer review committee shall conduct hearings relating to disputes referred by a local peer review committee and shall make its recommendations based solely on evidence presented in the hearings.

(c) A member of an executive peer review committee may not be a consultant to or an employee of any company or carrier of health care insurance.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 15, eff. September 1, 2005.

Sec. 201.254. DUTIES OF PEER REVIEW COMMITTEE WITH REGARD TO CERTAIN DISPUTES. (a) Each local chiropractic peer review committee shall:

(1) review and evaluate chiropractic treatment and services in disputes involving a chiropractor and a patient or a person obligated to pay a fee for chiropractic services or treatment; and

(2) mediate in a dispute involving a chiropractor and a patient or person obligated to pay a fee for chiropractic services or treatment.

(b) Each local peer review committee shall report its findings and recommendations to the executive chiropractic peer review committee. A local peer review committee shall refer a dispute that is not resolved at the local level to the executive peer review committee.

(c) Repealed by Acts 2005, 79th Leg., Ch. 1020, Sec. 36, eff. September 1, 2005.

(d) Repealed by Acts 2005, 79th Leg., Ch. 1020, Sec. 36, eff. September 1, 2005.

(e) Repealed by Acts 2005, 79th Leg., Ch. 1020, Sec. 36, eff. September 1, 2005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 16, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 36, eff. September 1, 2005.

Sec. 201.2545. COMPLAINT INVESTIGATION BY PEER REVIEW COMMITTEE. (a) The board may refer to a local chiropractic peer review committee for investigation a complaint regarding whether chiropractic treatment or services provided by a chiropractor were provided according to the standard of care in the practice of chiropractic.

(b) In conducting an investigation of a referred complaint, the committee shall review the records and other evidence obtained by the staff of the board in the course of the staff's investigation of the complaint.

(c) The committee shall report to the board its findings regarding the complaint, including a statement of:

(1) the standard of care in the practice of chiropractic governing the chiropractic treatment or services provided by the chiropractor;

(2) whether the chiropractor met the standard of care in providing the treatment or services; and

(3) the clinical basis for the committee's finding under Subdivision (2).

(d) The board may request a member of the committee to attend an informal conference or testify at a contested case hearing.

(e) The board, with input from the executive chiropractic peer review committee, shall adopt rules necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 17, eff. September 1, 2005.

Sec. 201.2546. IMMUNITY; ELIGIBILITY TO PARTICIPATE IN

COMMITTEE ACTIVITIES. (a) In the absence of fraud, conspiracy, or malice, a member of a peer review committee is not liable in a civil action for a finding, evaluation, recommendation, or other action made or taken by the member as a member of the committee or by the committee. The immunity granted by this subsection does not limit the operation of federal or state antitrust laws as applied to the conduct of a local or executive peer review committee that involves price fixing or any other unreasonable restraint of trade.

(b) A member of a peer review committee may not participate in committee deliberations or other activities involving chiropractic services or treatment rendered or performed by the member.

(c) Except for the express immunity provided by Subsection (a), this section does not deprive any person of a right or remedy, legal or equitable.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 17, eff. September 1, 2005.

Sec. 201.255. REQUEST FOR INFORMATION; REPORT TO BOARD ON DISPUTES MEDIATED. (a) The board may request from a chiropractic peer review committee information pertaining to actions taken by the peer review committee.

(b) The executive chiropractic peer review committee shall file annually with the board a report on the disputes mediated by the local chiropractic peer review committees under Section 201.254 during the preceding calendar year. The report must include:

- (1) the number of disputes referred to the committees;
- (2) a categorization of the disputes referred to the committees and the number of complaints in each category; and
- (3) the number of disputes resolved and the manner in which they were resolved.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 18, eff. September 1, 2005.

Sec. 201.256. PUBLIC ACCESS TO INFORMATION REGARDING PEER REVIEW COMMITTEES. The board shall maintain on the board's Internet

website information regarding local chiropractic peer review committees, including:

- (1) the services committees provide; and
- (2) the types of disputes committees mediate.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 19, eff. September 1, 2005.

#### **SUBCHAPTER G. LICENSE REQUIREMENTS**

Sec. 201.301. LICENSE REQUIRED. A person may not practice chiropractic unless the person holds a license issued by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.302. LICENSING EXAMINATION APPLICATION. (a) An applicant for a license by examination must present satisfactory evidence to the board that the applicant:

- (1) is at least 18 years of age;
- (2) is of good moral character;
- (3) has completed 90 semester hours of college courses

other than courses included in a doctor of chiropractic degree program; and

(4) is either a graduate or a final semester student of a bona fide reputable doctor of chiropractic degree program.

(b) An application for examination must be:

- (1) made in writing;
- (2) verified by affidavit;
- (3) filed with the secretary-treasurer of the board on a

form prescribed by the board; and

(4) accompanied by a fee.

(c) Each applicant shall be given reasonable notice of the time and place of the examination.

(d) Notwithstanding Subsection (a)(3), if the Council on Chiropractic Education or another national chiropractic education accreditation organization recognized by the board requires a number of semester hours of college courses other than courses included in a doctor of chiropractic degree program that is greater or less than the number of hours specified by that subsection to qualify for admission to a doctor of chiropractic degree program, the board may

adopt the requirement of that organization if the board determines that requirement to be appropriate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 20, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 802 (S.B. 776), Sec. 3, eff. June 15, 2007.

Sec. 201.303. EDUCATIONAL REQUIREMENTS. (a) To comply with the requirements of Section 201.302, the applicant must submit to the board a transcript of credits that certifies that the applicant has satisfactorily completed at least the number of semester hours of college credits required by that section at a college or university that issues credits accepted by The University of Texas at Austin for a bachelor of arts or bachelor of science degree.

(b) Repealed by Acts 2003, 78th Leg., ch. 329, Sec. 5.

(c) The board may charge a fee of not more than \$50 for verifying that the applicant has satisfied the requirements of this section.

(d) A bona fide reputable doctor of chiropractic degree program that satisfies Section 201.302(a)(4) is one that:

(1) has entrance requirements and a course of instruction as high as those of a better class of doctor of chiropractic degree programs in the United States;

(2) maintains a resident course of instruction equivalent to:

(A) not less than four terms of eight months each; or

(B) not less than the number of semester hours required by The University of Texas for a bachelor of arts or bachelor of science degree;

(3) provides a course of instruction in the fundamental subjects listed in Section 201.305(b); and

(4) has the necessary teaching staff and facilities for proper instruction in all of the fundamental subjects listed in Section 201.305(b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 329, Sec. 5.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 21, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 802 (S.B. 776), Sec. 4, eff. June 15, 2007.

Sec. 201.304. EXAMINATION REQUIREMENTS. (a) To receive a license, an applicant for a license by examination must pass:

(1) the required and optional parts of the examination given by the National Board of Chiropractic Examiners, as required by and under conditions established by board rule; and

(2) an examination prepared by the board that tests the applicant's knowledge and understanding of the laws relating to the practice of chiropractic in this state.

(b) The board shall periodically determine whether applicants who hold National Board of Chiropractic Examiners certificates have been adequately examined. If the board determines that those applicants have not been adequately examined, the board shall require those applicants to submit to an additional examination prepared by the board.

(c) The board may give an examination during the applicant's last semester of college if the board receives evidence indicating the applicant has satisfactory grades. Immediately after the applicant graduates from chiropractic college, the applicant must forward to the board evidence of satisfactory completion of the applicant's course of study.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 721, Sec. 1, eff. Sept. 1, 2001.

Sec. 201.305. EXAMINATION PROCEDURE. (a) Each examination for a license to practice chiropractic shall be conducted in the English language and in a fair and impartial manner.

(b) An examination given under Section 201.304(a)(1) shall be conducted on practical and theoretical chiropractic and in the subjects of anatomy-histology, chemistry, bacteriology, physiology, symptomatology, pathology and analysis of the human spine, and hygiene and public health.

(c) Applicants may be known to the examiners only by numbers, without a name or another method of identification on examination papers by which members of the board could identify an applicant, until after the general averages of the applicants' numbers in the class are determined and the licenses are granted or refused.

(d) The board by rule shall ensure that the examination is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 721, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 22, eff. September 1, 2005.

Sec. 201.306. EXAMINATION RESULTS. (a) The board shall notify each applicant of the results of an examination given by the board not later than the 30th day after the date the licensing examination is administered.

(b) If requested by a person who fails an examination given by the board, the board shall review with the person the circumstances surrounding the adverse score.

(c) To pass the examination under Section 201.304(a)(2), an applicant must score a grade of at least 75 percent.

(d) All questions and answers from an examination given by the board, with the grades attached, authenticated by the signature of the examiner, shall be preserved in the executive office of the board for at least one year.

(e) Each license shall be attested by the seal of the board and signed by all members of the board or a quorum of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 721, Sec. 3, eff. Sept. 1, 2001.

Sec. 201.307. REEXAMINATION. (a) An applicant who fails to pass a required examination may take another examination.

(b) The board by rule shall establish the number of times an applicant may retake the examination required by Section



201.304(a)(1) or (b), as applicable. An applicant must pass the examination required by Section 201.304(a)(2) within three attempts. The board by rule shall establish the conditions under which an applicant may retake an examination. The board may require an applicant to fulfill additional educational requirements.

(c) If the applicant makes a satisfactory grade on reexamination, the board shall grant to the applicant a license to practice chiropractic.

(d) The board's decision under this section is final.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 721, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 23, eff. September 1, 2005.

Sec. 201.308. TEMPORARY LICENSE. (a) The board by rule may provide for the issuance of a temporary license.

(b) The board by rule shall provide a time limit for the period a temporary license is valid.

(c) The board may issue a temporary faculty license to practice chiropractic to a person as provided by this section. The person:

(1) must hold a current chiropractic license that is unrestricted and not subject to a disciplinary order or probation in another state or a Canadian province;

(2) may not hold a chiropractic license in another state or a Canadian province that has any restrictions, disciplinary orders, or probation;

(3) must pass the examination required under Section 201.304(a)(2);

(4) must have been engaged in the practice of chiropractic:

(A) for at least the three years preceding the date of the application under this section; or

(B) as a chiropractic educator in a doctor of chiropractic degree program accredited by the Council on Chiropractic Education for at least the three years preceding the date of the application under this section; and

(5) must hold a salaried faculty position of at least the level of assistant professor and be working full-time at:

- (A) Parker College of Chiropractic; or
- (B) Texas Chiropractic College.

(d) A person is eligible for a temporary license under Subsection (c) if the person holds a faculty position of at least the level of assistant professor, the person works at least part-time at an institution listed in Subsection (c)(5), and:

(1) the person is on active duty in the United States armed forces; and

(2) the person's practice under the temporary license will fulfill critical needs of the citizens of this state.

(e) A chiropractor who is issued a temporary license under Subsection (c) must sign an oath on a form prescribed by the board swearing that the person:

(1) has read and is familiar with this chapter and board rules;

(2) will abide by the requirements of this chapter and board rules while practicing under the chiropractor's temporary license; and

(3) will be subject to the disciplinary procedures of the board.

(f) A chiropractor holding a temporary license under Subsection (c) and the chiropractor's chiropractic school must file affidavits with the board affirming acceptance of the terms and limits imposed by the board on the chiropractic activities of the chiropractor.

(g) A temporary license issued under Subsection (c) is valid for one year.

(h) The holder of a temporary license issued under Subsection (c) is limited to the teaching confines of the applying chiropractic school as a part of the chiropractor's duties and responsibilities assigned by the program and may not practice chiropractic outside of the setting of the chiropractic school or an affiliate of the chiropractic school.

(i) The application for a temporary license under Subsection (c) must be made by the chiropractic school in which the chiropractor teaches and must contain the information and documentation requested by the board. The application must be endorsed by the dean of the chiropractic school or the president of the institution.

(j) A chiropractor who holds a temporary license issued under Subsection (c) and who wishes to receive a permanent unrestricted license must meet the requirements for issuance of a permanent

unrestricted license, including any examination requirements.

(k) The board shall adopt:

(1) rules governing the issuance of a renewal temporary faculty license, including a rule that permits a person licensed under Subsection (c) to continue teaching while an application for a renewal temporary license is pending;

(2) fees for the issuance of a temporary license and a renewal temporary license; and

(3) an application form for temporary licenses and renewal temporary licenses to be issued under this section.

(1) The fee for a renewal temporary license issued under Subsection (k)(1) must be less than the amount of the fee for a temporary license issued under Subsection (c).

(m) A chiropractic school shall notify the board not later than 72 hours after the time:

(1) except as provided by Subdivision (2), a chiropractor licensed under Subsection (c) ceases to hold a full-time salaried position of at least the level of assistant professor at the school; and

(2) a chiropractor described by Subsection (d) ceases to hold a part-time salaried position of at least the level of assistant professor at the school.

(n) The board shall revoke a license issued under this section if the license holder no longer satisfies the requirements of this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 957 (H.B. 3450), Sec. 1, eff. September 1, 2009.

Sec. 201.309. LICENSE ISSUANCE TO CERTAIN OUT-OF-STATE APPLICANTS. The board shall issue a license to practice chiropractic to an out-of-state applicant who:

(1) submits a written application to the board on a form prescribed by the board, accompanied by the application fee set by the board and any other information requested by the board;

(2) is licensed in good standing to practice chiropractic in another state or foreign country that has licensing requirements

substantially equivalent to the requirements of this chapter;

(3) has not been the subject of a disciplinary action and is not the subject of a pending investigation in any jurisdiction in which the applicant is or has been licensed;

(4) has graduated from a doctor of chiropractic degree program accredited by the Council on Chiropractic Education and approved by rule by the board;

(5) has passed a national or other examination recognized by the board relating to the practice of chiropractic;

(6) has passed the board's jurisprudence examination;

(7) has practiced chiropractic:

(A) for at least the three years immediately preceding the date of the application under this section; or

(B) as a chiropractic educator in a doctor of chiropractic degree program accredited by the Council on Chiropractic Education for at least the three years immediately preceding the date of the application under this section; and

(8) meets any other requirements adopted by rule by the board under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 899, Sec. 1.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 802 (S.B. 776), Sec. 5, eff. June 15, 2007.

Sec. 201.311. INACTIVE STATUS. (a) The board by rule shall adopt a system by which a license holder may place the license on inactive status. A license holder must apply for inactive status, on a form prescribed by the board, before the expiration date of the license.

(b) A license holder whose license is on inactive status:

(1) is not required to pay license renewal fees; and

(2) may not perform an activity regulated under this chapter.

(c) A license holder whose license is on inactive status may return to active practice by notifying the board in writing. The board shall remove the license holder's license from inactive status after the holder pays an administrative fee and complies with any

educational or other requirements established by board rules.

(d) The board by rule shall establish a rule setting a limit on the time a license holder's license may remain on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.312. REGISTRATION OF FACILITIES. (a) The board by rule shall adopt requirements for registering chiropractic facilities as necessary to protect the public health, safety, and welfare.

(b) The rules adopted under this section must:

(1) specify the registration requirements for a chiropractic facility;

(2) prescribe the standards for the chiropractic facility registration program;

(3) provide for the issuance of a separate certificate of registration to an owner of a chiropractic facility for each chiropractic facility owned by the owner; and

(4) provide for the board to send notice to an owner of a chiropractic facility and to each chiropractor practicing in the facility of the impending expiration of the facility's certificate of registration before the expiration of the certificate.

(c) The standards adopted under Subsection (b)(2) must be consistent with industry standards for the practice of chiropractic.

(d) To register a chiropractic facility, the owner of the facility must:

(1) file with the board a written application for registration; and

(2) pay, with the application, a registration fee in an amount set by the board not to exceed \$75.

(e) The board may issue a certificate of registration only to a chiropractic facility that complies with the requirements of this section.

(f) A certificate of registration under this section must be renewed annually. To renew the certificate, the certificate holder shall apply to the board and pay an annual fee equal to the amount of the registration fee under Subsection (d)(2).

(g) A person licensed to practice chiropractic in this state is subject to disciplinary action under this chapter if the person practices chiropractic in a chiropractic facility that the person

knows is not registered under this section.

(h) An owner of a chiropractic facility who violates this section or a rule adopted under this section is subject to disciplinary action by the board in the same manner as a license holder who violates this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 227, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 329, Sec. 2.

#### **SUBCHAPTER H. ANNUAL REGISTRATION AND LICENSE RENEWAL**

Sec. 201.351. ANNUAL REGISTRATION. A chiropractor may not practice chiropractic in this state unless the chiropractor annually registers with the board not later than January 1 of each year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.352. APPLICATION FOR ANNUAL REGISTRATION. (a) A person required to register shall:

(1) file annually with the board a written application for registration; and

(2) pay, with the application, an annual registration fee to the board.

(b) The application must include:

(1) the person's full name, age, post office address, and place of residence;

(2) each place where the person is engaged in the practice of chiropractic;

(3) the college of chiropractic from which the person graduated; and

(4) the number and date of the person's license.

(c) On receipt of the application and registration fee, the board shall determine whether the applicant is licensed to practice chiropractic in this state based on the records of the board or other sources the board considers reliable.

(d) If the board determines that the applicant is licensed to practice chiropractic in this state, the board shall issue an annual registration receipt certifying that the applicant has filed an

application and paid the registration fee.

(e) The registration receipt is not evidence in a prosecution for the unlawful practice of chiropractic under Section 201.605 that the person is lawfully entitled to practice chiropractic.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.353. LICENSE EXPIRATION DATE. (a) The board by rule may adopt a system under which licenses expire on various dates during the year.

(b) For a year in which the license expiration date is changed, license fees payable on January 1 shall be prorated on a monthly basis so that each license holder pays only the portion of the fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.354. LICENSE RENEWAL. (a) A person may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license.

(b) At least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address according to the board's records.

(c) The annual renewal fee applies to each person licensed by the board, even if the person is not practicing chiropractic in this state.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to the sum of 1-1/2 times the annual renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b). If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a renewal fee that is equal to the sum of two times the annual renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b).

(e) Except as provided by Subsection (g) and Section 201.355, a person may not renew a license that has been expired for one year or more. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(f) A person who practices chiropractic without an annual renewal receipt for the current year practices chiropractic without a license.

(g) A person may renew a license that has been expired for at least one year but not more than three years if:

(1) the board determines according to criteria adopted by board rule that the person has shown good cause for the failure to renew the license; and

(2) the person pays to the board:

(A) the annual renewal fee set by the board under Section 201.153(a) for each year in which the license was expired;

(B) an additional fee in an amount equal to the sum of:

(i) the annual renewal fee set by the board under Section 201.153(a), multiplied by the number of years the license was expired, prorated for fractional years; and

(ii) two times the annual renewal fee set by the board under Section 201.153(a); and

(C) the increase in the annual renewal fee required by Section 201.153(b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 230, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. [972](#)), Sec. 24, eff. September 1, 2005.

Sec. 201.355. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state or foreign country, and is currently licensed in good standing and has been in practice in the other state or foreign country for the two years preceding application.

(b) The person must pay to the board a fee that is equal to the normally required renewal fee for the license.



(c) For purposes of this section, a person is currently licensed if the person is licensed by another chiropractic licensing board recognized by the board. The board shall adopt requirements for recognizing another chiropractic licensing board that:

(1) has licensing requirements substantially equivalent to the requirements of this chapter; and

(2) maintains professional standards considered by the board to be equivalent to the standards under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 329, Sec. 3.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 25, eff. September 1, 2005.

Sec. 201.356. CONTINUING EDUCATION. (a) The board by rule shall:

(1) assess the continuing education needs of license holders;

(2) adopt requirements for mandatory continuing education for license holders in subjects relating to the practice of chiropractic;

(3) establish a minimum number of hours of continuing education required to renew a license; and

(4) develop a process to evaluate and approve continuing education courses.

(b) The board may require license holders to attend continuing education courses specified by the board. The board shall adopt a procedure to assess a license holder's participation and performance in continuing education programs.

(c) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties.

(d) The board shall notify license holders of approved continuing education courses at least annually.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER I. PATIENT CONFIDENTIALITY**

Sec. 201.401. DEFINITION OF PATIENT. In this subchapter, "patient" means any person who consults or is seen by a chiropractor to receive chiropractic care.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.402. PATIENT CONFIDENTIALITY. (a) Communications between a chiropractor and a patient relating to or in connection with any professional services provided by a chiropractor to the patient are confidential and privileged and may not be disclosed except as provided by this subchapter.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a chiropractor that are created or maintained by a chiropractor are confidential and privileged and may not be disclosed except as provided by this subchapter.

(c) A person who receives information from the confidential communications or records, excluding a person listed in Section 201.404(a) who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(d) The prohibitions of this section apply to confidential communications or records concerning any patient regardless of when the patient received the services of a chiropractor.

(e) The privilege of confidentiality may be claimed by the patient or chiropractor acting on the patient's behalf. The authority of a chiropractor to claim the privilege of confidentiality on behalf of a patient is presumed in the absence of evidence to the contrary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.403. EXCEPTIONS TO CONFIDENTIALITY FOR ADMINISTRATIVE PROCEDURE. (a) Section 201.402 does not apply in a court or administrative proceeding:

- (1) brought by a patient against a chiropractor, including:
  - (A) a malpractice proceeding; and
  - (B) any criminal or license revocation proceeding in which the patient is a complaining witness and disclosure is relevant

to the claims or defense of the chiropractor;

(2) in which the patient or a person authorized to act on the patient's behalf submits a written consent to the release of confidential information, as provided by Section 201.405;

(3) brought to substantiate and collect on a claim for chiropractic services rendered to the patient;

(4) brought by the patient or a person on the patient's behalf who is attempting to recover monetary damages for any physical or mental condition, including death of the patient;

(5) brought in connection with a disciplinary investigation of a chiropractor under this chapter, except as provided by Subsection (b);

(6) brought in connection with a criminal investigation of a chiropractor if the board is participating or assisting in the investigation or proceeding by providing certain records obtained from the chiropractor, except as provided by Subsection (c); and

(7) brought in connection with a criminal prosecution in which the patient is a victim, witness, or defendant except as provided by Subsection (d).

(b) The board shall protect the identity of any patient whose chiropractic records are examined in connection with an investigation or proceeding described by Subsection (a)(5), excluding patients described by Subsection (a)(1) and patients who have submitted written consent to the release of their chiropractic records as provided by Section 201.405.

(c) The board shall protect the identity of any patient whose records are provided in connection with an investigation or proceeding described by Subsection (a)(6), excluding patients described by Subsection (a)(1) and patients who have submitted written consent to the release of their chiropractic records as provided by Section 201.405. The board does not authorize the release of any confidential information for the purpose of instigating or substantiating criminal charges against a patient.

(d) In a proceeding described by Subsection (a)(7), records or communications are not discoverable until the court in which the prosecution is pending makes an in camera determination of relevancy. A determination of relevancy by a court under this subsection is not a determination of the admissibility of any record or communication.

(e) Information is discoverable in a court or administrative proceeding in this state if the court or administrative body has

jurisdiction over the subject matter of the proceeding.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.404. EXCEPTIONS TO CONFIDENTIALITY FOR OTHER CIRCUMSTANCES. (a) In circumstances other than court or administrative proceedings, exceptions to Section 201.402 exist only for:

(1) a governmental agency, if the disclosure is required or permitted by law except as provided by Subsection (b);

(2) medical or law enforcement personnel, if the chiropractor determines that a probability of imminent physical injury to the patient, the chiropractor, or others exists or a probability of immediate mental or emotional injury to the patient exists;

(3) qualified personnel for the purpose of management audits, financial audits, program evaluations, or research, under the conditions provided by Subsection (c);

(4) those parts of the records reflecting charges and specific services performed, if necessary to collect fees for services provided by a chiropractor, a professional association, or another entity qualified to render or arrange for services;

(5) any person who possesses a written consent described by Section 201.405;

(6) an individual, corporation, or governmental agency involved in paying or collecting fees for services performed by a chiropractor;

(7) another chiropractor or personnel under the direction of the chiropractor who participate in the diagnosis, evaluation, or treatment of the patient; or

(8) an official legislative inquiry of state hospitals or state schools under the conditions provided under Subsection (d).

(b) A governmental agency shall protect the identity of any patient whose chiropractic records are examined under Subsection (a)(1).

(c) Personnel described by Subsection (a)(3) may not directly or indirectly identify a patient in any report of research, audit, or evaluation or otherwise disclose a patient's identity in any manner.

(d) Information released under Subsection (a)(8) may not

include:

(1) information or records that identify a patient or client for any purpose without proper consent given by the patient; and

(2) records that were not created by the state hospital or school or its employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.405. CONSENT FOR RELEASE. (a) In this section, "chiropractic records" means any record relating to the history, diagnosis, treatment, or prognosis of a patient.

(b) Consent for the release of confidential information must be in writing and signed by:

(1) the patient;

(2) a parent or legal guardian if the patient is a minor;

(3) a legal guardian if the patient has been adjudicated incompetent to manage the patient's personal affairs;

(4) an attorney ad litem appointed for the patient, as authorized by:

(A) Subtitle B, Title 6, Health and Safety Code;

(B) Subtitle C, D, or E, Title 7, Health and Safety Code;

(C) Chapter XIII, Texas Probate Code;

(D) Chapter 107, Family Code; or

(E) another applicable provision; or

(5) a personal representative if the patient is deceased.

(c) The written consent must specify:

(1) the information records covered by the release;

(2) the reason or purpose for the release; and

(3) the person to whom the information is to be released.

(d) The patient or the person authorized to consent to disclosure under this section may withdraw consent to the release of any information. Withdrawal of consent does not affect any information disclosed before written notice of the withdrawal.

(e) A person who receives information made confidential by this chapter may disclose the information to another only to the extent that disclosure is consistent with the authorized purposes for which consent to release the information was obtained.

(f) A chiropractor shall furnish copies of chiropractic records or a summary or narrative of the records requested under a written consent for release of the information. The chiropractor shall furnish the information within a reasonable time. The patient or a person acting on the patient's behalf shall pay a reasonable fee for the information provided by the chiropractor. The chiropractor may delete confidential information about another person who has not consented to the release.

(g) A chiropractor who determines that access to information requested under Subsection (f) would be harmful to the physical, mental, or emotional health of the patient may refuse to release the information requested under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER J. PRACTICE BY LICENSE HOLDER**

Sec. 201.451. DELEGATION TO ASSISTANTS. (a) The board by rule shall establish guidelines relating to the tasks and procedures that a chiropractor may delegate to an assistant.

(b) A chiropractor who delegates a task or procedure under this section retains full responsibility for the task or procedure.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.452. USE OF X-RAY. (a) The board may require evidence of proper training and safety in the use of analytical and diagnostic x-ray in conformity with:

- (1) Chapter 401, Health and Safety Code; and
- (2) rules of the Texas Radiation Control Agency and the

Texas Department of Health.

(b) This section does not modify or amend:

(1) Section 201.002 by enlarging the scope of the practice of chiropractic or the acts that a chiropractor is authorized to perform; or

- (2) Chapter 151.

(c) The board shall implement any federal and state requirements relating to radiologic training of the employees of a chiropractor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.453. MALPRACTICE SETTLEMENT INFORMATION AND EXPERT REPORTS. (a) The Texas Department of Insurance shall provide to the board any information received by the department regarding a settlement of a malpractice claim against a chiropractor.

(b) An insurer who delivers or issues for delivery in this state professional liability insurance coverage to a chiropractor who practices in this state shall provide to the board a copy of any expert report served under Section 74.351, Civil Practice and Remedies Code, in a malpractice action against the chiropractor.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 27, eff. September 1, 2005.

#### **SUBCHAPTER K. DISCIPLINARY PROCEDURES**

Sec. 201.501. DISCIPLINARY POWERS OF BOARD. (a) On a determination that a person has violated this chapter or a rule adopted by the board under this chapter, the board:

(1) shall revoke or suspend the person's license, place on probation a person whose license has been suspended, or reprimand a license holder; or

(2) may impose an administrative penalty.

(b) If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board;

or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(c) In addition to other disciplinary actions authorized by this chapter, the board may require a license holder who violates this chapter to participate in a continuing education program. The board shall specify the continuing education programs that the license holder may attend and the number of hours that the license holder must complete.

(d) Disciplinary proceedings of the board are governed by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.502. GROUNDS FOR REFUSAL, REVOCATION, OR SUSPENSION OF LICENSE. (a) The board may refuse to admit a person to examinations and may revoke or suspend a license or place a license holder on probation for a period determined by the board for:

(1) violating this chapter or a rule adopted under this chapter, including committing an act prohibited under Section 201.5025;

(2) engaging in deception or fraud in the practice of chiropractic;

(3) presenting to the board or using a license, certificate, or diploma or a transcript of a license, certificate, or diploma that was illegally or fraudulently obtained, counterfeited, or materially altered;

(4) presenting to the board an untrue statement or a document or testimony that was illegally used to pass the examination;

(5) being convicted of a crime involving moral turpitude or a felony;

(6) procuring or assisting in the procuring of an abortion;

(7) engaging in grossly unprofessional conduct or dishonorable conduct of a character likely to deceive or defraud the public;

(8) having a habit of intemperance or drug addiction or another habit that, in the opinion of the board, endangers the life of a patient;

(9) using an advertising statement that is false or that tends to mislead or deceive the public;

(10) directly or indirectly employing or associating with a person who, in the course of the person's employment, commits an act constituting the practice of chiropractic when the person is not licensed to practice chiropractic;

(11) advertising professional superiority, or advertising the performance of professional services in a superior manner, if that advertising is not readily subject to verification;



(12) purchasing, selling, bartering, using, or offering to purchase, sell, barter, or use a chiropractic degree, license, certificate, or diploma or transcript of a license, certificate, or diploma in or relating to an application to the board for a license to practice chiropractic;

(13) altering with fraudulent intent a chiropractic license, certificate, or diploma or transcript of a chiropractic license, certificate, or diploma;

(14) impersonating or acting as proxy for another in an examination required by this chapter for a chiropractic license;

(15) impersonating a licensed chiropractor;

(16) allowing one's chiropractic license to be used by another person to practice chiropractic;

(17) being proved insane by a person having authority to make that determination;

(18) failing to use proper diligence in the practice of chiropractic or using gross inefficiency in the practice of chiropractic;

(19) failing to clearly differentiate a chiropractic office or clinic from another business or enterprise;

(20) personally soliciting a patient or causing a patient to be solicited by the use of a case history of another patient of another chiropractor;

(21) using for the purpose of soliciting patients an accident report prepared by a peace officer in a manner prohibited by Section 38.12, Penal Code; or

(22) advertising using the term "physician" or "chiropractic physician" or any combination or derivation of the term "physician."

(b) Notwithstanding Subsection (a)(22), the term "chiropractic physician" may be used for the express purpose of filing a claim for necessary services within the definition of chiropractic under this chapter if the billing for the services has universally applied, predetermined coding or description requirements that are a prerequisite to appropriate reimbursement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 28, eff. September 1, 2005.

Sec. 201.5025. PROHIBITED PRACTICES BY CHIROPRACTOR OR LICENSE APPLICANT. (a) A chiropractor or an applicant for a license to practice chiropractic commits a prohibited practice if that person:

- (1) submits to the board a false or misleading statement, document, or certificate in an application for a license;
- (2) commits fraud or deception in taking or passing an examination;
- (3) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 201.5026, or injure the public;
- (4) engages in conduct that subverts or attempts to subvert an examination process required by this chapter for a chiropractic license;
- (5) directly or indirectly employs a person whose license to practice chiropractic has been suspended, canceled, or revoked;
- (6) associates in the practice of chiropractic with a person:
  - (A) whose license to practice chiropractic has been suspended, canceled, or revoked; or
  - (B) who has been convicted of the unlawful practice of chiropractic in this state or elsewhere; or
- (7) directly or indirectly aids or abets the practice of chiropractic by a person that is not licensed to practice chiropractic by the board.

(b) For purposes of Subsection (a)(4), conduct that subverts or attempts to subvert the chiropractic licensing examination process includes, as prescribed by board rule, conduct that violates:

- (1) the security of the examination materials;
- (2) the standard of test administration; or
- (3) the accreditation process.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 29, eff. September 1, 2005.

Sec. 201.5026. UNPROFESSIONAL OR DISHONORABLE CONDUCT. (a) For purposes of Section 201.5025(a)(3), unprofessional or dishonorable conduct that is likely to deceive or defraud the public

includes conduct in which a chiropractor:

(1) commits an act that violates any state or federal law if the act is connected with the chiropractor's practice of chiropractic;

(2) prescribes or administers a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is prescribed or administered;

(3) violates Section 311.0025, Health and Safety Code;

(4) fails to supervise adequately the activities of those acting under the supervision of the chiropractor; or

(5) delegates professional chiropractic responsibility or acts to a person if the delegating chiropractor knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts.

(b) A complaint, indictment, or conviction of a violation is not necessary for the enforcement of Subsection (a)(1). Proof of the commission of the act while in the practice of chiropractic or under the guise of the practice of chiropractic is sufficient for the board's action.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 29, eff. September 1, 2005.

Sec. 201.503. SCHEDULE OF SANCTIONS. (a) The board by rule shall adopt a schedule of the maximum amount of sanctions that may be assessed against a license holder for each category of violation of this chapter. In establishing the schedule of sanctions or in imposing the amount of an administrative penalty under this chapter, the board shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, or gravity of any prohibited acts and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(b) The State Office of Administrative Hearings shall use the schedule of sanctions for any sanction imposed as the result of a hearing conducted by that office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.504. INFORMAL PROCEEDINGS; REFUNDS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under Subsection (a) must:

(1) provide the complainant and the license holder an opportunity to be heard; and

(2) require the presence of a representative of the attorney general or the board's legal counsel to advise the board or the board's employees.

(c) Subject to Subsection (d), the board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(d) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 30, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 31, eff. September 1, 2005.

Sec. 201.505. HEARINGS. (a) A person is entitled to a hearing before the board if the board proposes to:

(1) refuse the person's application for a license;

(2) suspend or revoke the person's license; or

(3) place on probation or reprimand the person.

(b) The board is not bound by strict rules of evidence or procedure in conducting its proceedings and hearings, but the board must base its determination on sufficient legal evidence.

(c) The board may:

(1) issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, and other documents;

(2) administer oaths; and

(3) take testimony concerning all matters within its jurisdiction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.506. ENFORCEMENT COMMITTEE. (a) The board shall appoint an enforcement committee to:

(1) oversee and conduct the investigation of complaints filed with the board under this chapter; and

(2) perform other enforcement duties as directed by the board.

(b) The enforcement committee consists of three board members. Two members must be chiropractors, and one member must be a representative of the public.

(c) The attorney general shall provide legal counsel to the enforcement committee concerning enforcement matters, including the investigation and disposition of complaints.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.5065. REQUIRED SUSPENSION OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a chiropractor's license on proof that the chiropractor has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal Code; or  
 (E) a misdemeanor under Section 25.071, Penal Code; or  
 (2) subject to an initial finding by the trier of fact of  
 guilt of a felony under:  
 (A) Chapter 481 or 483, Health and Safety Code;  
 (B) Section 485.033, Health and Safety Code; or  
 (C) the Comprehensive Drug Abuse Prevention and Control  
 Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection  
 (a), the board shall revoke the chiropractor's license.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 32, eff.  
 September 1, 2005.

Sec. 201.507. TEMPORARY LICENSE SUSPENSION. (a) The  
 enforcement committee may temporarily suspend the license of a  
 license holder on an emergency basis if the enforcement committee  
 determines from the evidence or information presented to the  
 committee that the continued practice of chiropractic by the license  
 holder constitutes a continuing or imminent threat to the public  
 welfare.

(b) The board by rule shall adopt procedures for the temporary  
 suspension of a license under this section.

(c) A license temporarily suspended under this section may be  
 suspended without notice or hearing if, at the time the suspension is  
 ordered, a hearing on whether disciplinary proceedings under this  
 chapter should be initiated against the license holder is scheduled  
 to be held not later than the 14th day after the date of the  
 suspension.

(d) A second hearing on the suspended license shall be held not  
 later than the 60th day after the date the suspension is ordered. If  
 the second hearing is not held in the time required by this  
 subsection, the suspended license is automatically reinstated.

(e) A temporary suspension may also be ordered on a vote of  
 two-thirds of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.508. POWERS OF DISTRICT COURTS; DUTIES OF DISTRICT

AND COUNTY ATTORNEYS. (a) A district court may revoke or suspend a chiropractor's license on proof of a violation of the law relating to the practice of chiropractic.

(b) On the request of the board, a district or county attorney shall represent the state by filing and prosecuting a judicial proceeding for the revocation, cancellation, or suspension of the chiropractor's license.

(c) The district or county attorney may institute the judicial proceeding by filing a petition that:

- (1) is in writing;
- (2) states the grounds for prosecution; and
- (3) is signed officially by the prosecuting officer.

(d) Citation must be issued in the name of the state in the manner and form as in other cases and shall be served on the defendant, who is required to answer within the time and manner provided by law in civil cases.

(e) If a chiropractor, after proper citation, is found guilty or fails to appear and deny the charge, the court shall:

- (1) enter an order to suspend or revoke the chiropractor's license; and
- (2) give proper judgment for costs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.509. REPRESENTATION BY ATTORNEY GENERAL. (a) The board may apply to the attorney general for representation by stating that the board previously requested the representation of a district or county attorney under Section 201.508 and the district or county attorney failed to prosecute or proceed against the person accused of violating this chapter.

(b) The attorney general shall institute a civil or criminal proceeding against the person in the county of the person's residence.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.510. RIGHT TO APPEAL. (a) A person whose license to practice chiropractic has been revoked or suspended or against whom the board has imposed an administrative penalty may appeal to a

Travis County district court.

(b) The decision of the board may not be enjoined or stayed unless the person appeals the board's decision as provided by Subsection (a) and provides notices to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 228, Sec. 1, eff. Sept. 1, 2001.

Sec. 201.511. REISSUANCE OF LICENSE. (a) On application, the board may reissue a license to practice chiropractic to a person whose license has been canceled or suspended.

(b) An applicant whose license has been canceled or revoked:

(1) may not apply for reissuance before the first anniversary of the date the license was canceled or revoked; and

(2) must apply for reissuance in the manner and form required by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER L. ADMINISTRATIVE PENALTY**

Sec. 201.551. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on a person licensed or regulated under this chapter if the person violates this chapter or a rule or order adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.552. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$1,000.

(b) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.553. ENFORCEMENT COMMITTEE RECOMMENDATIONS. (a) On a determination by the enforcement committee that a violation of this chapter or a rule or order adopted under this chapter occurred, the



committee may issue a report to the board stating:

- (1) the facts on which the determination is based; and
- (2) the enforcement committee's recommendation on the imposition of the administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the violation by certified mail to the person on whom the penalty may be imposed.

(c) The notice issued under this section must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date a person receives the notice under Section 201.553, the person may:

- (1) accept in writing the enforcement committee's determination and recommended administrative penalty; or
- (2) make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the enforcement committee's determination and recommended penalty, the board by order shall approve the determination and impose the recommended penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.0515, eff. Sept. 1, 2001.

Sec. 201.555. HEARING ON ENFORCEMENT COMMITTEE RECOMMENDATIONS.

(a) If the person requests a hearing or fails to respond timely to the notice, the executive director shall set a hearing and give notice of the hearing to the person.

(b) A hearing set by the executive director under Subsection (a) shall be held by an administrative law judge of the State Office of Administrative Hearings.

(c) The administrative law judge shall:

- (1) make findings of fact and conclusions of law; and
- (2) promptly issue to the board a proposal for a decision as to the occurrence of the violation and the amount of a proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.556. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may determine that:

- (1) a violation has occurred and impose an administrative penalty; or

- (2) a violation did not occur.

(b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.557. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

- (1) pay the administrative penalty;

- (2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or

- (3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

- (1) stay enforcement of the penalty by:

- (A) paying the penalty to the court for placement in an escrow account; or

- (B) giving to the court a supersedeas bond that is approved by the court and that:

- (i) is for the amount of the penalty; and

- (ii) is effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the director may, at the direction of the enforcement committee, file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and stay the enforcement of the penalty on finding that the alleged facts are true. The person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.558. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may, at the direction of the enforcement committee, refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.559. DETERMINATION BY COURT. (a) If a court sustains the finding that a violation occurred after the court reviews the order of the board imposing an administrative penalty, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that an administrative penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.560. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.561. ADMINISTRATIVE PROCEDURE. All proceedings under this subchapter are subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER M. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 201.601. INJUNCTIVE RELIEF. (a) The board may institute in the board's name an action to restrain a violation of this chapter. An action under this subsection is in addition to any other action authorized by law.

(b) The state may sue for an injunction to restrain the practice of chiropractic in violation of this chapter.

(c) The state shall be represented in suits for injunction by:

(1) the attorney general;

(2) the district attorney of the district in which the defendant resides; or

(3) the county attorney of the county in which the defendant resides.

(d) A suit for injunction under Subsection (b) may not be filed before the final conviction for a violation of this chapter of the party sought to be enjoined.

(e) The state is not required to show that a person is

personally injured by the defendant's unlawful practice of chiropractic.

(f) A court may not grant a temporary or permanent injunction until a hearing of the complaint on its merits. A court may not issue an injunction or restraining order until the final trial and final judgment on the merits of the suit.

(g) If the defendant is shown to have been unlawfully practicing chiropractic or to have been about to unlawfully practice chiropractic, the court shall perpetually enjoin the defendant from practicing chiropractic in the manner that was the subject of the suit.

(h) A defendant who disobeys the injunction is subject to the penalties provided by law for the violation of an injunction. The remedy by injunction is in addition to a criminal prosecution.

(i) A suit for injunction under this section shall be advanced for trial on the docket of the trial court and advanced and tried in the appellate courts in the same manner as other suits for injunction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.6015. CEASE AND DESIST ORDER. (a) If it appears to the board that a person is engaging in an act or practice that constitutes the practice of chiropractic without a license or registration under this chapter, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter L.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 33, eff. September 1, 2005.

Sec. 201.602. MONITORING LICENSE HOLDER. The board by rule shall develop a system for monitoring compliance with the requirements of this chapter of a license holder who is the subject of disciplinary action. Rules adopted under this section must include procedures to:

- (1) monitor for compliance a license holder who is ordered

by the board to perform certain acts; and

(2) identify and monitor each license holder who is the subject of disciplinary action and who presents a continuing threat to the public welfare through the practice of chiropractic.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.603. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted by the board under this chapter is liable to the state for a civil penalty of \$1,000 for each day of violation.

(b) At the request of the board, the attorney general shall bring an action to recover a civil penalty authorized by this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.604. GENERAL CRIMINAL PENALTY. A person commits an offense if the person violates this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$500 or by confinement in the county jail for not more than 30 days.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 34, eff. September 1, 2005.

Sec. 201.605. CRIMINAL PENALTY: PRACTICE WITHOUT LICENSE. (a) A person commits an offense if the person violates Section 201.301.

(b) Except as provided by Subsection (c), an offense under this section is a Class A misdemeanor.

(c) If it is shown on the trial of the offense that the defendant has been previously convicted under Subsection (a), the offense is a felony of the third degree.

(d) Each day of violation constitutes a separate offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.606. CRIMINAL PENALTY: PROVIDING CHIROPRACTIC TREATMENT OR SERVICES WHILE INTOXICATED. (a) In this section, "intoxicated" has the meaning assigned by Section 49.01, Penal Code.

(b) A person commits an offense if the person is licensed or regulated under this chapter, provides chiropractic treatment or services to a patient while intoxicated, and, by reason of that conduct, places the patient at a substantial and unjustifiable risk of harm.

(c) An offense under this section is a state jail felony.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 35, eff. September 1, 2005.

## CHAPTER 202. PODIATRISTS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 202.001. DEFINITIONS. (a) In this chapter:

(1) "Board" means the Texas State Board of Podiatric Medical Examiners.

(2) "Executive director" means the employee of the board who manages the board's day-to-day operations.

(3) "Podiatrist" means a person who:

(A) is licensed under this chapter to practice podiatry and who directly or indirectly charges money or other compensation for podiatric services; or

(B) publicly professes or claims to be a podiatrist, foot specialist, or doctor or uses any title, degree, letter, syllable, or word that would lead the public to believe that the person is a practitioner authorized to practice or assume the duties incident to the practice of podiatry.

(4) "Podiatry" means the treatment of or offer to treat any disease, disorder, physical injury, deformity, or ailment of the human foot by any system or method. The term includes podiatric medicine.

(b) In the laws of this state:

(1) "chiropody" means podiatry; and

(2) "chiropodist" means podiatrist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.002. APPLICATION OF SUNSET ACT. The Texas State Board of Podiatric Medical Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 1, eff. September 1, 2005.

Sec. 202.003. APPLICATION OF CHAPTER. (a) This chapter does not apply to:

(1) a physician licensed by the Texas State Board of Medical Examiners;

(2) a surgeon of the United States Army, United States Navy, or United States Public Health Service, when performing that person's official duties; or

(3) a bona fide member of an established church in ministering or offering to minister to the sick or suffering by prayer, as set forth in the principles, tenets, or teachings of the church of which the person is a bona fide member.

(b) This chapter does not prohibit the recommendation, advertising, or sale of corrective shoes, arch supports or similar mechanical appliances, or foot remedies by a manufacturer, wholesaler, or retail dealer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS**

Sec. 202.051. BOARD MEMBERSHIP. (a) The Texas State Board of Podiatric Medical Examiners consists of nine members appointed by the governor as follows:

(1) six members who are reputable practicing podiatrists who have resided in this state and have been actively engaged in the practice of podiatry for the five years preceding appointment; and

(2) three members who represent the public.

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



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 2, eff. September 1, 2005.

Sec. 202.052. OATH OF OFFICE. Before entering office, a board member shall qualify for office by filing with the secretary of state the constitutional oath taken by the board member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.053. PUBLIC MEMBER ELIGIBILITY. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

- (1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;
- (2) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the board or receiving funds from the board; or
- (4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.054. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of

establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 3, eff. September 1, 2005.

Sec. 202.055. TERMS. Members of the board serve staggered six-year terms. At the expiration of the term of each member, the governor shall appoint a successor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 202.051 or 202.053;

(2) does not maintain during service on the board the qualifications required by Section 202.051 or 202.053;

(3) is ineligible for membership under Section 202.054;

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

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

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 4, eff. September 1, 2005.

Sec. 202.057. PER DIEM; REIMBURSEMENT. (a) Each board member is entitled to a per diem as set by legislative appropriation for each day the member engages in the business of the board.

(b) A member may receive reimbursement for travel expenses, including expenses for meals, lodging, and transportation, as prescribed by the General Appropriations Act.

(c) The secretary of the board is entitled to reimbursement for the secretary's necessary expenses incurred in the performance of services for the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 5, eff. September 1, 2005.

Sec. 202.058. OFFICERS. (a) The governor shall designate a member of the board as the president of the board to serve in that capacity at the pleasure of the governor.

(b) At the first regular scheduled meeting of each biennium, the board shall elect from its members a vice president and secretary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 6, eff. September 1, 2005.

Sec. 202.059. MEETINGS. (a) The board shall hold regular meetings at least twice a year and special meetings as necessary. The board shall hold the meetings at times and places the board considers most convenient for applicants for license examinations.

(b) A special meeting shall be held on the call of the president or on the request of a majority of board members.

(c) If a quorum is not present on the day of a meeting, the members present may adjourn from day to day until a quorum is present.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.060. LOCATION OF OFFICES. The board shall maintain offices in Austin.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.061. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) this chapter and the programs, functions, rules, and budget of the board;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board may be entitled to reimbursement, as provided by the General Appropriations Act, for the

travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 7, eff. September 1, 2005.

#### **SUBCHAPTER C. BOARD PERSONNEL**

Sec. 202.101. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 8, eff. September 1, 2005.

Sec. 202.102. QUALIFICATIONS AND STANDARDS OF CONDUCT. The board shall provide, as often as necessary, to its members and employees information regarding their:

- (1) qualifications for office or employment under this chapter; and
- (2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.103. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all non-entry-level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be

based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.104. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

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

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel, that are in compliance with Chapter 21, Labor Code;

(2) a comprehensive analysis of the board workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER D. BOARD POWERS AND DUTIES**

Sec. 202.151. GENERAL RULEMAKING AUTHORITY. The board shall adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and

the law of the United States to govern:

- (1) its proceedings and activities;
- (2) the regulation of the practice of podiatry; and
- (3) the enforcement of the law regulating the practice of podiatry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.152. RULES REGARDING ADVERTISING AND COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the person's use of any medium for advertising;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.1525. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.

(a) The board shall adopt rules necessary to comply with Chapter 53.

(b) In its rules under this section, the board shall list the specific offenses for which a conviction would constitute grounds for the board to take action under Section 53.021.

Added by Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 9, eff. September 1, 2005.

Sec. 202.153. FEES. (a) The board by rule shall establish fees in amounts reasonable and necessary to cover the cost of administering this chapter. The board may not set a fee that existed

on September 1, 1993, in an amount less than the amount of that fee on that date.

(b) The board may not maintain unnecessary fund balances, and fee amounts shall be established in accordance with this requirement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.154. COMMITTEES. The board may appoint committees from its own membership. The duties of a committee are to:

(1) consider matters relating to the enforcement of the law regulating the practice of podiatry and the rules adopted in accordance with that law as referred to the committee; and

(2) make recommendations to the board with respect to the enforcement of those matters.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.1545. ADVISORY COMMITTEE MEMBERSHIP. (a) This section does not apply to a committee created under Section 202.154 exclusively composed of board members.

(b) A board member is not eligible to serve as a voting member on a task force or advisory committee that makes recommendations to the board.

Added by Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 10, eff. September 1, 2005.

Sec. 202.155. CONTRACTS WITH OTHER STATE AGENCIES. The board may contract with the Texas State Board of Medical Examiners or any other appropriate state agency to provide some or all of the services necessary to carry out the board's activities.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.156. BOARD RECORDS. (a) The board shall keep correct records of the board's proceedings and of all money received or spent by the board. The records shall be open to public inspection at all



reasonable times. The records must include:

- (1) a record of proceedings relating to the examination of license applicants;
  - (2) a record of proceedings relating to the issuance, renewal, or refusal of a license, including information on whether an application was rejected or granted;
  - (3) the name, age, and known place of residence of each applicant for a license or license renewal;
  - (4) the name and location of the college of podiatry from which each license applicant holds credentials and the time devoted by the applicant to the study and practice of podiatry; and
  - (5) any other information the board desires to record.
- (b) Each license and annual renewal certificate issued by the board must be numbered and recorded in a book kept by the board.
- (c) Information in a record is prima facie evidence of each matter contained in the record.
- (d) A certified copy of a record, under the hand and seal of the custodian of records of the board, is admissible as evidence in all courts.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.157. BOARD PROCEEDINGS. (a) The board is not bound by the strict rules of procedure or by the laws of evidence in the conduct of its proceedings, but a board determination must be founded on legal evidence sufficient to sustain it.

- (b) Each order of the board is prima facie valid.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.158. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

- (1) adopt a form to standardize information concerning complaints made to the board; and
  - (2) prescribe information to be provided to a person when the person files a complaint with the board.
- (b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.160. INFORMATION PROVIDED TO LICENSE HOLDERS. At least once each biennium, the board shall provide to license holders information on:

- (1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;
- (2) abusive and addictive behavior of certain persons who use prescription pain medications;
- (3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and
- (4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 2, eff. Sept. 1, 2003.

Sec. 202.161. POISON CONTROL CENTER INFORMATION. The board shall provide to license holders information regarding the services provided by poison control centers.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 2, eff. Sept. 1, 2003.

Sec. 202.162. USE OF TECHNOLOGY. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 11, eff. September 1, 2005.

Sec. 202.163. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 11, eff. September 1, 2005.

#### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 202.201. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.202. COMPLAINTS. (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notification:

(1) on each registration form, application, brochure, or written contract for services of a person regulated under this chapter;

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

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

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

(c) The board shall make information available describing its procedures for complaint investigation and resolution.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 12, eff. September 1, 2005.

Sec. 202.203. COMPLAINT RECORDS. (a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and the disposition of the complaint.

(b) The board shall periodically notify the complaint parties of the status of the complaint until final disposition unless the notification would jeopardize an undercover investigation. The board may provide a copy of the complaint to the license holder unless providing a copy would jeopardize an investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.052(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 13, eff. September 1, 2005.

Sec. 202.204. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection must:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of an investigator and the procedures for the board to obtain the services of an investigator, including a private investigator.

(b) The board shall:

(1) dispose of all complaints in a timely manner; and

(2) establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) The board shall notify each party of the projected time requirements for the complaint. The board shall notify each party to the complaint of the change in the schedule not later than the seventh day after the date the change is made.

(d) The executive director shall notify the board of a complaint that is not resolved within the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

(e) An investigator whose service is obtained by the board in an investigation under this section is immune from suit and liability for:

(1) holding an informal conference to determine the facts of the complaint;

(2) testifying at a hearing regarding the investigation;

(3) issuing an opinion on or making a report about:

(A) a person who files a complaint under this chapter or requests the services of the board;

(B) a podiatrist; or

(C) a podiatric patient; and

(4) investigating a complaint filed with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1259, Sec. 1, eff. Sept. 1, 2001.

Sec. 202.205. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. LICENSE REQUIREMENTS**

Sec. 202.251. LICENSE REQUIRED. A person may not practice podiatry or hold the person out as a podiatrist unless the person is licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.252. LICENSE APPLICATION. (a) A person who desires to practice podiatry in this state shall apply in writing to the board for a license on a form prescribed by the board.

(b) The applicant shall submit any information reasonably required by the board, including evidence satisfactory to the board that the applicant:

- (1) is at least 21 years of age;
- (2) is of good moral character;
- (3) has completed at least 90 semester hours of college courses acceptable at the time of completion for credit toward a bachelor's degree at The University of Texas;
- (4) is a graduate of a reputable school of podiatry or chiropody; and
- (5) has successfully completed any other course of training reasonably required by board rule relating to the safe care and treatment of patients.

(c) The applicant shall verify by affidavit the information submitted in the application.

(d) The applicant shall establish that the applicant graduated from a reputable school of podiatry or chiropody by furnishing a diploma from that school.

(e) All educational attainments or credits for evaluation under

this chapter must be completed within the United States. The board may not accept educational credits attained in a foreign country that are not acceptable to The University of Texas for credit toward a bachelor's degree.

(f) For purposes of this section, a podiatry or chiropody school is reputable if:

- (1) the course of instruction consists of four terms of approximately eight months each, or the substantial equivalent; and
- (2) the school is approved by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.253. GROUND FOR DENIAL OF LICENSE. (a) The board may refuse to admit a person to an examination, and may refuse to issue a license to practice podiatry to a person, for:

- (1) presenting to the board a license, certificate, or diploma that was illegally or fraudulently obtained or engaging in fraud or deception in passing the examination;
- (2) being convicted of:
  - (A) a felony;
  - (B) a crime that involves moral turpitude; or
  - (C) an offense under Section 202.606;
- (3) engaging in habits of intemperance or drug addiction that in the board's opinion would endanger the health, well-being, or welfare of patients;
- (4) engaging in grossly unprofessional or dishonorable conduct of a character that in the board's opinion is likely to deceive or defraud the public;
- (5) directly or indirectly violating or attempting to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice;
- (6) using any advertising statement of a character tending to mislead or deceive the public;
- (7) advertising professional superiority or the performance of professional service in a superior manner;
- (8) purchasing, selling, bartering, or using or offering to purchase, sell, barter, or use a podiatry degree, license, certificate, diploma, or a transcript of a license, certificate, or diploma, in or incident to an application to the board for a license

to practice podiatry;

(9) altering, with fraudulent intent, a podiatry license, certificate, diploma, or a transcript of a podiatry license, certificate, or diploma;

(10) using a podiatry license, certificate, or diploma, or a transcript of a podiatry license, certificate, or diploma, that has been fraudulently purchased, issued, counterfeited, or materially altered;

(11) impersonating, or acting as proxy for, another person in a podiatry license examination;

(12) impersonating a license holder, or permitting another person to use the license holder's license to practice podiatry in this state, to treat or offer to treat, by any method, conditions and ailments of human feet;

(13) directly or indirectly employing a person whose license to practice podiatry has been suspended or associating in the practice of podiatry with a person whose license to practice podiatry has been suspended or who has been convicted of the unlawful practice of podiatry in this state or elsewhere;

(14) wilfully making in the application for a license to practice podiatry a material misrepresentation or material untrue statement;

(15) being unable to practice podiatry with reasonable skill and safety to a patient because of age, illness, drunkenness, or excessive use of drugs, narcotics, chemicals, or other substances or as a result of a mental or physical condition;

(16) failing to practice podiatry in an acceptable manner consistent with public health and welfare;

(17) being removed, suspended, or disciplined in another manner by the podiatrist's peers in a professional podiatry association or society, whether local, regional, state, or national in scope, or being disciplined by a licensed hospital or the medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if the board determines that the action was:

(A) based on unprofessional conduct or professional incompetence likely to harm the public; and

(B) appropriate and reasonably supported by evidence submitted to the association, society, hospital, or medical staff;

or



(18) having repeated or recurring meritorious health care liability claims filed against the podiatrist that in the board's opinion are evidence of professional incompetence likely to injure the public.

(b) In enforcing Subsection (a)(15), the board, on probable cause, shall request the affected podiatrist to submit to a mental or physical examination by a physician designated by the board. If the podiatrist refuses to submit to the examination, the board shall issue an order requiring the podiatrist to show cause why the podiatrist will not submit to the examination and shall schedule a hearing on the order not later than the 30th day after the date notice is served on the podiatrist. The podiatrist shall be notified by either personal service or certified mail with return receipt requested.

(c) At the hearing, the podiatrist and the podiatrist's attorney may present testimony and other evidence to show why the podiatrist should not be required to submit to the examination. After a complete hearing, the board shall issue an order either requiring the podiatrist to submit to the examination or withdrawing the request for examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.254. EXAMINATION. (a) Except as provided by Section 202.261, each applicant for a license to practice podiatry in this state must pass an examination approved by the board. Each applicant shall pay to the board an examination fee at least 15 days before the date of the scheduled examination.

(b) The board may adopt and enforce rules of procedure for administering this section. A public board member may not participate in any part of the examination process for applicants for a license issued by the board that requires knowledge of the practice of podiatry.

(c) The license examination must consist of a written and practical component. The board shall determine the passing score for the examination using accepted criterion-referenced methods. The board shall have the examination validated by an independent testing professional.

(d) The examination must cover the subjects of anatomy,

chemistry, dermatology, diagnosis, pharmacology, pathology, physiology, microbiology, orthopedics, and podiatry, as related to ailments of the human foot.

(e) The board shall determine the credit to be given on the examination answers. The discretion of the board on the examination is final.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.255. EXAMINATION RESULTS. (a) The board shall notify each examinee of the results of the examination not later than the 30th day after the date a licensing examination is administered under this chapter. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the examination, the board shall provide to the person an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.256. REEXAMINATION. (a) An applicant who fails an examination and is refused a license based on that failure may retake the examination. The applicant must pay the regular examination fee for any reexamination.

(b) Each reexamination must cover each subject tested in Section 202.254(d).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.257. ISSUANCE OF LICENSE. The board shall issue a license to each applicant who possesses the qualifications required for a license and passes the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.258. REFUSAL OF ADMITTANCE TO EXAMINATION. An applicant who is refused admittance to examination may try the issue in a district court in Travis County.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.259. TEMPORARY LICENSE. (a) The board by rule may adopt a procedure for the issuance of a temporary license to an applicant other than an applicant for a provisional license under Section 202.260.

(b) Rules adopted under this section must establish:

- (1) the criteria for issuance of a temporary license; and
- (2) a maximum period during which a temporary license is valid.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.260. PROVISIONAL LICENSE. (a) On application, the board shall grant a provisional license to practice podiatry to an applicant who:

- (1) is licensed in good standing as a podiatrist in another state that has licensing requirements that are substantially equivalent to the requirements of this chapter;
- (2) has passed a national or other examination recognized by the board relating to the practice of podiatry; and
- (3) is sponsored by a person licensed under this chapter with whom the provisional license holder may practice under this section.

(b) The board may excuse an applicant for a provisional license from the requirement of Subsection (a)(3) if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. Except as provided by Subsection (e), the board shall issue a license under this chapter to the holder of a provisional license

under this section if:

(1) the provisional license holder passes the examination required by Section 202.254;

(2) the board verifies that the provisional license holder has the academic and experience requirements for a license under this chapter; and

(3) the provisional license holder satisfies any other license requirements under this chapter.

(d) The board shall complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend that deadline to allow for the receipt of pending examination results.

(e) A provisional license holder is not required to pass a part of an examination related to the testing of clinical skills that an applicant for an original license under this chapter with substantially equivalent experience is not required to pass.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 14, eff. September 1, 2005.

Sec. 202.261. LIMITED LICENSE FOR PODIATRY FACULTY MEMBERS.

(a) The board may issue a license to practice podiatry without administering the examination under Section 202.254 to a podiatrist who:

(1) at the time of applying for a license has accepted an appointment or is serving as a full-time member of the faculty of an educational institution in this state offering an approved or accredited course of study or training leading to a degree in podiatry;

(2) is licensed to practice podiatry in another state that has licensing requirements substantially equivalent to those established by this state; and

(3) otherwise satisfies the requirements of Section 202.252.

(b) For purposes of Subsection (a)(1), a course of study, training, or education is considered to be approved or accredited if

it is approved or accredited by the board as constituting a reputable course of study, training, or education. In deciding whether to approve or accredit a course of study, training, or education, the board shall consider whether the course is approved or accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association or its successor organization.

(c) Except for the examination requirement, an applicant for a license under this section must comply with all application, license, and license renewal requirements relating to podiatry and is subject to all laws relating to the practice of podiatry.

(d) A license issued under this section permits the practice of podiatry only for purposes of instruction in the educational institution.

(e) A license issued under this section terminates when the faculty appointment of a podiatrist licensed under this section is terminated. This section does not:

(1) prohibit the podiatrist from applying for and obtaining a license; or

(2) affect a license obtained by the podiatrist by complying with Section 202.254 and other applicable laws relating to the practice of podiatry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.262. DISPLAY OF LICENSE. (a) A person licensed under this chapter must conspicuously display both the license and an annual renewal certificate for the current year of practice at the location where the person practices.

(b) The person shall exhibit the license and renewal certificate to a board representative on the representative's official request for examination or inspection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.263. ISSUANCE OF DUPLICATE OR AMENDED LICENSE. (a) If a license issued by the board is lost, destroyed, or stolen from the person to whom it was issued, the license holder shall report the fact to the board in an affidavit. The affidavit must include detailed information as to the loss, destruction, or theft, giving

dates, place, and circumstances.

(b) A license holder may apply to the board for an amended license because of a lawful change in the person's name or degree designation or for any other lawful and sufficient reason. The license holder must state the reasons that the issuance of an amended license is requested.

(c) The board shall issue a duplicate or amended license on application by a license holder and payment of a fee set by the board for the duplicate or amended license. The board may not issue a duplicate or amended license unless:

(1) the license holder submits sufficient evidence to prove the license has been lost, destroyed, or stolen or establishes the lawful reason that an amended license should be issued; and

(2) the board's records show a license had been issued and was in effect at the time of the loss, destruction, or theft or on the date of the request for an amended license.

(d) If an amended license is issued, the license holder shall return the original license to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.264. INACTIVE STATUS. The board by rule may provide for the license of a person under this chapter to be placed on inactive status. Rules adopted under this section must include a time limit for a license to remain on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. LICENSE RENEWAL**

Sec. 202.301. ANNUAL LICENSE RENEWAL. (a) The board by rule may adopt a system under which licenses expire on various dates during the year, and the dates for sending notice that payment is due and dates of suspension, revocation, and assessment of a penalty for nonpayment shall be adjusted accordingly. For the year in which the license renewal date is changed, license fees payable on November 1 shall be prorated on a monthly basis so that each license holder shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal

fee is payable.

(b) At least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address according to the board's records.

(c) A person may renew the person's unexpired license by paying the required renewal fee to the board before the expiration date of the license.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the board a fee equal to 1-1/2 times the required renewal fee. If a license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a fee equal to two times the required renewal fee.

(e) If a person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 15, eff. September 1, 2005.

Sec. 202.302. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date the person applied for renewal.

(b) The person must pay to the board a fee equal to the amount charged for renewal of the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 16, eff. September 1, 2005.

Sec. 202.303. PRACTICE WITHOUT RENEWING LICENSE. A person who

practices podiatry without an annual renewal certificate for the current year is considered to be practicing without a license and is subject to all the penalties of the practice of podiatry without a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.304. RENEWAL AFTER MILITARY SERVICE. (a) Except as provided by Subsection (c), this section applies to a podiatrist whose license has been suspended or revoked, or whose annual renewal certificate has expired, while the podiatrist has been:

(1) engaged in federal service or on active duty with:

- (A) the United States Army;
- (B) the United States Navy;
- (C) the United States Marine Corps;
- (D) the United States Coast Guard; or
- (E) the United States Air Force;

(2) called into service or training of the United States;

or

(3) in training or education under the supervision of the United States before induction into military service.

(b) A podiatrist subject to this section may renew the podiatrist's license without paying a renewal fee for the expired license or passing an examination if, not later than the first anniversary of the date of the termination of service, training, or education described by Subsection (a), other than by dishonorable discharge, the podiatrist furnishes to the board an affidavit stating that the podiatrist has been so engaged and that the service, training, or education has terminated.

(c) This section does not apply to a podiatrist whose license is revoked under Section 202.502.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.305. CONTINUING EDUCATION. (a) The board shall develop a mandatory continuing education program. In developing its program, the board shall:

(1) establish by rule the minimum hours of continuing education required for license renewal;



(2) identify the key factors that lead to the competent performance of professional duties;

(3) develop a process to evaluate and approve continuing education courses; and

(4) develop a process to assess the participation and performance of license holders in continuing education courses to enable the board to evaluate the overall effectiveness of the program.

(b) The board may assess the continuing education needs of a license holder and require the license holder to attend continuing education courses specified by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER H. PRACTICE BY LICENSE HOLDER**

Sec. 202.351. **PODIATRY SERVICES FOR CERTAIN HEALTH ORGANIZATIONS.** A licensed podiatrist may contract with a health organization approved by the Texas State Board of Medical Examiners under Chapter 162 to provide podiatry services for the health organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.352. **BOARD APPROVAL OF NAMES UNDER WHICH PODIATRIST MAY PRACTICE.** (a) The board may adopt rules establishing standards or guidelines for the name, including a trade name or assumed name, under which a podiatrist may conduct a practice in this state. In its rules, the board may also establish procedures to review and make determinations approving or disapproving a specific name submitted to the board by one or more podiatrists desiring to practice under a particular name.

(b) The authority granted to the board by this section includes any form of business organization under which a podiatrist conducts a practice, including:

- (1) a sole proprietorship;
- (2) an association;
- (3) a partnership;
- (4) a professional corporation;
- (5) a clinic;

(6) a health maintenance organization; and

(7) a group practice with a practitioner of another branch of the healing art.

(c) A podiatrist may not practice podiatry in this state under any name, including a trade name or assumed name, unless the name is in compliance with the applicable rules adopted or determinations made under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.353. MALPRACTICE CLAIM REPORTS. (a) An insurer who delivers or issues for delivery in this state professional liability insurance coverage to a podiatrist who practices in this state shall furnish to the board the information specified in Subsection (b) relating to:

(1) a notice of claim letter or a complaint filed against the insured in a court, if the notice of claim letter or the complaint seeks the recovery of damages based on the insured's conduct in providing or failing to provide medical or health care services; or

(2) a settlement of a claim or other legal action made by the insurer on behalf of the insured.

(b) The insurer shall furnish the following information not later than the 30th day after the date the insurer receives the notice of claim letter or complaint against the insured:

(1) the name of the insured;

(2) the number of the insured's license to practice podiatry in this state;

(3) the insured's insurance policy number; and

(4) a copy of the notice of claim letter or complaint.

(c) If a podiatrist who practices in this state is not covered by professional liability insurance or is insured by an insurer who is not authorized to write professional liability insurance for podiatrists in this state, the affected podiatrist shall submit information to the board relating to any malpractice action brought against that podiatrist. The podiatrist shall submit the information as required by rules adopted by the board under Subsections (d)-(f).

(d) In consultation with the commissioner of insurance, the board shall adopt rules for reporting the information required under

Subsections (a) and (b) and any additional information required by the board.

(e) The board shall consider other claim reports required under state or federal law in determining:

- (1) any additional information to be reported;
- (2) the form of the report; and
- (3) reasonable reporting intervals.

(f) The board may require additional information, including:

- (1) the date of a judgment, dismissal, or settlement of a malpractice action;
- (2) whether an appeal has been taken and the identity of the party appealing; and
- (3) the amount of any judgment or settlement.

(g) An insurer, an agent or employee of the insurer, a board member, or an employee or representative of the board is not liable or subject to a cause of action for an action taken as required under this section.

(h) A report or information submitted to the board under this section or the fact that a report or information has been submitted may not be offered in evidence or in any manner used in the trial of an action brought against a podiatrist based on the podiatrist's conduct in providing or failing to provide medical or health care services.

(i) The board shall review the information relating to a podiatrist against whom three or more malpractice claims have been reported during any five-year period in the same manner as if a complaint against that podiatrist had been made to the board under Subchapter E.

(j) The commissioner of insurance may impose the sanctions authorized by Chapter 82, Insurance Code, against an insurer subject to this section who fails to report as prescribed by this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.544, eff. Sept. 1, 2003.

#### **SUBCHAPTER I. PRIVILEGE AND CONFIDENTIALITY REQUIREMENTS**

Sec. 202.401. DEFINITIONS. In this subchapter:

(1) "Patient" means a person who consults or is seen by a podiatrist to receive podiatric care.

(2) "Podiatric record" means a record relating to the history, diagnosis, treatment, or prognosis of a patient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.402. SCOPE OF PRIVILEGE. (a) A communication that relates to or is in connection with professional services provided by a podiatrist for a patient is confidential and privileged and may not be disclosed except as provided by this subchapter.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a podiatrist that are created or maintained by a podiatrist are confidential and privileged and may not be disclosed except as provided by this subchapter.

(c) A person who receives information from confidential communications or podiatric records, other than a person listed under Section 202.405 or 202.406 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(d) The prohibitions of this section continue to apply to confidential communications or records concerning a patient without regard to when the patient received the services of a podiatrist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.403. CLAIM OF PRIVILEGE. (a) The privilege of confidentiality under this subchapter may be claimed by the patient or by a podiatrist acting on the patient's behalf.

(b) A podiatrist may claim the privilege of confidentiality only on behalf of the podiatrist's patient. The authority to claim the privilege is presumed in the absence of evidence to the contrary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.404. EXCEPTIONS TO PRIVILEGE AND CONFIDENTIALITY IN CERTAIN PROCEEDINGS. (a) The privilege and confidentiality requirements under this subchapter do not apply in a court or administrative proceeding if:

(1) the proceeding is brought by a patient against a podiatrist, including a malpractice proceeding, a criminal proceeding, or a license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claims or defense of a podiatrist;

(2) a patient or a person authorized to act on the patient's behalf submits written consent to the release of confidential information, as provided by Section 202.406; or

(3) the purpose of the proceeding is to substantiate and collect on a claim for podiatric services provided to a patient.

(b) The privilege and confidentiality requirements under this subchapter do not apply in a civil litigation or administrative proceeding brought by a patient or a person authorized to act on the patient's behalf if the plaintiff is attempting to recover monetary damages for a physical or mental condition, including the patient's death. Information that is otherwise confidential under this subchapter is discoverable in a court or administrative proceeding in this state if the information is relevant to the proceeding and the court or administrative body has jurisdiction over the subject matter under the applicable rules of procedure specified for that matter.

(c) The privilege and confidentiality requirements under this subchapter do not apply in a disciplinary investigation or proceeding against a podiatrist conducted under this chapter.

(d) The privilege and confidentiality requirements under this subchapter do not apply in a criminal investigation of or criminal proceeding against a podiatrist in which the board is participating or assisting by providing certain records obtained from the podiatrist. This subsection does not authorize the release of any confidential information to instigate or substantiate criminal charges against a patient.

(e) The board shall protect the identity of a patient whose podiatric records are examined or provided under Subsection (c) or (d), other than a patient who:

(1) is covered under Subsection (a)(1); or

(2) has submitted written consent to the release of the patient's podiatric records as provided by Section 202.406.

(f) The privilege and confidentiality requirements under this subchapter do not apply in a criminal prosecution in which the patient is a victim, witness, or defendant. Records or communications are not discoverable under this subsection until the

court in which the prosecution is pending makes an in camera determination as to the relevancy of the records or communications or part of the records or communications. The court's determination does not constitute a determination as to the admissibility of the records or communications or part of the records or communications.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.405. OTHER EXCEPTIONS TO PRIVILEGE AND CONFIDENTIALITY REQUIREMENTS. (a) The privilege and confidentiality requirements of this subchapter do not apply to, and a podiatrist may disclose information made confidential under this subchapter to:

(1) a government agency, if:

(A) the disclosure is required or permitted by law;

and

(B) the agency protects the identity of a patient whose podiatric records are examined;

(2) medical or law enforcement personnel, if the podiatrist determines that there is a probability of:

(A) imminent physical injury to the patient, the podiatrist, or another person; or

(B) immediate mental or emotional injury to the patient;

(3) qualified personnel for a management audit, financial audit, program evaluation, or research;

(4) a person who presents the written consent of the patient or a person authorized to act on the patient's behalf for the release of confidential information, as provided by Section 202.406;

(5) an individual, corporation, or governmental entity involved in the payment or collection of fees for services provided by a podiatrist; or

(6) another podiatrist and a person under the direction of the podiatrist who is participating in the diagnosis, evaluation, or treatment of the patient.

(b) A person who receives information under Subsection (a)(3) may not directly or indirectly identify the patient in any report of the research, audit, or evaluation or otherwise disclose the patient's identity.

(c) Records reflecting charges and specific services provided

may be disclosed only when necessary to collect fees for services provided by a podiatrist, professional association, or another entity qualified to provide or arrange for services.

(d) Records created by a state hospital, a state school, or an employee of the state hospital or state school that are otherwise confidential under this subchapter may be disclosed in an official legislative inquiry regarding the state hospital or state school. Information or records that identify a patient or client may not be released for any purpose unless proper consent to the release is given by the patient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.406. CONSENT FOR RELEASE OF CONFIDENTIAL INFORMATION.

(a) Consent for the release of information made confidential under this subchapter must be made in writing and signed by:

- (1) the patient;
- (2) the patient's parent or legal guardian if the patient is a minor;
- (3) a legal guardian if the patient has been adjudicated incompetent to manage the patient's personal affairs;
- (4) an attorney ad litem appointed for the patient, as authorized by:
  - (A) Subtitle B, Title 6, Health and Safety Code;
  - (B) Subtitle C, D, or E, Title 7, Health and Safety Code;
  - (C) Chapter XIII, Texas Probate Code;
  - (D) Chapter 107, Family Code; or
  - (E) another applicable law; or
- (5) the patient's personal representative if the patient is deceased.

(b) The written consent required under this section must specify:

- (1) the information and records covered by the release;
- (2) the reason or purpose for the release; and
- (3) the person to whom the information is to be released.

(c) A patient or other person authorized to consent may withdraw consent to the release of any information. Withdrawal of consent does not affect information disclosed before the written

notice of the withdrawal.

(d) A podiatrist shall furnish copies of podiatric records requested or a summary or narrative of the records under a written consent for release of the information as provided by this section unless the podiatrist determines that access to the information would be harmful to the physical, mental, or emotional health of the patient. The podiatrist may delete confidential information about another person who has not consented to the release.

(e) The podiatrist shall furnish the information within a reasonable period of time. The patient or another person acting on the patient's behalf shall pay a reasonable fee charged by the podiatrist for furnishing the information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.407. DISCLOSURE OF RELEASED INFORMATION. A person who receives information made confidential by this subchapter may disclose the information to another person only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER J. PEER REVIEW**

Sec. 202.451. DEFINITIONS. In this subchapter:

(1) "Podiatric medical society or association" means a membership organization of podiatrists:

(A) incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); or

(B) exempt from the payment of federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 and its subsequent amendments by being listed as an exempt entity under Section 501(c) of that code.

(2) "Podiatric peer review committee" means the podiatric peer review, judicial, or grievance committee of a podiatric medical society or association that is authorized to evaluate the quality of podiatry services or the competence of a podiatrist. A committee includes the members, employees, and agents of the committee.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.452. DISCLOSURE OF COMMUNICATIONS MADE TO PEER REVIEW COMMITTEE. (a) Written or oral communications made to a podiatric peer review committee and the records and proceedings of a peer review committee may be disclosed to:

- (1) another podiatric peer review committee;
- (2) an appropriate state or federal agency;
- (3) a national accreditation body; or
- (4) the board or the state board of registration or licensing of podiatrists in another state.

(b) The disclosure of confidential podiatric peer review committee information to the affected podiatrist that is relevant to the matter under review by the committee does not constitute a waiver of the confidentiality provisions of this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.453. INFORMATION PROVIDED TO AFFECTED PODIATRIST. A podiatric peer review committee that takes action that could result in censure or suspension, restriction, limitation, or revocation of a license by the board or a denial of a podiatrist's membership or privileges in a health care entity shall provide the affected podiatrist a written copy of the committee's recommendation and a copy of the final decision, including a statement of the basis for the decision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.454. CONFIDENTIALITY REQUIREMENTS. (a) Except as otherwise provided by this subchapter, the proceedings and records of a podiatric peer review committee are confidential and all communications made to a podiatric peer review committee are privileged.

(b) If a court makes a preliminary finding that the proceedings, records, or communications of a podiatric peer review committee are relevant to an anticompetitive action or to an action brought under federal civil rights laws, the proceedings, records, or

communications are not considered to be confidential to the extent the proceedings, records, or communications are determined to be relevant to that action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.455. PRIVILEGE OF CONFIDENTIALITY; WAIVER. (a) The records or determinations of a podiatric peer review committee or communications made to a committee are not subject to subpoena or discovery and are not admissible as evidence in a civil or administrative proceeding unless disclosure is required or authorized by law. A committee may in writing waive the privilege of confidentiality.

(b) The evidentiary privilege under this subchapter may be invoked by any person in a civil or administrative proceeding unless the person has secured a waiver of the privilege executed in writing by the chairman, vice chairman, or secretary of the affected podiatric peer review committee.

(c) If a podiatric peer review committee, a person participating in peer review, or an organization named as a defendant in a civil action filed as a result of participating in peer review is permitted to use confidential information in the defendant's defense or in a claim or suit under Section 202.457, the plaintiff in that proceeding also may disclose the records or determinations of a peer review committee or communications made to a peer review committee to rebut the defendant.

(d) A person who seeks access to privileged information must plead and prove waiver of the privilege.

(e) A member, employee, or agent of a podiatric peer review committee who provides access to otherwise privileged communications or records in cooperation with a law enforcement authority in a criminal investigation does not waive a privilege established under this subchapter.

(f) The disclosure of documents or information under a subpoena issued by the board does not constitute a waiver of the confidentiality privilege associated with a podiatric peer review committee proceeding.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.456. IMMUNITY. (a) Except for an action involving fraud, conspiracy, or malice, a podiatric peer review committee is immune from liability and may not be subject to a suit for damages for any act arising from the performance of the committee's duties in:

- (1) investigating a disagreement or complaint;
- (2) holding a hearing to determine facts; or
- (3) making an evaluation, recommendation, decision, or

award involving:

(A) a podiatrist who is a member of the podiatric medical society or association; or

(B) another podiatrist, podiatric patient, or third party who requests the services of the committee.

(b) A person, including a health care entity or podiatric peer review committee, that participates in podiatric peer review activity or furnishes records, information, or assistance to a podiatric peer review committee or to the board is immune from civil liability arising from those acts if the person acted in good faith and without malice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.457. CLAIMS FOR DEFENSE COSTS. A podiatric peer review committee, a person participating in peer review, or another entity named as a defendant in a civil action filed as a result of the defendant's participation in peer review may file a counterclaim in the pending action or may prove a cause of action in a subsequent suit to recover defense costs, including court costs, attorney's fees, and damages incurred as a result of the civil action, if the plaintiff's original suit is determined to be frivolous or to have been brought in bad faith.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER K. DISCIPLINARY ACTIONS AND PROCEDURES**

Sec. 202.501. BOARD DISCIPLINARY POWERS; ADMINISTRATIVE PROCEDURE. (a) The board shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for violating the law regulating the practice of

podiatry or a rule adopted by the board.

(b) If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit the license holder's practice to the areas prescribed by the board; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(c) Proceedings for the suspension or revocation of a license under this section are subject to Chapter 2001, Government Code.

(d) A person whose license to practice podiatry has been revoked or suspended by order of the board may appeal the action to a district court in Travis County. The board's decision may not be enjoined or stayed except on application to the district court after notice to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.5015. CERTAIN CONDUCT CONSTITUTING CHAPTER VIOLATION. A license holder who engages in conduct described by Section 202.253 violates this chapter.

Added by Acts 2001, 77th Leg., ch. 1259, Sec. 2, eff. Sept. 1, 2001.

Sec. 202.502. REVOCATION AND SUSPENSION OF LICENSE FOR DRUG-RELATED FELONY CONVICTION. (a) The board shall suspend a person's license after an administrative hearing conducted in accordance with Chapter 2001, Government Code, in which the board determines that the license holder has been convicted of a felony under Chapter 481 or 483, Health and Safety Code, or Section 485.033, Health and Safety Code.

(b) On the person's final conviction, the board shall revoke the person's license.

(c) The board may not reinstate or reissue a license to a person whose license is suspended or revoked under this section except on an express determination based on substantial evidence contained in an investigative report indicating that the

reinstatement or reissuance of the license is in the best interests of the public and of the person whose license has been suspended or revoked.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.503. PROBATION; HEARING. (a) The board, on majority vote, may probate an order revoking or suspending a podiatrist's license conditioned on the podiatrist conforming to any order or rule the board adopts as the condition of probation. The board, at the time of probation, shall set the term of the probationary period.

(b) At any time while the podiatrist remains on probation, the board may hold a hearing to determine whether the podiatrist has violated the conditions of the probation. On a board determination that the conditions of the probation have been violated, the board may rescind the probation and enforce the board's original action in revoking or suspending the podiatrist's license.

(c) The president of the board shall call the hearing under Subsection (b) to rescind the probation. The president shall order the issuance of notice setting the time and place for the hearing and containing the charges or complaints against the podiatrist. The notice shall be served on the podiatrist or the podiatrist's counsel and on any person complaining about the podiatrist or that person's counsel at least 10 days before the date set for the hearing. If personal service is impossible or cannot be effected, the provisions for service instead of personal service under Chapter 2001, Government Code, apply.

(d) The podiatrist and any person complaining about the podiatrist may appear at the hearing either personally or by counsel, or both, to produce witnesses or evidence, to cross-examine witnesses, and to have subpoenas issued by the board. The board may also issue subpoenas on its own motion. The subpoenas of the board may be enforced through any district court with jurisdiction and venue in the county where the hearing is held.

(e) The board shall determine the charges on their merits. The order revoking or rescinding the probation is not subject to review or appeal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.504. REISSUANCE OF LICENSE. (a) On application, the board may reissue a license to practice podiatry to a person whose license has been revoked or suspended.

(b) A person whose license has been revoked may not apply for a reissued license before the first anniversary of the date of the revocation. The person shall apply for the license in the manner and form required by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.505. REEXAMINATION IF LICENSE SUSPENDED OR REVOKED. The board may refuse to reinstate a license or to issue a new license until a podiatrist has passed the regular license examination if the board suspended or revoked the license for:

(1) failure to satisfy continuing education requirements under Section 202.305; or

(2) nonpayment of the annual license renewal fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.506. APPLICATION TO CERTAIN DRUG OFFENSES. A person convicted of a felony under Chapter 481 or 483, Health and Safety Code, or Section 485.033, Health and Safety Code, is not eligible for:

(1) probation of a license suspension or revocation under Section 202.503; or

(2) reissuance of a license under Section 202.504.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.507. SUBPOENA AUTHORITY. (a) The board may request and, if necessary, compel by subpoena:

(1) the attendance or examination under oath of witnesses; and

(2) the production of books, accounts, records, papers, correspondence, documents, and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) If a person fails to comply with a subpoena issued under

this section, the board, through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in a county in which a hearing conducted by the board may be held. If the court finds that good cause existed for the issuance of the subpoena, the court shall order compliance with the subpoena. Failure to obey the court order is punishable by the court as contempt.

(c) Failure to comply with a subpoena constitutes grounds for disciplinary action against the person, including a facility, by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.508. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must:

(1) provide the complainant and the license holder an opportunity to be heard; and

(2) require the presence of:

(A) a representative of the office of the attorney general or the board's legal counsel to advise the board or the board's employees; and

(B) a public member of the board at an informal settlement conference.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 17, eff. September 1, 2005.

Sec. 202.5085. REFUND. (a) Subject to Subsection (b), the board may order a person licensed under this chapter to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) The amount of a refund ordered as provided in an agreement

resulting from an informal settlement conference may not exceed the amount the consumer paid to the person for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 18, eff. September 1, 2005.

Sec. 202.509. DISCLOSURE OF INVESTIGATIVE INFORMATION. (a) A complaint, report, investigation file, or other investigative information in the possession of or received or gathered by the board or an employee or agent of the board that relates to a license holder, a license application, or a criminal investigation or proceeding is privileged, confidential, and not subject to discovery, subpoena, or any other legal method of compelling release.

(b) Subject to any other privilege or restriction established by law, not later than the 30th day after the date the board receives a written request from a license holder, or the license holder's attorney, who is the subject of a formal complaint, the board shall provide the license holder with access to all information in the board's possession that the board intends to offer into evidence at the contested case hearing on the complaint. The board may provide access to the information to the license holder after the 30th day after the date the board receives a request only on a showing of good cause.

(c) The board is not required under Subsection (b) to provide access to the board's investigative reports or memoranda, release the identity of a complainant who will not testify at the hearing, or release information that is an attorney's work product or protected by the attorney-client privilege or another privilege recognized by the Texas Rules of Civil Procedure or Texas Rules of Evidence. The furnishing of information under Subsection (b) does not constitute a waiver of any privilege or confidentiality provision under law.

(d) Investigative information in the board's possession that relates to a disciplinary action regarding a license holder may be disclosed to:

(1) a licensing agency regulating the practice of podiatry in another state or country in which the license holder is also licensed or has applied for a license; or



(2) a peer review committee reviewing a license holder's application for privileges or the license holder's qualifications with regard to retaining the privileges.

(e) The board shall report to the appropriate law enforcement agency information obtained by the board in the course of an investigation that indicates that a crime may have been committed. The board shall cooperate and assist a law enforcement agency conducting a criminal investigation of a license holder by providing relevant information to the agency. Information provided to a law enforcement agency by the board is confidential and may not be disclosed except as necessary to conduct the investigation.

(f) The board shall provide information to a health care entity on the written request of the entity concerning:

(1) a complaint filed against a license holder that was resolved after an investigation by the board or resolved by an agreed settlement; and

(2) the basis for and status of an active investigation concerning a license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.510. TEMPORARY SUSPENSION OF LICENSE. (a) The president of the board shall appoint a disciplinary panel consisting of three board members to determine whether a person's license to practice podiatry should be temporarily suspended.

(b) If the disciplinary panel determines from the evidence presented to the panel that a person licensed to practice podiatry would, by the person's continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the license of that person.

(c) A license may be suspended by a disciplinary panel under this section without notice or hearing if:

(1) the board immediately provides notice of the suspension to the license holder; and

(2) a hearing on the temporary suspension before a disciplinary panel of the board is scheduled for the earliest possible date after the 10th day after the notice of hearing.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if

immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

(e) After the hearing before the disciplinary panel described by Subsection (c), if the disciplinary panel affirms the temporary suspension of the license holder's license, the board shall schedule an informal compliance meeting that meets the requirements of Section 2001.054(c), Government Code, and Section 202.508 of this code to be held as soon as practicable, unless the license holder waives the informal meeting or an informal meeting has already been held with regard to the issues that are the basis for the temporary suspension.

(f) If the license holder is unable to show compliance at the informal meeting described by Subsection (e) regarding the issues that are the basis for the temporary suspension, a board representative shall initiate a disciplinary procedure under Section 202.501 as soon as practicable.

(g) If, after the hearing described by Subsection (c), the disciplinary panel does not temporarily suspend the license holder's license, the facts that were the basis for the temporary suspension may not be the sole basis of another proceeding to temporarily suspend the license holder's license. The board may use those same facts in a subsequent investigation to obtain new information that may be the basis for the temporary suspension of the license holder's license. For purposes of this subsection, facts that are the basis for the temporary suspension of a license holder's license include facts presented to the disciplinary panel and facts presented by the board or a representative of the board at the time evidence was presented to the disciplinary panel.

Added by Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 18, eff. September 1, 2005.

#### **SUBCHAPTER L. ADMINISTRATIVE PENALTY**

Sec. 202.551. IMPOSITION OF PENALTY. The board may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.552. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited acts; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts made to correct the violation; and

(6) any other matter that justice may require.

(c) The board by rule shall develop a standardized penalty schedule based on the criteria listed in Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 19, eff. September 1, 2005.

Sec. 202.553. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) The executive director, on determining that a violation has occurred, may issue to the board a report that states the facts on which the determination is based and the executive director's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the report to the person. The notice may be given by certified mail. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice under Section 202.553, the person may:

- (1) accept in writing the executive director's determination and recommended administrative penalty; or
- (2) make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the executive director's determination and recommended penalty, the board by order shall approve the determination and impose the recommended penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.555. HEARING. (a) If the person requests a hearing or fails to respond timely to the notice, the executive director shall:

- (1) set a hearing; and
- (2) give notice of the hearing to the person.

(b) A hearing set under Subsection (a) shall be held by an administrative law judge of the State Office of Administrative Hearings.

(c) The administrative law judge shall:

- (1) make findings of fact and conclusions of law; and
- (2) promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.556. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may determine that:

- (1) a violation has occurred and impose an administrative penalty; or
- (2) a violation did not occur.

(b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the right

of the person to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.557. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order is final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Not later than the 30th day after the date the order is final, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.558. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.559. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that an administrative penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.560. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.561. ADMINISTRATIVE PROCEDURE. A proceeding under

this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER M. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 202.601. INJUNCTION. (a) In addition to any other action, proceeding, or remedy authorized by law, the board may institute an action in its own name to enjoin the violation of a law regulating the practice of podiatry or a rule adopted under this chapter. The court may grant a temporary injunction in the action.

(b) The attorney general or a district or county attorney shall represent the board in an action under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.6015. CEASE AND DESIST ORDER. (a) If it appears to the board that a person who is not licensed under this chapter is violating or has violated this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of podiatry, the board after providing to the person notice and the opportunity for a hearing may issue a cease and desist order prohibiting the conduct described in the notice.

(b) If the person does not request a hearing before the 22nd day after the date of receiving notice under Subsection (a), the board may:

- (1) issue a cease and desist order; and
- (2) refer the violation to the attorney general for further action.

(c) If the person requests a hearing before the 22nd day after the date of receiving notice under Subsection (a), the board shall hold the hearing not later than the 30th day after the date the board receives the request for the hearing.

(d) A hearing under this section is subject to Chapter 2001, Government Code.

(e) Notwithstanding Section 202.551, the board may impose an administrative penalty under Subchapter L against a person who violates an order issued under this section.

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

Added by Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 20, eff. September 1, 2005.

Sec. 202.602. MONITORING AND INSPECTION OF LICENSE HOLDER. (a) The board by rule shall develop a system to monitor a podiatrist's compliance with this chapter. The system must include:

- (1) procedures for determining whether a podiatrist is in compliance with an order issued by the board; and
- (2) a method of identifying and monitoring each podiatrist who represents a risk to the public.

(b) The board, during reasonable business hours, may enter the business premises of a person regulated by the board without notice to:

- (1) investigate a complaint filed with the board; or
- (2) determine compliance with an order of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 21, eff. September 1, 2005.

Sec. 202.603. PROSECUTION OF VIOLATION. The board shall take action to ensure the prosecution of each person who violates this chapter and may incur reasonably necessary related expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.604. CIVIL PENALTY: USE OF TRADE NAME; INJUNCTION.

(a) A person who violates Section 202.352 or a rule adopted or a determination made by the board under that section is subject to a civil penalty of not less than \$50 or more than \$500 for each day of violation.

(b) If it appears that a person has violated or is violating Section 202.352 or a rule adopted or determination made by the board under that section, the board may institute a civil action in district court for:

- (1) injunctive relief to restrain the person from continuing the violation;



(2) the assessment and recovery of a civil penalty under Subsection (a); or

(3) both injunctive relief and the civil penalty.

(c) At the request of the board, the attorney general shall institute and conduct the action in the name of the state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.605. GENERAL CRIMINAL PENALTY: PRACTICING WITHOUT LICENSE. (a) A person commits an offense if the person professes to be a podiatrist or practices or assumes the duties incident to the practice of podiatry without holding a license to practice podiatry.

(b) An offense under this section is punishable by:

(1) a fine of not less than \$50 or more than \$500;

(2) confinement in the county jail for not less than 30 days or more than six months; or

(3) both the fine and confinement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.606. CRIMINAL PENALTY: AMPUTATION OF FOOT. (a) A podiatrist commits an offense if the podiatrist amputates a human foot.

(b) An offense under this section is punishable by:

(1) a fine of not less than \$100 or more than \$500;

(2) confinement in the county jail for not less than 30 days or more than six months; or

(3) both the fine and confinement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## CHAPTER 203. MIDWIVES

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 203.001. SHORT TITLE. This chapter may be cited as the Texas Midwifery Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2005, 79th Leg., Ch. 1240, Sec. 56(1), eff. September 1, 2005.

(2) "Certified nurse-midwife" means a person who is:

(A) a registered nurse under Chapter 301;

(B) recognized as an advanced nurse practitioner by the Texas Board of Nursing; and

(C) certified by the American College of Nurse-Midwives.

(3) "Commissioner" means the commissioner of state health services.

(4) "Department" means the Department of State Health Services.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Local health department" means a department of health created by the governing body of a municipality or a county under Section 121.031, Health and Safety Code.

(6) "Midwife" means a person who practices midwifery and has met the licensing requirements established by this chapter and midwifery board rules.

(7) "Midwifery" means the practice of:

(A) providing the necessary supervision, care, and advice to a woman during normal pregnancy, labor, and the postpartum period;

(B) conducting a normal delivery of a child; and

(C) providing normal newborn care.

(8) "Newborn" means an infant from birth through the first six weeks of life.

(9) "Normal" means, as applied to pregnancy, labor, delivery, the postpartum period, and the newborn period, and as defined by midwifery board rule, circumstances under which a midwife has determined that a client is at a low risk of developing complications.

(10) "Postpartum period" means the first six weeks after a woman has given birth.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. [1535](#)), Sec. 1, eff.

September 1, 2005.

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 56(1), eff.

September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 35, eff.

September 1, 2007.

Sec. 203.003. FINDINGS. The legislature finds:

(1) a parent has the responsibility and right to give birth where and with whom the parent chooses;

(2) childbirth is a natural process of the human body and not a disease; and

(3) midwifery has been practiced in this state since the days of the Republic.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.004. APPLICABILITY. This chapter does not apply to:

(1) a certified nurse-midwife, a physician, or another health care professional licensed by the state and operating within the scope of the person's license;

(2) a natural childbirth trainer; or

(3) a person other than a midwife who assists childbirth in an emergency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.005. EFFECT ON LOCAL ORDINANCES. This chapter does not prohibit a municipality from adopting a local ordinance or rule to regulate the practice of midwifery in the municipality if the ordinance or rule is compatible with and at least as strict as this chapter and midwifery board rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 2, eff.

September 1, 2005.

Sec. 203.006. APPLICATION OF SUNSET ACT. The midwifery board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the midwifery board is abolished and this chapter expires September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 3, eff. September 1, 2005.

#### **SUBCHAPTER B. MIDWIFERY BOARD**

Sec. 203.051. MIDWIFERY BOARD. The commissioner shall appoint a midwifery board that reports directly to the commissioner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 4, eff. September 1, 2005.

Sec. 203.052. APPOINTMENT OF MIDWIFERY BOARD. (a) The midwifery board consists of nine members appointed as follows:

(1) five licensed midwife members each of whom has at least three years' experience in the practice of midwifery;

(2) one physician member who is certified by a national professional organization of physicians that certifies obstetricians and gynecologists;

(3) one physician member who is certified by a national professional organization of physicians that certifies family practitioners or pediatricians; and

(4) two members who represent the public and who are not practicing or trained in a health care profession, one of whom is a parent with at least one child born with the assistance of a midwife.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 5, eff.

September 1, 2005.

Sec. 203.053. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the midwifery board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of midwifery;

(2) is employed by or participates in the management of a business entity or other organization regulated by the midwifery board or receiving funds from the midwifery board;

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.054. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a midwifery board member, an employee of the midwifery board, or a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) A person may not be a midwifery board member or act as the general counsel to the midwifery board or the department if the

person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the midwifery board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 6, eff. September 1, 2005.

Sec. 203.055. TERMS. Members of the midwifery board serve for staggered terms of six years. The terms of three members expire on January 31 of each odd-numbered year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.056. OFFICERS. The commissioner shall designate a public member of the midwifery board as the presiding officer of the midwifery board to serve in that capacity at the pleasure of the commissioner. The midwifery board shall elect one of the other members of the midwifery board as vice presiding officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 7, eff. September 1, 2005.

Sec. 203.057. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the midwifery board that a member:

- (1) does not have at the time of taking office the qualifications required by Section 203.052;
- (2) does not maintain during service on the midwifery board the qualifications required by Section 203.052;
- (3) is ineligible for membership under Section 203.053 or 203.054;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly

scheduled midwifery board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the midwifery board.

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

(c) If the program coordinator has knowledge that a potential ground for removal exists, the program coordinator shall notify the presiding officer of the midwifery board of the potential ground. The presiding officer shall then notify the commissioner that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the program coordinator shall notify the next highest ranking member of the midwifery board, who shall then notify the commissioner that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 8, eff. September 1, 2005.

Sec. 203.058. REIMBURSEMENT. A midwifery board member may receive reimbursement for travel expenses as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 9, eff. September 1, 2005.

Sec. 203.059. MEETINGS. (a) The midwifery board shall meet at least semiannually.

(b) The midwifery board shall meet at other times at the call of the midwifery board or the commissioner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 10, eff. September 1, 2005.

Sec. 203.060. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the midwifery board may not vote, deliberate, or be counted as a member in attendance at a meeting of the midwifery board until the person completes a training program that complies with this section.

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

(1) this chapter and the programs, functions, rules, and budget of the midwifery board;

(2) the results of the most recent formal audit of the midwifery board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the midwifery board or the Texas Ethics Commission.

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

Added by Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 11, eff. September 1, 2005.

#### **SUBCHAPTER C. PROGRAM COORDINATOR AND PERSONNEL**

Sec. 203.101. PROGRAM COORDINATOR. The department shall, after consultation with the midwifery board, employ a coordinator for the midwifery program and the staff necessary to administer the program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 12, eff. September 1, 2005.

Sec. 203.102. DUTIES OF PROGRAM COORDINATOR. The program coordinator shall supervise the staff in the performance of



administrative duties, including:

- (1) keeping the minutes of midwifery board meetings; and
- (2) maintaining:
  - (A) records about basic midwifery education courses and continuing midwifery education courses;
  - (B) a roster of midwives licensed under Section 203.251; and
  - (C) a record of each person who is licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 13, eff. September 1, 2005.

Sec. 203.103. DIVISION OF RESPONSIBILITIES. The midwifery board shall develop and implement policies that clearly define the respective responsibilities of the midwifery board and the staff of the midwifery board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.104. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

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

- (1) personnel policies, including policies related to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with Chapter 21, Labor Code;

- (2) a comprehensive analysis of the midwifery board workforce that meets federal and state guidelines;

- (3) procedures by which a determination can be made of significant underuse in the midwifery board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of another biennial report made to the legislature.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER D. POWERS AND DUTIES OF MIDWIFERY BOARD, EXECUTIVE COMMISSIONER, AND DEPARTMENT**

Sec. 203.151. RULEMAKING AUTHORITY OF MIDWIFERY BOARD. (a) Subject to the approval of the executive commissioner, the midwifery board shall:

(1) adopt substantive and procedural rules necessary for the licensing of midwives;

(2) adopt rules prescribing the standards for the practice of midwifery in this state, including standards for:

(A) the delineation of findings that preclude a woman or newborn from being classified as having a normal pregnancy, labor, delivery, postpartum period, or newborn period; and

(B) administration of oxygen by a midwife to a mother or newborn;

(3) adopt rules prescribing:

(A) the type of courses and number of hours required to meet the basic midwifery education course and continuing midwifery education course requirements; and

(B) minimum standards for the approval and revocation of approval of:

(i) basic midwifery education courses and continuing midwifery education courses; and

(ii) instructors or facilities used in basic midwifery education courses and continuing midwifery education

courses;

(4) adopt rules prescribing a procedure for reporting and processing complaints relating to the practice of midwifery in this state;

(5) adopt and implement substantive and procedural rules as necessary to discipline midwives determined to be in violation of this chapter or otherwise a threat to the public health and safety;

(6) adopt rules as necessary to establish eligibility for reciprocity for initial licensing under this chapter; and

(7) adopt other rules necessary to implement a duty imposed on the executive commissioner or the department under this chapter.

(b) The rules adopted under Subsection (a)(5) must include rules relating to:

(1) warnings provided to midwives for a violation of this chapter or rules adopted under this chapter;

(2) agreed orders for additional education by midwives;

(3) recommendations or requirements for medical or psychological treatment, including treatment related to substance abuse by a midwife; and

(4) restrictions on the practice of a midwife, including practice limitations and the suspension and revocation of a license, and placement of a midwife on probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. [1535](#)), Sec. 15, eff. September 1, 2005.

Sec. 203.1515. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.

(a) Subject to the approval of the executive commissioner, the midwifery board shall adopt rules necessary to comply with Chapter 53.

(b) In its proposed rules under this section, the midwifery board shall list the specific offenses for which a conviction would constitute grounds for the midwifery board to take action under Section 53.021.

Added by Acts 2005, 79th Leg., Ch. 1240 (H.B. [1535](#)), Sec. 16, eff. September 1, 2005.

Sec. 203.152. FEES. (a) Subject to the approval of the executive commissioner, the midwifery board by rule shall establish reasonable and necessary fees that, in the aggregate, produce sufficient revenue to cover the costs of administering this chapter.

(b) The midwifery board may not set a fee for an amount less than the amount of that fee on September 1, 1993.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 17, eff. September 1, 2005.

Sec. 203.153. MANUALS. (a) Subject to the approval of the department, the midwifery board shall issue basic information manuals for the practice of midwifery. The midwifery board shall approve the basic information manuals and instructor manuals that may be used in basic midwifery education courses.

(b) The department shall provide the manuals to each licensed midwife and to any other person on request.

(c) A basic information manual must include information about:

(1) the knowledge necessary to practice as a midwife;

(2) the basic education and continuing education requirements for a midwife;

(3) the legal requirements and procedures relating to midwifery;

(4) the standards of practice as a midwife; and

(5) other information or procedures required by the midwifery board or the department.

(d) The department may charge a fee for each manual not to exceed \$10. The department shall make the manual available in English and Spanish.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 18, eff. September 1, 2005.

Sec. 203.154. REPORTS ON MIDWIFERY. (a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(138), eff. June 17, 2011.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(138), eff. June 17, 2011.

(c) The midwifery board shall prepare and publish reports on the practice of midwifery in this state, including statistical reporting of infant fetal morbidity and mortality.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 19, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(138), eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 14.001, eff. September 1, 2013.

Sec. 203.155. COMPLAINT PROCEDURE AND INVESTIGATION. (a) The midwifery board shall adopt rules concerning the investigation of a complaint filed with the midwifery board.

(b) The rules adopted under Subsection (a) must:

- (1) distinguish among categories of complaints;
- (2) ensure that a person who files a complaint has an opportunity to explain the allegations made in the complaint; and
- (3) provide for the release of any relevant midwifery or medical record to the midwifery board, without the necessity of consent by the midwife's client, as necessary to conduct an investigation of a complaint.

(c) The midwifery board by rule shall:

- (1) adopt a form to standardize information concerning complaints made to the midwifery board; and
- (2) prescribe information to be provided to a person when the person files a complaint with the midwifery board.

(d) The midwifery board shall provide reasonable assistance to a person who wishes to file a complaint with the midwifery board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.156. DUTIES OF MIDWIFERY BOARD AND DEPARTMENT. (a) Repealed by Acts 2005, 79th Leg., Ch. 1240, Sec. 56(2), eff. September 1, 2005.

(b) The department, with the recommendation of the midwifery board, shall:

(1) implement rules governing:

(A) basic midwifery education courses and continuing midwifery education courses; and

(B) approval of instructors or facilities used in offering basic midwifery education courses and continuing midwifery education courses;

(2) prepare and distribute basic midwifery information and instructor manuals; and

(3) enter into agreements necessary to carry out this chapter.

(c) The department shall:

(1) establish a program for licensure as a midwife as prescribed by midwifery board rules;

(2) pay the salaries of the program coordinator and any additional staff the department determines to be necessary; and

(3) provide office space and supplies for the program coordinator and other staff.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 20, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 21, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 56(2), eff. September 1, 2005.

Sec. 203.157. ROSTER; NOTICE TO COUNTY OFFICIALS. (a) The department shall maintain a roster of each person licensed as a midwife in this state.

(b) The roster shall contain for each person the information required on the licensure form under this chapter and other information the department determines necessary to accurately identify each licensed midwife. The information is public information as defined by Chapter 552, Government Code.

(c) The department shall provide each county clerk and each local registrar of births in a county with the name of each midwife

practicing in the county.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 22, eff. September 1, 2005.

Sec. 203.158. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The midwifery board may not propose rules restricting advertising or competitive bidding by a licensed midwife except to prohibit false, misleading, or deceptive practices.

(b) The midwifery board may not include in its proposed rules to prohibit false, misleading, or deceptive practices by a licensed midwife a rule that:

(1) restricts the licensed midwife's use of any advertising medium;

(2) restricts the licensed midwife's personal appearance or use of the licensed midwife's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the licensed midwife; or

(4) restricts the licensed midwife's advertisement under a trade name.

Added by Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 23, eff. September 1, 2005.

Sec. 203.159. BOARD COMMITTEES. (a) The midwifery board may appoint committees to assist the midwifery board with its functions under this chapter.

(b) Only a member of the midwifery board may serve as a member of a midwifery board committee.

Added by Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 23, eff. September 1, 2005.

Sec. 203.160. USE OF TECHNOLOGY. Subject to the approval of the executive commissioner, the midwifery board shall implement a policy requiring the midwifery board to use appropriate technological

solutions to improve the midwifery board's ability to perform its functions. The policy must ensure that the public is able to interact with the midwifery board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 23, eff. September 1, 2005.

Sec. 203.161. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Subject to the approval of the executive commissioner, the midwifery board shall develop and implement a policy to encourage the use of:

- (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of midwifery board rules; and
- (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the midwifery board's jurisdiction.

(b) The midwifery board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The department shall designate a trained person to:

- (1) coordinate the implementation of the policy adopted under Subsection (a);
- (2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and
- (3) collect data concerning the effectiveness of those procedures, as implemented by the midwifery board.

Added by Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 23, eff. September 1, 2005.

#### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 203.201. PUBLIC INTEREST INFORMATION. (a) The midwifery board shall prepare information of public interest describing the functions of the midwifery board and the procedures by which complaints are filed with and resolved by the midwifery board.

(b) The midwifery board shall make the information available to



the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.202. COMPLAINTS. (a) The midwifery board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the midwifery board for the purpose of directing complaints to the midwifery board. The midwifery board may provide for that notice:

(1) on each registration form, application, or disclosure and informed consent form of a person regulated by the midwifery board;

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

(3) in a bill for service provided by a person regulated by the midwifery board.

(b) The midwifery board shall list with its regular telephone number the toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

(c) The midwifery board shall maintain a system to promptly and efficiently act on complaints filed with the midwifery board. The midwifery board shall maintain:

(1) information about the parties to the complaint and the subject matter of the complaint;

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

(3) information about the disposition of the complaint.

(d) The midwifery board shall make information available describing its procedures for complaint investigation and resolution.

(e) The midwifery board shall periodically notify the parties of the status of the complaint until final disposition of the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. [1535](#)), Sec. 24, eff. September 1, 2005.

Sec. 203.2021. COMPLAINT COMMITTEE. The midwifery board shall appoint at least one public member of the midwifery board to any midwifery board committee established to review a complaint filed with the midwifery board or review an enforcement action against a licensed midwife related to a complaint filed with the midwifery board.

Added by Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 25, eff. September 1, 2005.

Sec. 203.203. PUBLIC PARTICIPATION. (a) The midwifery board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the midwifery board and to speak on any issue under the midwifery board's jurisdiction.

(b) The midwifery board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the midwifery board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. LICENSURE REQUIREMENTS**

Sec. 203.251. LICENSE REQUIRED. (a) A person may not practice midwifery unless the person holds a license issued under this chapter.

(b) The department shall provide a license to each person who fulfills the licensing requirements.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 27, eff. September 1, 2005.

Sec. 203.252. QUALIFICATIONS FOR INITIAL LICENSE. (a) A person qualifies to become a licensed midwife under this chapter if the person provides the program coordinator with documentary evidence that the person has:

(1) satisfied each requirement for basic midwifery education; and

(2) passed the comprehensive midwifery examination and jurisprudence examination required by this chapter.

(b) The initial license must be issued before the midwife begins to practice midwifery and may be issued at any time during the year.

(c) The term of the initial license begins on the date the requirements are met and extends through December 31 of the year in which the initial license is issued.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 28, eff. September 1, 2005.

Sec. 203.253. LICENSE APPLICATION. A person who practices midwifery must apply to the department to be licensed as a midwife. The application must:

- (1) be accompanied by a nonrefundable application fee; and
- (2) include information required by midwifery board rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 29, eff. September 1, 2005.

Sec. 203.254. BASIC MIDWIFERY EDUCATION. Subject to the approval of the executive commissioner, the midwifery board shall establish requirements for basic midwifery education.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 30, eff. September 1, 2005.

Sec. 203.255. EXAMINATION. (a) The midwifery board, with the approval of the executive commissioner, shall:

- (1) adopt a comprehensive midwifery examination for persons regulated under this chapter that must be passed before the initial

license may be issued; and

(2) establish eligibility requirements for persons taking a comprehensive midwifery examination.

(b) The midwifery board shall have an independent testing professional validate any written portion of the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 31, eff. September 1, 2005.

Sec. 203.2555. JURISPRUDENCE EXAMINATION. (a) The midwifery board shall develop and administer at least twice each calendar year a jurisprudence examination to determine an applicant's knowledge of this chapter, midwifery board rules, and any other applicable laws of this state affecting the applicant's midwifery practice.

(b) Subject to the approval of the executive commissioner, the midwifery board shall adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results.

Added by Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 32, eff. September 1, 2005.

Sec. 203.2556. EXAMINATION RESULTS. (a) The midwifery board shall notify each examinee of the examination results not later than the 30th day after the date on which the examination is administered. If an examination is graded or reviewed by a national testing service, the midwifery board shall notify each examinee of the examination results not later than the 14th day after the date the midwifery board receives the results from the testing service.

(b) If the notice of the examination results graded or reviewed by a national testing service will be delayed for more than 90 days after the examination date, the midwifery board shall notify the examinee of the reason for the delay before the 90th day.

(c) The midwifery board may require a testing service to notify an examinee of the examination results.

(d) If requested in writing by a person who fails an

examination administered under this chapter, the midwifery board shall furnish the person with an analysis of the person's performance on the examination.

Added by Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 32, eff. September 1, 2005.

Sec. 203.256. TRAINING IN NEWBORN SCREENING AND BASIC LIFE SUPPORT CARDIOPULMONARY RESUSCITATION. A person who practices midwifery in this state must provide the program coordinator with satisfactory evidence that the person:

(1) is trained to perform the newborn screening tests under Section 203.354 or has made arrangements for the performance of those tests; and

(2) holds:

(A) a current certificate issued by the American Heart Association in basic life support cardiopulmonary resuscitation; or

(B) another form of certification acceptable to the department that demonstrates proficiency in basic life support cardiopulmonary resuscitation for adults and children.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. LICENSE RENEWAL**

Sec. 203.301. APPLICATION FOR LICENSE RENEWAL. An applicant for renewal of a license under this chapter must apply biennially as provided in Section 203.253.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 34, eff. September 1, 2005.

Sec. 203.302. PROCEDURE FOR RENEWAL. (a) A licensed midwife is responsible for renewing a license before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person may renew an unexpired license by paying the

required renewal fee to the midwifery board before the expiration date of the license.

(c) A person whose license has been expired for 90 days or less may renew the license by paying to the midwifery board a fee that is equal to 1-1/4 times the amount of the renewal fee.

(d) If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the midwifery board a fee that is equal to 1-1/2 times the amount of the renewal fee.

(e) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an initial license.

(f) Not later than the 30th day before the date a person's license is scheduled to expire, the midwifery board shall send written notice of the impending expiration to the person at the person's last known address according to the records of the midwifery board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 35, eff. September 1, 2005.

Sec. 203.303. STAGGERED RENEWAL DATES. (a) The midwifery board by rule may adopt a system under which licenses expire on various dates during the year.

(b) For the year in which the license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each licensed midwife pays only that portion of the license fee that is allocable to the number of months during which the license is valid.

(c) On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 36, eff. September 1, 2005.

Sec. 203.304. CONTINUING MIDWIFERY EDUCATION. (a) Subject to the approval of the executive commissioner, the midwifery board shall establish requirements for continuing midwifery education, including a minimum number of hours of continuing education required to renew a license under this chapter.

(b) On renewal of the license, a midwife must provide the program coordinator with evidence, acceptable under midwifery board rules, of completion of continuing midwifery education as prescribed by the midwifery board.

(c) The midwifery board by rule shall develop a process to evaluate and approve continuing education courses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 37, eff. September 1, 2005.

Sec. 203.305. REQUIRED ATTENDANCE AT SPECIFIC MIDWIFERY EDUCATION COURSES. The midwifery board may assess the continuing education needs of licensed midwives and may require licensed midwives to attend continuing midwifery education courses specified by the midwifery board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 38, eff. September 1, 2005.

Sec. 203.306. GROUNDS FOR REFUSING RENEWAL. The midwifery board may refuse to renew the license of a person who fails to pay an administrative penalty imposed under Subchapter J, unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 39, eff. September 1, 2005.

#### **SUBCHAPTER H. PRACTICE BY MIDWIFE**

## Sec. 203.351. INFORMED CHOICE AND DISCLOSURE REQUIREMENTS. (a)

A midwife shall disclose in oral and written form to a prospective client the limitations of the skills and practices of a midwife.

(b) The midwifery board shall prescribe the form of the informed choice and disclosure statement required to be used by a midwife under this chapter. The form must include:

- (1) statistics of the midwife's experience as a midwife;
- (2) the date the midwife's license expires;
- (3) the date the midwife's cardiopulmonary resuscitation certification expires;
- (4) the midwife's compliance with continuing education requirements;
- (5) a description of medical backup arrangements; and
- (6) the legal responsibilities of a midwife, including statements concerning newborn blood screening, ophthalmia neonatorum prevention, and prohibited acts under Sections 203.401-203.403.

(c) The informed choice statement must include a statement that state law requires a newborn child to be tested for certain heritable diseases and hypothyroidism. The midwife shall disclose to a client whether the midwife is approved to collect blood specimens to be used to perform the tests. If the midwife is not approved to collect the blood specimens, the disclosure must inform the client of the midwife's duty to refer the client to an appropriate health care facility or physician for the collection of the specimens.

(d) The disclosure of legal requirements required by this section may not exceed 500 words and must be in English and Spanish.

(e) A midwife shall disclose to a prospective or actual client the procedure for reporting complaints to the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 40, eff. September 1, 2005.

## Sec. 203.352. PRENATAL AND CERTAIN MEDICAL CARE ENCOURAGED. A

midwife shall encourage a client to seek:

- (1) prenatal care; and
- (2) medical care through consultation or referral, as specified by midwifery board rules, if the midwife determines that



the pregnancy, labor, delivery, postpartum period, or newborn period of a woman or newborn may not be classified as normal for purposes of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.353. PREVENTION OF OPHTHALMIA NEONATORUM. Unless the newborn child is immediately transferred to a hospital because of an emergency, a midwife who attends the birth of the child shall comply with Section 81.091, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.354. NEWBORN SCREENING. (a) Each midwife who attends the birth of a child shall cause the newborn screening tests to be performed on blood specimens taken from the child as required by Chapter 33, Health and Safety Code.

(b) A midwife may collect blood specimens for the newborn screening tests if the midwife has been approved by the department to collect the specimen. Subject to the approval of the executive commissioner, the midwifery board shall adopt rules establishing the standards for approval. The standards must recognize completion of a course of instruction that includes the blood specimen collection procedure or verification by appropriately trained health care providers that the midwife has been instructed in the blood collection procedures.

(c) A midwife who is not approved to collect blood specimens for newborn screening tests shall refer a client and her newborn to an appropriate health care facility or physician for the collection of the blood specimen and submission of the specimen to the department.

(d) If the midwife has been approved by the department to collect blood specimens under this section, the collection by the midwife of blood specimens for the required newborn screening tests does not constitute the practice of medicine as defined by Subtitle B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 41, eff. September 1, 2005.

Sec. 203.355. SUPPORT SERVICES. (a) In this section:

(1) "Clinical services" include prenatal, postpartum, child health, and family planning services.

(2) "Local health unit" means a division of a municipal or county government that provides limited public health services under Section 121.004, Health and Safety Code.

(3) "Public health district" means a district created under Subchapter E, Chapter 121, Health and Safety Code.

(b) The department and a local health department, a public health district, or a local health unit shall provide clinical and laboratory support services to a pregnant woman or a newborn who is a client of a midwife if the midwife is required to provide the services under this chapter.

(c) The laboratory services must include the performance of the standard serological tests for syphilis and the collection of blood specimens for newborn screening tests for phenylketonuria, hypothyroidism, and other heritable diseases as required by law.

(d) The provider may charge a reasonable fee for the services. A person may not be denied the services because of inability to pay.

(e) If available, appropriately trained personnel from local health departments, public health districts, and local health units shall instruct licensed midwives in the approved techniques for collecting blood specimens to be used to perform newborn screening tests.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 42, eff. September 1, 2005.

Sec. 203.356. IMMUNITY. (a) A physician, a registered nurse, or other person who, on the order of a physician, instructs a midwife in the approved techniques for collecting blood specimens to be used for newborn screening tests is immune from liability arising out of the failure or refusal of the midwife to:

- (1) collect the specimens in the approved manner; or
- (2) submit the specimens to the department in a timely

manner.

(b) A physician who issues an order directing or instructing a midwife is immune from liability arising out of the failure or refusal of the midwife to comply with the order if, before the issuance of the order, the midwife provided the physician with evidence satisfactory to the department of compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 43, eff. September 1, 2005.

Sec. 203.357. ADDITIONAL INFORMATION REQUIRED. (a) The midwifery board may require information in addition to that required by Section 203.253 if it determines the additional information is necessary and appropriate to ascertain the nature and extent of midwifery in this state. The midwifery board may not require information regarding any act that is prohibited under this chapter.

(b) With the approval of the midwifery board, the department shall prescribe forms for the additional information and shall distribute those forms directly to each midwife. Each midwife must complete and return the forms to the department as requested.

(c) Information received under this section may not be made public in a manner that discloses the identity of any person to whom the information relates. The information is not public information as defined by Chapter 552, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER I. PROHIBITED PRACTICES AND GROUNDS FOR DISCIPLINARY ACTION**

Sec. 203.401. PROHIBITED PRACTICES. A midwife may not:

- (1) provide midwifery care in violation of midwifery board rule, except in an emergency that poses an immediate threat to the life of a woman or newborn;
- (2) administer a prescription drug to a client other than:

(A) a drug administered under the supervision of a licensed physician in accordance with state law;

(B) prophylaxis approved by the department to prevent ophthalmia neonatorum; or

(C) oxygen administered in accordance with midwifery board rule;

(3) use forceps or a surgical instrument for a procedure other than cutting the umbilical cord or providing emergency first aid during delivery;

(4) remove placenta by invasive techniques;

(5) use a mechanical device or medicine to advance or retard labor or delivery; or

(6) make on a birth certificate a false statement or false record in violation of Section 195.003, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 44, eff. September 1, 2005.

Sec. 203.402. PROHIBITED REPRESENTATION. A midwife may not:

(1) except as provided by Section 203.403, use in connection with the midwife's name a title, abbreviation, or designation tending to imply that the midwife is a "registered" or "certified" midwife as opposed to one who is licensed under this chapter;

(2) advertise or represent that the midwife is a physician or a graduate of a medical school unless the midwife is licensed to practice medicine by the Texas Medical Board;

(3) use advertising or an identification statement that is false, misleading, or deceptive; or

(4) except as authorized by rules adopted by the Texas Board of Nursing, use in combination with the term "midwife" the term "nurse" or another title, initial, or designation that implies that the midwife is licensed as a registered nurse or vocational nurse.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.015, eff. Feb. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 45, eff.

September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 36, eff. September 1, 2007.

Sec. 203.403. PROHIBITED USE OF TITLE. (a) A midwife certified by the North American Registry of Midwives who uses "certified" as part of the midwife's title in an identification statement or advertisement must include in the statement or advertisement a statement that the midwife is certified by the North American Registry of Midwives.

(b) A midwife may not use an identification statement or advertisement that would lead a reasonable person to believe that the midwife is certified by a governmental entity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.404. GROUNDS FOR DISCIPLINARY ACTION. (a) The midwifery board may discipline a licensed midwife, refuse to renew a midwife's license, or refuse to issue a license to an applicant if the person:

- (1) violates this chapter or a rule adopted under this chapter;
- (2) submits false or misleading information to the midwifery board or the department;
- (3) is convicted of a misdemeanor involving moral turpitude or a felony;
- (4) uses alcohol or drugs intemperately;
- (5) engages in unprofessional or dishonorable conduct that may reasonably be determined to deceive or defraud the public;
- (6) is unable to practice midwifery with reasonable skill and safety because of illness, disability, or psychological impairment;
- (7) is determined by a court judgment to be mentally impaired;
- (8) submits a birth or death certificate known by the person to be false or fraudulent or engages in another act that violates Title 3, Health and Safety Code, or a rule adopted under that title;

(9) violates Chapter 244, Health and Safety Code, or a rule adopted under that chapter; or

(10) fails to practice midwifery in a manner consistent with the public health and safety.

(b) The midwifery board may discipline a licensed midwife and may refuse to issue a license to an applicant for a disciplinary action taken by another jurisdiction that affects the person's authority to practice midwifery, including a suspension, a revocation, or another action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 46, eff. September 1, 2005.

Sec. 203.405. EMERGENCY SUSPENSION. (a) The midwifery board or a three-member committee of midwifery board members designated by the midwifery board shall temporarily suspend the license of a licensed midwife if the midwifery board or committee determines from the evidence or information presented to it that continued practice by the licensed midwife would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 47, eff. September 1, 2005.

Sec. 203.406. REFUND. (a) Subject to Subsection (b), the midwifery board may order a licensed midwife to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the licensed midwife for a service regulated by this chapter. The midwifery board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 48, eff. September 1, 2005.

#### **SUBCHAPTER J. ADMINISTRATIVE PENALTY**

Sec. 203.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The midwifery board may impose an administrative penalty on a person who violates this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.452. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues is a separate violation.

(b) The amount shall be based on:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts made to correct the violation; and
- (5) any other matter that justice may require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 49, eff. September 1, 2005.

Sec. 203.453. NOTICE OF VIOLATION AND PENALTY. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the midwifery board or its designee determines that a violation has occurred, the midwifery board or its designee shall give written notice of the violation to the person alleged to have committed the violation.

(b) The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the proposed administrative penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.454. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice under Section 203.453, the person may:

- (1) accept the midwifery board or its designee's determination and the proposed administrative penalty; or
- (2) make a written request for a hearing on that determination.

(b) If the person accepts the midwifery board or its designee's determination, the midwifery board by order shall approve the determination and require the person to pay the proposed penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.455. HEARING. (a) If the person timely requests a hearing, the midwifery board or its designee shall set a hearing and give written notice of the hearing to the person. The midwifery board or its designee may employ a hearings examiner for this purpose.

(b) The hearings examiner shall make findings of fact and conclusions of law and promptly issue to the midwifery board a proposal for decision as to the occurrence of the violation and the amount of the proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



Sec. 203.456. DECISION BY MIDWIFERY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the midwifery board by order may determine that:

- (1) a violation has occurred and impose an administrative penalty; or
- (2) a violation did not occur.

(b) The midwifery board shall give notice of the midwifery board's order to the person. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the amount of any penalty assessed; and
- (3) a statement of the right of the person to judicial review of the midwifery board's order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.457. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the midwifery board's order becomes final, the person shall:

- (1) pay the administrative penalty;
- (2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or
- (3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account; or
  - (B) giving to the court a supersedeas bond that is approved by the court and that:
    - (i) is for the amount of the penalty; and
    - (ii) is effective until judicial review of the order is final; or
- (2) request the court to stay enforcement of the penalty

by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the midwifery board by certified mail.

(c) If the midwifery board receives a copy of an affidavit under Subsection (b)(2), the midwifery board may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.458. COLLECTION OF PENALTY. (a) If the person on whom the administrative penalty is imposed does not comply with Section 203.457, the penalty may be collected.

(b) The midwifery board may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of the midwifery board requiring the payment of expenses and costs is final. The midwifery board may refer the matter to the attorney general for collection of the expenses and costs.

(c) If the attorney general brings an action against a person to enforce an administrative penalty assessed under this chapter and the person is found liable for an administrative penalty, the attorney general may recover, on behalf of the attorney general, the midwifery board, and the department, reasonable expenses and costs.

(d) In this section, reasonable expenses and costs includes expenses incurred by the department, the midwifery board, and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs,

attorney's fees, witness fees, and deposition expenses.

(e) Costs and expenses collected under this section shall be deposited in the state treasury to the credit of a special account that may be appropriated only to the department. Section 403.095, Government Code, does not apply to the account.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.459. DETERMINATION BY COURT. (a) If a court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.460. REMITTANCE OF PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall:

(1) order the midwifery board to remit to the person the appropriate amount, plus accrued interest, if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is accrued at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.461. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter to impose an administrative penalty is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER K. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 203.501. CIVIL PENALTY. (a) A person is liable for a civil penalty if the person is required to be licensed under this chapter and the person knowingly or intentionally practices midwifery:

(1) without a license or while the license is suspended or revoked; or

(2) in violation of a midwifery board order.

(b) A civil penalty under this section may not exceed \$250 for each violation. Each day of violation may constitute a separate violation for purposes of penalty assessment. In determining the amount of the penalty, the court shall consider:

(1) the person's history of previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public; and

(4) the demonstrated good faith of the person charged.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. [1535](#)), Sec. 50, eff. September 1, 2005.

Sec. 203.502. INJUNCTIONS. (a) In this section, "health authority" means a physician who administers state and local laws regulating public health under Chapter 121, Health and Safety Code.

(b) If the commissioner or a health authority determines that a person has violated this chapter and that the violation creates an immediate threat to the health and safety of the public, the commissioner or the health authority, with the concurrence of the commissioner, may request the attorney general or a district, county, or city attorney to bring an action in a district court for a restraining order to restrain the violation.

(c) If a person has violated this chapter, the commissioner or a health authority, with the concurrence of the commissioner, may bring an action in a district court for an injunction to prohibit the person from continuing the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.503. VENUE. (a) Venue for a civil action brought under Section 203.451 or 203.452 is in the county in which the defendant resides or in the county in which the violation occurred.

(b) Venue for the civil action may be changed only after a good faith effort has been made to address the violation in the county in which venue is proper.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.504. CRIMINAL PENALTY. (a) A person commits an offense if the person is required to be licensed under this chapter and the person knowingly practices midwifery without a license.

(b) An offense under this section is a Class C misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 51, eff. September 1, 2005.

Sec. 203.505. CEASE AND DESIST ORDER. (a) If it appears to the midwifery board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of midwifery, the midwifery board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter J.

Added by Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 52, eff. September 1, 2005.

**CHAPTER 204. PHYSICIAN ASSISTANTS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 204.001. SHORT TITLE. This chapter may be cited as the

Physician Assistant Licensing Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.002. DEFINITIONS. In this chapter:

(1) "Medical board" means the Texas Medical Board.

(2) "Physician assistant board" means the Texas Physician Assistant Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.01, eff. September 1, 2005.

Sec. 204.003. APPLICABILITY. (a) A person is not required to hold a license issued under this chapter to practice as:

(1) a technician, assistant, or employee of a physician who performs delegated tasks but does not act as a physician assistant or represent that the person is a physician assistant; or

(2) any other licensed health care worker acting within the scope of that person's license if the person:

(A) does not use the title "physician assistant" or the initials "P.A."; or

(B) is not represented or designated as a physician assistant.

(b) This chapter does not limit the employment arrangement of a physician assistant licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. TEXAS PHYSICIAN ASSISTANT BOARD**

Sec. 204.051. TEXAS PHYSICIAN ASSISTANT BOARD. (a) The Texas Physician Assistant Board is an advisory board to the Texas State Board of Medical Examiners.

(b) A reference in any other law to the former Texas State Board of Physician Assistant Examiners means the Texas Physician Assistant Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.03, eff. September 1, 2005.

Sec. 204.052. APPOINTMENT OF BOARD. (a) The physician assistant board consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) three practicing physician assistant members who each have at least five years of clinical experience as a physician assistant;

(2) three physician members who are licensed in this state and who supervise physician assistants; and

(3) three public members who are not licensed as a physician or physician assistant.

(b) Appointments to the physician assistant board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.04, eff. September 1, 2005.

Sec. 204.053. MEMBERSHIP ELIGIBILITY AND RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or profession problems and in promoting their common interest.

(b) A person may not be a public member of the physician assistant board if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the medical board or physician assistant board;

(3) owns or controls, directly or indirectly, more than a

10 percent interest in a business entity or other organization regulated by or receiving money from the medical board or physician assistant board; or

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

(c) A person may not be a member of the physician assistant board and may not be a medical board employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.05, eff. September 1, 2005.

Sec. 204.054. TERMS; VACANCIES. (a) Members of the physician assistant board are appointed for staggered six-year terms. The terms of three members expire on February 1 of each odd-numbered year.

(b) A member may not serve more than:

(1) two consecutive full terms; or

(2) a total of three full terms.

(c) If a vacancy occurs during a member's term, the governor shall appoint a new member to fill the unexpired term.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.055. OFFICERS. The governor shall designate a member of the physician assistant board as the presiding officer of the board to serve in that capacity at the will of the governor. The physician assistant board shall select from its membership a secretary to serve a one-year term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.06, eff. September 1, 2005.

Sec. 204.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the physician assistant board that a member:

- (1) does not have at the time of taking office the qualifications required by Sections 204.052 and 204.053;
- (2) does not maintain during service on the physician assistant board the qualifications required by Sections 204.052 and 204.053;
- (3) is ineligible for membership under Section 204.053;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled physician assistant board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

(c) If the executive director of the medical board has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the physician assistant board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the physician assistant board,

who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.07, eff. September 1, 2005.

Sec. 204.057. PER DIEM. A member of the physician assistant board is entitled to receive a per diem as set by legislative appropriation for each day that the member engages in the business of the board. If the General Appropriations Act does not prescribe the amount of the per diem, the per diem is equal to a member's actual expenses for meals, lodging, and transportation plus \$100.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.058. OPEN MEETINGS; ADMINISTRATIVE PROCEDURE LAW. Except as otherwise provided by this chapter, the physician assistant board is subject to Chapters 551 and 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the physician assistant board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) this chapter and the physician assistant board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the physician assistant board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the physician

assistant board or the Texas Ethics Commission.

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

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.08, eff. September 1, 2005.

**SUBCHAPTER C. POWERS AND DUTIES OF PHYSICIAN ASSISTANT BOARD AND  
MEDICAL BOARD**

Sec. 204.101. GENERAL POWERS AND DUTIES OF BOARD. The physician assistant board shall:

(1) adopt rules that are reasonable and necessary for the performance of the physician assistant board's duties under this chapter, as provided by Chapter 2001, Government Code, including rules to establish:

- (A) licensing and other fees;
- (B) license renewal dates; and
- (C) procedures for disciplinary actions;

(2) review and approve or reject each application for the issuance or renewal of a license;

(3) issue each license;

(4) deny, suspend, or revoke a license or otherwise discipline a license holder; and

(5) take any action necessary to carry out the functions and duties of the physician assistant board under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.1015. GUIDELINES FOR EARLY INVOLVEMENT IN RULEMAKING PROCESS. (a) The physician assistant board shall adopt guidelines to establish procedures for receiving input during the rulemaking process from individuals and groups that have an interest in matters under the board's jurisdiction. The guidelines must provide an opportunity for those individuals and groups to provide input before the physician assistant board submits the rule to the medical board for approval.

(b) A rule adopted by the medical board may not be challenged on the grounds that the physician assistant board did not comply with this section. If the physician assistant board was unable to solicit a significant amount of input from the public or affected persons early in the rulemaking process, the physician assistant board shall state in writing the reasons why the physician assistant board was unable to do so.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.09, eff. September 1, 2005.

Sec. 204.102. POWERS AND DUTIES OF MEDICAL BOARD RELATING TO PHYSICIAN ASSISTANTS. (a) The medical board shall adopt rules consistent with this chapter to regulate physician assistants and physicians who supervise physician assistants.

(b) The medical board, by a majority vote, shall approve or reject each rule adopted by the physician assistant board. If approved, the rule may take effect. If the rule is rejected, the medical board shall return the rule to the physician assistant board for revision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.1025. DUTIES REGARDING PRESCRIPTIVE AUTHORITY AGREEMENTS. The physician assistant board shall in conjunction with the Texas Medical Board and the Texas Board of Nursing perform the functions and duties relating to prescriptive authority agreements assigned to the physician assistant board in Sections 157.0512 and 157.0513.

Added by Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 11, eff. November 1, 2013.

Sec. 204.103. FEES. The physician assistant board shall establish and collect fees in amounts that are reasonable and necessary to cover the cost of administering this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.104. RURAL PHYSICIAN ASSISTANT LOAN REIMBURSEMENT PROGRAM. (a) A program shall be established to provide student loan reimbursement for graduates of physician assistant training programs from any state who practice in rural health professional shortage areas and medically underserved areas identified by the Texas Department of Health. The physician assistant board shall fund the program by designating annually a portion of the revenue generated under this chapter from physician assistant licensing fees.

(b) The Texas Department of Rural Affairs shall establish policies for and adopt rules to administer the loan program.

(c) The physician assistant board shall authorize and the medical board shall transfer annually the funds designated under Subsection (a) to the Texas Department of Rural Affairs to administer the loan program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1424, Sec. 10, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 112 (H.B. 1918), Sec. 100, eff. September 1, 2009.

Sec. 204.105. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The physician assistant board shall adopt rules and guidelines as necessary to comply with Chapter 53, except to the extent the requirements of this chapter are stricter than the requirements of Chapter 53.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.10, eff. September 1, 2005.

Sec. 204.106. DIVISION OF RESPONSIBILITIES. Subject to the advice and approval of the medical board, the physician assistant board shall develop and implement policies that clearly separate the policy-making responsibilities of the physician assistant board and the management responsibilities of the executive director and the staff of the medical board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.11, eff. September 1, 2005.

Sec. 204.107. PUBLIC PARTICIPATION. Subject to the advice and approval of the medical board, the physician assistant board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the physician assistant board and to speak on any issue under the jurisdiction of the physician assistant board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.12, eff. September 1, 2005.

Sec. 204.108. RECORDS OF COMPLAINTS. (a) The physician assistant board shall maintain a system to promptly and efficiently act on complaints filed with the physician assistant board. The board shall maintain:

- (1) information about the parties to the complaint and the subject matter of the complaint;
  - (2) a summary of the results of the review or investigation of the complaint; and
  - (3) information about the disposition of the complaint.
- (b) The physician assistant board shall make information available describing its procedures for complaint investigation and resolution.
- (c) The physician assistant board shall periodically notify the parties of the status of the complaint until final disposition of the complaint, unless the notice would jeopardize an investigation.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.13, eff. September 1, 2005.

Sec. 204.109. USE OF TECHNOLOGY. Subject to the advice and approval of the medical board, the physician assistant board shall implement a policy requiring the physician assistant board to use appropriate technological solutions to improve the physician assistant board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the

Internet.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.14, eff. September 1, 2005.

Sec. 204.110. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval of the medical board, the physician assistant board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of physician assistant board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the physician assistant board's jurisdiction.

(b) The physician assistant board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The physician assistant board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the physician assistant board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.15, eff. September 1, 2005.

#### **SUBCHAPTER D. LICENSE REQUIREMENTS, EXEMPTIONS, AND RENEWAL**

Sec. 204.151. LICENSE REQUIRED. A person may not practice as a physician assistant in this state unless the person holds a physician assistant license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.152. ISSUANCE OF LICENSE. (a) The physician assistant board shall issue a license to an applicant who:

- (1) meets the eligibility requirements of Section 204.153;
- (2) submits an application on a form prescribed by the board;
- (3) pays the required application fee;
- (4) certifies that the applicant is mentally and physically able to function safely as a physician assistant; and
- (5) submits to the board any other information the board considers necessary to evaluate the applicant's qualifications.

(b) The physician assistant board may delegate authority to medical board employees to issue licenses under this chapter to applicants who clearly meet all licensing requirements. If the medical board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the physician assistant board. A license issued under this subsection does not require formal physician assistant board approval.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.16, eff. September 1, 2005.

Sec. 204.153. ELIGIBILITY REQUIREMENTS. (a) To be eligible for a license under this chapter, an applicant must:

- (1) successfully complete an educational program for physician assistants or surgeon assistants accredited by the Committee on Allied Health Education and Accreditation or by that committee's predecessor or successor entities;
- (2) pass the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;
- (3) hold a certificate issued by the National Commission on Certification of Physician Assistants;
- (4) be of good moral character;



(5) meet any other requirement established by board rule;  
and

(6) pass a jurisprudence examination approved by the physician assistant board as provided by Subsection (a-1).

(a-1) The jurisprudence examination shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the physician assistant profession in this state. The physician assistant board shall establish rules for the jurisprudence examination under Subsection (a)(6) regarding:

- (1) the development of the examination;
- (2) applicable fees;
- (3) administration of the examination;
- (4) reexamination procedures;
- (5) grading procedures; and
- (6) notice of results.

(b) In addition to the requirements of Subsection (a), an applicant is not eligible for a license, unless the physician assistant board takes the fact into consideration in determining whether to issue the license, if the applicant:

- (1) has been issued a license, certificate, or registration as a physician assistant in this state or from a licensing authority in another state that is revoked or suspended; or
- (2) is subject to probation or other disciplinary action for cause resulting from the applicant's acts as a physician assistant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.17, eff. September 1, 2005.

Sec. 204.154. EXEMPTIONS FROM LICENSING REQUIREMENT FOR CERTAIN PHYSICIAN ASSISTANTS. A person is not required to hold a license issued under this chapter to practice as:

- (1) a physician assistant student enrolled in a physician assistant or surgeon assistant educational program accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association or by successor entities as approved and designated by physician assistant board rule; or

(2) a physician assistant employed in the service of the federal government while performing duties related to that employment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.155. TEMPORARY LICENSE. (a) The physician assistant board may issue a temporary license to an applicant who:

(1) meets all the qualifications for a license under this chapter but is waiting for the license to be issued at the next scheduled meeting of the board;

(2) seeks to temporarily substitute for a licensed physician assistant during the license holder's absence, if the applicant:

(A) is licensed or registered in good standing in another state;

(B) submits an application on a form prescribed by the board; and

(C) pays the appropriate fee prescribed by the board;

or

(3) has graduated from an educational program for physician assistants or surgeon assistants described by Section 204.153(a)(1) not later than six months before applying for a temporary license and is waiting for examination results from the National Commission on Certification of Physician Assistants.

(b) A temporary license may be valid for not more than one year after the date issued as determined by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 578, Sec. 1, eff. Sept. 1, 2001.

Sec. 204.156. LICENSE RENEWAL. (a) On notification from the physician assistant board, a person who holds a license under this chapter may renew the license by:

(1) paying the required renewal fee;

(2) submitting the appropriate form; and

(3) meeting any other requirement established by board

rule.

(b) The physician assistant board by rule may adopt a system

under which licenses expire on various dates during the year.

(c) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the physician assistant board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the physician assistant board a fee that is equal to 1-1/2 times the renewal fee for the license.

(e) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the physician assistant board a fee equal to two times the renewal fee for the license.

(f) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of the application may obtain a new license without reexamination. The person must pay to the physician assistant board a fee that is equal to two times the normally required renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.18, eff. September 1, 2005.

Sec. 204.1562. CONTINUING MEDICAL EDUCATION REQUIREMENTS. (a) The physician assistant board by rule shall adopt, monitor, and enforce a reporting program for the continuing medical education of license holders. The physician assistant board shall adopt and administer rules that:

(1) establish the number of hours of continuing medical education the physician assistant board determines appropriate as a prerequisite to the renewal of a license under this chapter;

(2) require at least one-half of the hours of continuing medical education established under Subdivision (1) to be approved by the physician assistant board; and

(3) adopt a process to assess a license holder's participation in continuing medical education courses.

(b) The physician assistant board may require that a specified

number of continuing medical education hours be completed informally, including through self-study and self-directed education.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.19, eff. September 1, 2005.

Sec. 204.1565. INFORMAL CONTINUING MEDICAL EDUCATION. (a) In this section, "practice serving a medically underserved population" has the meaning assigned by Section 157.051.

(b) The physician assistant board by rule shall permit a license holder to complete half of any informal continuing medical education hours required to renew a license under this chapter by providing volunteer medical services at a practice serving a medically underserved population, other than a site that is a primary practice site of the license holder.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.053(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 12, eff. November 1, 2013.

Sec. 204.157. INACTIVE STATUS. (a) A person licensed under this chapter may place the person's license on inactive status by applying to the physician assistant board. A person whose license is on inactive status is excused from paying renewal fees for the license.

(b) The holder of a license on inactive status may not practice as a physician assistant. A violation of this subsection is considered to be practicing without a license.

(c) A person whose license is on inactive status under this section may return the person's license to active status by:

- (1) applying to the physician assistant board;
- (2) satisfying the requirements of Section 204.156; and
- (3) paying the fee established by the physician assistant

board for returning a license to active status.

(d) The physician assistant board by rule shall establish a limit on the length of time a physician assistant's license may remain on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.20, eff. September 1, 2005.

#### **SUBCHAPTER E. PRACTICE BY LICENSE HOLDER**

Sec. 204.201. NOTICE OF INTENT TO PRACTICE. (a) Before beginning practice, each physician assistant licensed under this chapter shall submit on a form prescribed by the physician assistant board notice of the license holder's intent to practice. The notice must include:

- (1) the name, business address, license number, and telephone number of the physician assistant; and
- (2) the name, business address, Texas license number, and telephone number of the physician assistant's supervising physician.

(b) A physician assistant shall notify the physician assistant board of any change in, or addition to, the person acting as a supervising physician for the physician assistant not later than the 30th day after the date the change or addition occurs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.202. SCOPE OF PRACTICE. (a) The practice of a physician assistant includes providing medical services delegated by a supervising physician that are within the education, training, and experience of the physician assistant.

(b) Medical services provided by a physician assistant may include:

- (1) obtaining patient histories and performing physical examinations;
- (2) ordering or performing diagnostic and therapeutic procedures;
- (3) formulating a working diagnosis;
- (4) developing and implementing a treatment plan;
- (5) monitoring the effectiveness of therapeutic interventions;
- (6) assisting at surgery;
- (7) offering counseling and education to meet patient

needs;

(8) requesting, receiving, and signing for the receipt of pharmaceutical sample prescription medications and distributing the samples to patients in a specific practice setting in which the physician assistant is authorized to prescribe pharmaceutical medications and sign prescription drug orders as provided by Section 157.0512 or 157.054;

(9) prescribing or ordering a drug or device as provided by Subchapter B, Chapter 157; and

(10) making appropriate referrals.

(c) The activities listed by Subsection (b) may be performed in any place authorized by a supervising physician, including a clinic, hospital, ambulatory surgical center, patient home, nursing home, or other institutional setting.

(d) A physician assistant's signature attesting to the provision of a service the physician assistant is legally authorized to provide satisfies any documentation requirement for that service established by a state agency.

(e) A physician assistant is the agent of the physician assistant's supervising physician for any medical services that are delegated by that physician and that:

(1) are within the physician assistant's scope of practice; and

(2) are delineated by protocols, practice guidelines, or practice directives established by the supervising physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 112, Sec. 3, eff. May 11, 2001; Acts 2001, 77th Leg., ch. 178, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.054(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 13, eff. November 1, 2013.

Sec. 204.203. IDENTIFICATION REQUIREMENTS. A physician assistant shall:

(1) keep the physician assistant's license available for inspection at the physician assistant's primary place of business; and

(2) when engaged in the physician assistant's professional activities, wear a name tag identifying the license holder as a physician assistant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.204. SUPERVISION REQUIREMENTS. (a) A physician assistant shall be supervised by a supervising physician. A physician assistant may have more than one supervising physician. The supervising physician oversees the activities of, and accepts responsibility for, medical services provided by the physician assistant.

(b) Supervision of a physician assistant by a supervising physician must be continuous. The supervision does not require the constant physical presence of the supervising physician where physician assistant services are being performed, but, if a supervising physician is not present, the supervising physician and the physician assistant must be, or must be able to easily be, in contact with one another by radio, telephone, or another telecommunication device.

(c) The number of physician assistants a physician may supervise in a practice setting may not be less than the number of physician assistants to whom a physician may delegate the authority to prescribe or order a drug or device in that practice setting under Subchapter B, Chapter 157.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 14, eff. November 1, 2013.

Sec. 204.2045. SERVICES PERFORMED DURING DISASTER. (a) The supervision and delegation requirements of this chapter and Subtitle B do not apply to medical tasks performed by a physician assistant during a disaster under the state emergency management plan adopted under Section 418.042, Government Code, or a disaster declared by the governor or United States government. This section does not apply to medical tasks performed by a physician assistant for compensation or other remuneration.

(b) A physician assistant performing medical tasks under this section is entitled to the immunity from liability provided by Section 74.151, Civil Practice and Remedies Code.

(c) A physician assistant may perform tasks described by this section:

(1) under the supervision of any physician who is also performing volunteer work in the disaster; or

(2) without the supervision of a physician, if a physician is not available to provide supervision.

(d) A physician assistant employed by the United States government or licensed in another state may perform medical tasks in this state in circumstances described by Subsection (a) without holding a license in this state.

Added by Acts 2005, 79th Leg., Ch. 580 (H.B. 1577), Sec. 1, eff. June 17, 2005.

Sec. 204.205. REQUIREMENTS FOR SUPERVISING PHYSICIAN. A supervising physician must:

(1) hold an unrestricted and active license as a physician in this state;

(2) notify the medical board of the physician's intent to supervise a physician assistant;

(3) submit to the medical board a statement that the physician will:

(A) supervise the physician assistant according to medical board rule; and

(B) retain professional and legal responsibility for the care provided by the physician assistant; and

(4) receive approval from the medical board to supervise the physician assistant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.206. ESTABLISHMENT OF CERTAIN FUNCTIONS AND STANDARDS. Each physician assistant and the physician assistant's supervising physician shall ensure that:

(1) the physician assistant's scope of function is identified;



(2) delegation of medical tasks is appropriate to the physician assistant's level of competence;

(3) the relationship between the physician assistant and the supervising physician and the access of the physician assistant to the supervising physician are defined; and

(4) a process is established for evaluating the physician assistant's performance.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.207. ASSUMPTION OF PROFESSIONAL LIABILITY. (a) Each supervising physician retains legal responsibility for a physician assistant's patient care activities, including the provision of care and treatment to a patient in a health care facility.

(b) If a physician assistant is employed by an entity, including a health care facility, the entity shares the legal responsibility for the physician assistant's acts or omissions with the physician assistant's supervising physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.208. DUTY TO REPORT; MEDICAL PEER REVIEW. (a) A medical peer review committee in this state, physician assistant, physician assistant student, or physician lawfully practicing medicine in this state shall report relevant information to the physician assistant board related to the acts of a physician assistant in this state if, in the person's opinion, a physician assistant poses a continuing threat to the public welfare through practice as a physician assistant. The duty to report under this section may not be nullified through contract.

(b) Sections 160.002, 160.003, 160.006, 160.007(d), 160.009, 160.013, 160.014, and 160.015 apply to medical peer review relating to the practice of a physician assistant.

(c) A person, including a health care entity or medical peer review committee, that without malice furnishes records, information, or assistance to the physician assistant board is immune from any civil liability arising from that act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1420, Sec. 14.055, eff. Sept. 1, 2001.

Sec. 204.209. JOINTLY OWNED ENTITIES WITH PHYSICIANS. (a) A physician assistant who jointly owns an entity with a physician shall report annually to the physician assistant board the ownership interest and other information required by physician assistant board rule.

(b) The physician assistant board shall assess a fee for processing each report required by Subsection (a).

(c) A report filed under Subsection (a) is public information for purposes of Chapter 552, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 782 (H.B. 2098), Sec. 5, eff. June 17, 2011.

#### **SUBCHAPTER F. COMPLAINTS AND INVESTIGATIVE INFORMATION**

Sec. 204.251. COMPLAINT INFORMATION AND STATUS. (a) The physician assistant board shall keep information on file about each complaint filed with the board.

(b) If a written complaint is filed with the physician assistant board relating to a person licensed by the board, the board, as often as quarterly and until final determination of the action to be taken on the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an active investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.2511. CONDUCT OF INVESTIGATION. The physician assistant board shall complete a preliminary investigation of a complaint filed with the physician assistant board not later than the 30th day after the date of receiving the complaint. The physician assistant board shall first determine whether the physician assistant constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the physician assistant board shall determine whether to officially proceed on the complaint. If the physician assistant board fails to complete the preliminary investigation in the time required by this section, the physician

assistant board's official investigation of the complaint is considered to commence on that date.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.21, eff. September 1, 2005.

Sec. 204.252. LICENSE HOLDER ACCESS TO COMPLAINT INFORMATION.

(a) The physician assistant board shall provide a license holder who is the subject of a formal complaint filed under this chapter with access to all information in its possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint, subject to any other privilege or restriction established by rule, statute, or legal precedent. The board shall provide the information not later than the 30th day after receipt of a written request from the license holder or the license holder's counsel, unless good cause is shown for delay.

(b) Notwithstanding Subsection (a), the board is not required to provide:

- (1) board investigative reports;
- (2) investigative memoranda;
- (3) the identity of a nontestifying complainant;
- (4) attorney-client communications;
- (5) attorney work product; or
- (6) other material covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) The provision of information does not constitute a waiver of privilege or confidentiality under this chapter or other law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.253. HEALTH CARE ENTITY REQUEST FOR INFORMATION. On the written request of a health care entity, the physician assistant board shall provide to the entity:

- (1) information about a complaint filed against a license holder that was resolved after investigation by:
  - (A) a disciplinary order of the board; or
  - (B) an agreed settlement; and
- (2) the basis of and current status of any complaint under active investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.254. CONFIDENTIALITY OF INVESTIGATIVE INFORMATION. A complaint, adverse report, investigation file, other report, or other investigative information in the possession of or received or gathered by the physician assistant board or a board employee or agent relating to a license holder, a license application, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the board or a board employee or agent involved in license holder discipline.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.255. PERMITTED DISCLOSURE OF INVESTIGATIVE INFORMATION. (a) Investigative information in the possession of a physician assistant board employee or agent that relates to the discipline of a license holder may be disclosed to:

(1) a licensing authority in another state or country in which the license holder is licensed or has applied for a license; or

(2) a peer review committee reviewing:

(A) an application for privileges; or

(B) the qualifications of the license holder with respect to retaining privileges.

(b) If investigative information in the possession of the physician assistant board or a board employee or agent indicates that a crime may have been committed, the board shall report the information to the proper law enforcement agency. The board shall cooperate with and assist each law enforcement agency conducting a criminal investigation of a license holder by providing information relevant to the investigation. Confidential information disclosed by the board to a law enforcement agency under this subsection remains confidential and may not be disclosed by the law enforcement agency except as necessary to further the investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER G. DISCIPLINARY PROCEEDINGS**

Sec. 204.301. DISCIPLINARY AUTHORITY OF BOARD. (a) Except as provided by Section 204.305, on a determination that an applicant or license holder committed an act described in Section 204.302, 204.303, or 204.304, the physician assistant board by order shall take any of the following actions:

(1) deny the person's application for a license or license renewal or revoke the person's license or other authorization;

(2) require the person to submit to the care, counseling, or treatment of a health care practitioner designated by the physician assistant board;

(3) stay enforcement of an order and place the person on probation;

(4) require the person to complete additional training;

(5) suspend, limit, or restrict the person's license, including:

(A) limiting the practice of the person to, or excluding from the practice, one or more specified activities of the practice as a physician assistant; or

(B) stipulating periodic physician assistant board review;

(6) assess an administrative penalty against the person under Section 204.351;

(7) order the person to perform public service; or

(8) administer a public reprimand.

(b) If the physician assistant board stays enforcement of an order and places a person on probation, the board retains the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation or impose any other remedial measure or sanction authorized by this section.

(c) The physician assistant board may restore or reissue a license or remove any disciplinary or corrective measure that the board has imposed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.22, eff. September 1, 2005.

## Sec. 204.3011. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS.

(a) The physician assistant board may delegate to a committee of medical board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations. The disposition determined by the committee must be approved by the physician assistant board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceedings under Section 204.312 if:

- (1) the committee of employees determines that the complaint should not be dismissed or settled;
  - (2) the committee is unable to reach an agreed settlement;
- or
- (3) the affected physician assistant requests that the complaint be referred for informal proceedings.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.23, eff. September 1, 2005.

## Sec. 204.302. CONDUCT RELATED TO FRAUD OR MISREPRESENTATION.

The physician assistant board may take action under Section 204.301 against an applicant or license holder who:

- (1) fraudulently or deceptively obtains or attempts to obtain a license;
- (2) fraudulently or deceptively uses a license;
- (3) falsely represents that the person is a physician;
- (4) acts in an unprofessional or dishonorable manner that is likely to deceive, defraud, or injure the public;
- (5) fraudulently alters a physician assistant license, certificate, or diploma;
- (6) uses a physician assistant license, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;
- (7) directly or indirectly aids or abets a person not licensed to practice as a physician assistant in practicing as a physician assistant; or
- (8) unlawfully advertises in a false, misleading, or deceptive manner, as described by Section 101.201.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.303. CONDUCT RELATED TO VIOLATION OF LAW. (a) The physician assistant board may take action under Section 204.301 against an applicant or license holder who:

- (1) violates this chapter or a rule adopted under this chapter;
- (2) is convicted of a felony, placed on deferred adjudication, or placed in a pretrial diversion program;
- (3) violates state law if the violation is connected with practice as a physician assistant;
- (4) fails to keep complete and accurate records of the purchase and disposal of drugs as required by Chapter 483, Health and Safety Code, or any subsequent rules; or
- (5) writes a false or fictitious prescription for a dangerous drug as defined by Chapter 483, Health and Safety Code.

(b) A complaint, indictment, or conviction of a law violation is not necessary for the physician assistant board to act under Subsection (a)(3). Proof of the commission of the act while in practice as a physician assistant or under the guise of practice as a physician assistant is sufficient for action by the physician assistant board.

(c) A failure to keep the records described under Subsection (a)(4) for a reasonable time is grounds for disciplinary action against a physician assistant. The physician assistant board or its representative may enter and inspect a physician assistant's place or places of practice during reasonable business hours to:

- (1) verify the correctness of the records; and
- (2) inventory the drugs on hand.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.304. CONDUCT INDICATING LACK OF FITNESS. (a) The physician assistant board may take action under Section 204.301 against an applicant or license holder who:

- (1) habitually uses drugs or intoxicating liquors to the extent that, in the board's opinion, the person cannot safely perform as a physician assistant;
- (2) has been adjudicated as mentally incompetent;

(3) has a mental or physical condition that renders the person unable to safely perform as a physician assistant;

(4) has committed an act of moral turpitude;

(5) has failed to practice as a physician assistant in an acceptable manner consistent with public health and welfare;

(6) has had the person's license to practice as a physician assistant suspended, revoked, or restricted;

(7) has had other disciplinary action taken by another state or by the uniformed services of the United States regarding practice as a physician assistant;

(8) prescribes, dispenses, or administers a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is prescribed, dispensed, or administered;

(9) is removed or suspended from, or has had disciplinary action taken by the person's peers in, any professional association or society, or is being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other disciplinary action, if the reason for the discipline, in the board's opinion, is unprofessional conduct or professional incompetence likely to harm the public;

(10) has repeated or recurring meritorious health care liability claims that, in the board's opinion, are evidence of professional incompetence likely to harm the public; or

(11) sexually abuses or exploits another person through the license holder's practice as a physician assistant.

(b) A certified copy of the record of the state or uniformed services of the United States taking an action described by Subsection (a)(7) is conclusive evidence of the action.

(c) An action described by Subsection (a)(9) does not constitute state action on the part of the association, society, or hospital medical staff.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.3045. PHYSICAL OR MENTAL EXAMINATION. (a) The physician assistant board shall adopt guidelines, in conjunction with persons interested in or affected by this section, to enable the physician assistant board to evaluate circumstances in which a



physician assistant or applicant may be required to submit to an examination for mental or physical health conditions, alcohol and substance abuse, or professional behavior problems.

(b) The physician assistant board shall refer a physician assistant or applicant with a physical or mental health condition to the most appropriate medical specialist for evaluation. The physician assistant board may not require a physician assistant or applicant to submit to an examination by a physician having a specialty specified by the physician assistant board unless medically indicated. The physician assistant board may not require a physician assistant or applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the physician assistant or applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

(c) The guidelines adopted under this section do not impair or remove the physician assistant board's power to make an independent licensing decision.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.24, eff. September 1, 2005.

Sec. 204.308. SUBPOENA. (a) The executive director or the secretary-treasurer of the medical board may issue a subpoena or subpoena duces tecum for the physician assistant board to:

- (1) conduct an investigation or a contested proceeding related to:
  - (A) alleged misconduct by a physician assistant;
  - (B) an alleged violation of this chapter or other law related to practice as a physician assistant; or
  - (C) the provision of health care under this chapter;
- (2) issue, suspend, restrict, or revoke a license under this chapter; or
- (3) deny or grant an application for a license under this chapter.

(b) Failure to timely comply with a subpoena issued under this section is a ground for:

- (1) disciplinary action by the physician assistant board or another licensing or regulatory agency with jurisdiction over the

person subject to the subpoena; and  
(2) denial of a license application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.309. PROTECTION OF PATIENT IDENTITY. In a disciplinary investigation or proceeding conducted under this chapter, the physician assistant board shall protect the identity of each patient whose medical records are examined and used in a public proceeding unless the patient:

(1) testifies in the public proceeding; or  
(2) submits a written release in regard to the patient's records or identity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.310. REQUIRED SUSPENSION OF LICENSE OF INCARCERATED PHYSICIAN ASSISTANT. Regardless of the offense, the physician assistant board shall suspend the license of a physician assistant serving a prison term in a state or federal penitentiary during the term of the incarceration.

Added by Acts 2001, 77th Leg., ch. 578, Sec. 2, eff. Sept. 1, 2001.

Sec. 204.311. TEMPORARY SUSPENSION. (a) The presiding officer of the physician assistant board, with board approval, shall appoint a three-member disciplinary panel consisting of board members to determine whether a person's license to practice as a physician assistant should be temporarily suspended.

(b) If the disciplinary panel determines from the evidence or information presented to the panel that a person licensed to practice as a physician assistant would, by the person's continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the

physician assistant board is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

Added by Acts 2001, 77th Leg., ch. 578, Sec. 2, eff. Sept. 1, 2001.

Sec. 204.312. INFORMAL PROCEEDINGS. (a) The physician assistant board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must require that:

(1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled not later than the 180th day after the date the complaint is filed with the physician assistant board, unless good cause is shown by the physician assistant board for scheduling the informal meeting after that date;

(2) the physician assistant board give notice to the license holder of the time and place of the meeting not later than the 30th day before the date the meeting is held;

(3) the complainant and the license holder be provided an opportunity to be heard;

(4) at least one of the physician assistant board members participating in the informal meeting as a panelist be a member who represents the public;

(5) the physician assistant board's legal counsel or a representative of the attorney general be present to advise the physician assistant board or the medical board's staff; and

(6) a member of the medical board's staff be at the meeting to present to the physician assistant board's representative the facts the staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing.

(c) An affected physician assistant is entitled to:

(1) reply to the staff's presentation; and

(2) present the facts the physician assistant reasonably believes the physician assistant could prove by competent evidence or qualified witnesses at a hearing.

(d) After ample time is given for the presentations, the physician assistant board representative shall recommend that the investigation be closed or shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) If the license holder has previously been the subject of disciplinary action by the physician assistant board, the physician assistant board shall schedule the informal meeting as soon as practicable but not later than the deadline prescribed by Subsection (b)(1).

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.27, eff. September 1, 2005.

Sec. 204.313. PHYSICIAN ASSISTANT BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal meeting under Section 204.312, at least two panelists shall be appointed to determine whether an informal disposition is appropriate.

(b) Notwithstanding Subsection (a) and Section 204.312(b)(4), an informal proceeding may be conducted by one panelist if the affected physician assistant waives the requirement that at least two panelists conduct the informal proceeding. If the physician assistant waives that requirement, the panelist may be any member of the physician assistant board.

(c) The panel requirements described by Subsections (a) and (b) apply to an informal proceeding conducted by the physician assistant board under Section 204.312, including a proceeding to:

(1) consider a disciplinary case to determine if a violation has occurred; or

(2) request modification or termination of an order.

(d) The panel requirements described by Subsections (a) and (b) do not apply to an informal proceeding conducted by the physician assistant board under Section 204.312 to show compliance with an order of the physician assistant board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.28, eff. September 1, 2005.

Sec. 204.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) A physician assistant board member that serves as a panelist at an informal meeting under Section 204.312 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a medical board employee at any time.

(b) Medical board employees shall present a summary of the allegations against the affected physician assistant and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) A physician assistant board or medical board attorney shall act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of participants in the informal meeting to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the physician assistant board or medical board, keep the proceedings focused on the case being discussed, and ensure that the medical board's employees and the affected physician assistant have an opportunity to present information related to the case. During the panel's deliberations, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the physician assistant board or medical board.

(d) The panel and medical board employees shall provide an opportunity for the affected physician assistant and the physician assistant's authorized representative to reply to the medical board employees' presentation and to present oral and written statements and facts that the physician assistant and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the medical board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected physician assistant, the physician assistant's authorized representative, the complainant, the

witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the attorney serving as counsel to the panel may be present during the deliberations.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected physician assistant has violated a statute or physician assistant board rule, the panel may recommend physician assistant board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected physician assistant and the physician assistant's authorized representative. The physician assistant may accept the proposed settlement within the time established by the panel at the informal meeting. If the physician assistant rejects the proposed settlement or does not act within the required time, the physician assistant board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.29, eff. September 1, 2005.

Sec. 204.3145. LIMIT ON ACCESS TO INVESTIGATION FILES. The physician assistant board shall prohibit or limit access to an investigation file relating to a license holder in an informal proceeding in the manner provided by Section 164.007(c).

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.29, eff. September 1, 2005.

Sec. 204.315. SURRENDER OF LICENSE. (a) The physician assistant board may accept the voluntary surrender of a license.

(b) A surrendered license may not be returned to the license holder unless the physician assistant board determines, under physician assistant board rules, that the former holder of the license is competent to resume practice.

(c) The physician assistant board by rule shall establish guidelines for determining the competency of a former license holder to return to practice.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.30, eff. September 1, 2005.

Sec. 204.316. REFUND. (a) Subject to Subsection (b), the physician assistant board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under Section 204.351.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The physician assistant board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.31, eff. September 1, 2005.

Sec. 204.317. MODIFICATION OF FINDINGS OR RULINGS BY ADMINISTRATIVE LAW JUDGE. The physician assistant board may change a finding of fact or conclusion of law or vacate or modify an order of an administrative law judge only if the physician assistant board makes a determination required by Section 2001.058(e), Government Code.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.32, eff. September 1, 2005.

Sec. 204.318. EXPERT IMMUNITY. An expert who assists the physician assistant board is immune from suit and judgment and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding, or other action taken without fraud or malice in the course of assisting the board in a disciplinary proceeding. The attorney general shall represent the expert in any suit resulting from a service provided by the person in good faith to the physician assistant board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.33, eff. September 1, 2005.

**SUBCHAPTER H. PENALTIES AND OTHER ENFORCEMENT PROVISIONS**

Sec. 204.351. ADMINISTRATIVE PENALTY. (a) The physician assistant board by order may impose an administrative penalty against a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty may be in an amount not to exceed \$5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The physician assistant board shall base the amount of the penalty on:

- (1) the severity of patient harm;
- (2) the severity of economic harm to any person;
- (3) the severity of any environmental harm;
- (4) increased potential for harm to the public;
- (5) any attempted concealment of misconduct;
- (6) any premeditated or intentional misconduct;
- (7) the motive for the violation;
- (8) prior misconduct of a similar or related nature;
- (9) the license holder's disciplinary history;
- (10) prior written warnings or written admonishments from any government agency or official regarding statutes or regulations relating to the misconduct;
- (11) violation of a board order;
- (12) failure to implement remedial measures to correct or mitigate harm from the misconduct;
- (13) lack of rehabilitative potential or likelihood of future misconduct of a similar nature;
- (14) relevant circumstances increasing the seriousness of the misconduct; and
- (15) any other matter that justice may require.

(d) The physician assistant board by rule shall prescribe the procedure by which it may impose an administrative penalty. A proceeding under this section is subject to Chapter 2001, Government Code.

(e) If the physician assistant board by order determines that a violation has occurred and imposes an administrative penalty, the board shall give notice to the person of the board's order. The notice must include a statement of the person's right to judicial



review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.352. CRIMINAL PENALTY. (a) A person commits an offense if, without holding a license issued under this chapter, the person:

- (1) holds the person out as a physician assistant;
- (2) uses any combination or abbreviation of the term "physician assistant" to indicate or imply that the person is a physician assistant; or
- (3) acts as a physician assistant.

(b) An offense under this section is a felony of the third degree.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.353. CEASE AND DESIST ORDER. (a) If it appears to the physician assistant board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to physician assistant practice, the board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.35, eff. September 1, 2005.

## CHAPTER 205. ACUPUNCTURE

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 205.001. DEFINITIONS. In this chapter:

(1) "Acudetox specialist" means a person certified under Section 205.303.

(2) "Acupuncture" means:

(A) the nonsurgical, nonincisive insertion of an acupuncture needle and the application of moxibustion to specific

areas of the human body as a primary mode of therapy to treat and mitigate a human condition, including evaluation and assessment of the condition; and

(B) the administration of thermal or electrical treatments or the recommendation of dietary guidelines, energy flow exercise, or dietary or herbal supplements in conjunction with the treatment described by Paragraph (A).

(3) "Acupuncture board" means the Texas State Board of Acupuncture Examiners.

(4) "Acupuncturist" means a person who:

(A) practices acupuncture; and

(B) directly or indirectly charges a fee for the performance of acupuncture services.

(5) "Chiropractor" means a person licensed to practice chiropractic by the Texas Board of Chiropractic Examiners.

(6) "Executive director" means the executive director of the Texas Medical Board.

(7) "Medical board" means the Texas Medical Board.

(8) "Physician" means a person licensed to practice medicine by the Texas Medical Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 719, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.01, eff. September 1, 2005.

Sec. 205.003. EXEMPTION; LIMITATION. (a) This chapter does not apply to a health care professional licensed under another statute of this state and acting within the scope of the license.

(b) This chapter does not:

(1) limit the practice of medicine by a physician;

(2) permit the unauthorized practice of medicine; or

(3) permit a person to dispense, administer, or supply a controlled substance, narcotic, or dangerous drug unless the person is authorized by other law to do so.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER B. TEXAS STATE BOARD OF ACUPUNCTURE EXAMINERS**

Sec. 205.051. BOARD; MEMBERSHIP. (a) The Texas State Board of Acupuncture Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) four acupuncturist members who have at least five years of experience in the practice of acupuncture in this state and who are not physicians;

(2) two physician members experienced in the practice of acupuncture; and

(3) three members of the general public who are not licensed or trained in a health care profession.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.02, eff. September 1, 2005.

Sec. 205.052. PUBLIC MEMBER ELIGIBILITY. A person is not eligible for appointment as a public member of the acupuncture board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by the medical board or receiving funds from the medical board or acupuncture board;

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

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

(5) owns, operates, or has a financial interest in a school of acupuncture.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1420, Sec. 14.056(a), eff. Sept. 1, 2001.

Sec. 205.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) An officer, board member, employee, or paid consultant of a Texas trade association in the field of health care may not be a member of the acupuncture board or an employee of the medical board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(c) A person may not be a member of the acupuncture board and may not be a medical board employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

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

(e) A person may not serve on the acupuncture board if the person owns, operates, or has a financial interest in a school of acupuncture.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.056(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.03, eff. September 1, 2005.

Sec. 205.054. TERMS; VACANCIES. (a) Members of the acupuncture board serve staggered six-year terms. The terms of three members expire on January 31 of each odd-numbered year.

(b) A vacancy on the acupuncture board shall be filled by appointment of the governor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.055. PRESIDING OFFICER. The governor shall designate an acupuncturist member of the acupuncture board as presiding officer. The presiding officer serves in that capacity at the will of the governor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.04, eff. September 1, 2005.

Sec. 205.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the acupuncture board that a member:

- (1) does not have at the time of appointment the qualifications required by Sections 205.051 and 205.052;
- (2) does not maintain during service on the acupuncture board the qualifications required by Sections 205.051 and 205.052;
- (3) violates a prohibition established by Section 205.053;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled acupuncture board meetings that the member is eligible to attend during a calendar year.

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

(c) If the executive director has knowledge that a potential

ground for removal of an acupuncture board member exists, the executive director shall notify the presiding officer of the acupuncture board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest officer of the acupuncture board, who shall notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.057. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the acupuncture board may not vote, deliberate, or be counted as a member in attendance at a meeting of the acupuncture board until the person completes a training program that complies with this section.

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

- (1) this chapter;
- (2) the programs operated by the acupuncture board;
- (3) the role and functions of the acupuncture board;
- (4) the rules of the acupuncture board;
- (5) the current budget for the acupuncture board;
- (6) the results of the most recent formal audit of the acupuncture board;
- (7) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and
- (8) any applicable ethics policies adopted by the acupuncture board or the Texas Ethics Commission.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. [419](#)), Sec. 3.05, eff.

September 1, 2005.

Sec. 205.058. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide, as often as necessary, to members of the acupuncture board information regarding their:

- (1) qualifications for office under this chapter; and
- (2) responsibilities under applicable laws relating to standards of conduct for state officers.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.059. COMPENSATION; PER DIEM. An acupuncture board member may not receive compensation for service on the acupuncture board but is entitled to receive a per diem as set by legislative appropriation for transportation and related expenses incurred for each day that the member engages in the acupuncture board's business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.060. APPLICATION OF OPEN MEETINGS, OPEN RECORDS, AND ADMINISTRATIVE PROCEDURE LAWS. Except as provided by this chapter, the acupuncture board is subject to Chapters 551, 552, and 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER C. POWERS AND DUTIES OF ACUPUNCTURE BOARD AND MEDICAL BOARD**

Sec. 205.101. GENERAL POWERS AND DUTIES OF ACUPUNCTURE BOARD.

(a) Subject to the advice and approval of the medical board, the acupuncture board shall:

- (1) establish qualifications for an acupuncturist to practice in this state;
- (2) establish minimum education and training requirements necessary for the acupuncture board to recommend that the medical board issue a license to practice acupuncture;

- (3) administer an examination that is validated by independent testing professionals for a license to practice acupuncture;
  - (4) develop requirements for licensure by endorsement of other states;
  - (5) prescribe the application form for a license to practice acupuncture;
  - (6) recommend rules to establish licensing and other fees;
  - (7) establish the requirements for a tutorial program for acupuncture students who have completed at least 48 semester hours of college; and
  - (8) recommend additional rules as are necessary to administer and enforce this chapter.
- (b) The acupuncture board does not have independent rulemaking authority. A rule adopted by the acupuncture board is subject to medical board approval.
- (c) The acupuncture board shall:
- (1) review and approve or reject each application for the issuance or renewal of a license;
  - (2) issue each license; and
  - (3) deny, suspend, or revoke a license or otherwise discipline a license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.06, eff. September 1, 2005.

Sec. 205.102. ASSISTANCE BY MEDICAL BOARD. (a) The medical board shall provide administrative and clerical employees as necessary to enable the acupuncture board to administer this chapter.

(b) Subject to the advice and approval of the medical board, the acupuncture board shall develop and implement policies that clearly separate the policy-making responsibilities of the acupuncture board and the management responsibilities of the executive director and the staff of the medical board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



Sec. 205.103. FEES. The medical board shall set and collect fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing this chapter without the use of any other funds generated by the medical board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.104. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The medical board may not adopt rules under this chapter restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the medical board may not include a rule that:

- (1) restricts the use of any medium for advertising;
- (2) restricts the use of a license holder's personal appearance or voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the license holder; or
- (4) restricts the license holder's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.1041. GUIDELINES FOR EARLY INVOLVEMENT IN RULEMAKING PROCESS. (a) The acupuncture board shall develop guidelines to establish procedures for receiving input during the rulemaking process from individuals and groups that have an interest in matters under the acupuncture board's jurisdiction. The guidelines must provide an opportunity for those individuals and groups to provide input before the acupuncture board submits the rule to the medical board for approval.

(b) A rule adopted by the acupuncture board may not be challenged on the grounds that the board did not comply with this section. If the acupuncture board was unable to solicit a significant amount of input from the public or affected persons early in the rulemaking process, the board shall state in writing the reasons why the board was unable to do so.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.07, eff.

September 1, 2005.

Sec. 205.1045. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The acupuncture board shall adopt rules and guidelines as necessary to comply with Chapter 53, except to the extent the requirements of this chapter are stricter than the requirements of Chapter 53.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.08, eff. September 1, 2005.

Sec. 205.106. USE OF TECHNOLOGY. Subject to the advice and approval of the medical board, the acupuncture board shall implement a policy requiring the acupuncture board to use appropriate technological solutions to improve the acupuncture board's ability to perform its functions. The policy must ensure that the public is able to interact with the acupuncture board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.09, eff. September 1, 2005.

Sec. 205.107. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval of the medical board, the acupuncture board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of acupuncture board rules; and  
(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the acupuncture board's jurisdiction.

(b) The acupuncture board procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The acupuncture board shall designate a trained person to:  
(1) coordinate the implementation of the policy adopted under Subsection (a);  
(2) serve as a resource for any training needed to

implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the acupuncture board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.10, eff. September 1, 2005.

#### **SUBCHAPTER D. PUBLIC ACCESS AND INFORMATION AND COMPLAINT PROCEDURES**

Sec. 205.151. PUBLIC INTEREST INFORMATION. (a) The acupuncture board shall prepare information of public interest describing the functions of the acupuncture board and the procedures by which complaints are filed with and resolved by the acupuncture board.

(b) The acupuncture board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.152. COMPLAINTS. (a) The acupuncture board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the acupuncture board for the purpose of directing a complaint to the acupuncture board. The acupuncture board may provide for that notification:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or

(3) in a bill for service provided by a person regulated under this chapter.

(b) The acupuncture board shall keep information about each complaint filed with the acupuncture board. The information shall include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all persons contacted in relation to the complaint;

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

(6) for a complaint for which the acupuncture board took no action, an explanation of the reason the complaint was closed without action.

(c) The acupuncture board shall keep a file about each written complaint filed with the acupuncture board that the acupuncture board has authority to resolve. The acupuncture board shall provide to the person filing the complaint and each person who is the subject of the complaint the acupuncture board's policies and procedures pertaining to complaint investigation and resolution.

(d) The acupuncture board, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person who is the subject of the complaint of the status of the complaint unless the notice would jeopardize an investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.1521. CONDUCT OF INVESTIGATION. The acupuncture board shall complete a preliminary investigation of a complaint received by the acupuncture board not later than the 30th day after the date of receiving the complaint. The acupuncture board shall first determine whether the acupuncturist constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the acupuncture board shall determine whether to officially proceed on the complaint. If the acupuncture board fails to complete the preliminary investigation in the time required by this section, the acupuncture board's official investigation of the complaint is considered to commence on that date.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.11, eff. September 1, 2005.

Sec. 205.153. PUBLIC PARTICIPATION. (a) Subject to the advice and approval of the medical board, the acupuncture board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the acupuncture board and to speak on any issue under the acupuncture board's jurisdiction.

(b) The executive director shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the acupuncture board's programs and services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER E. LICENSE REQUIREMENTS**

Sec. 205.201. LICENSE REQUIRED. Except as provided by Section 205.303, a person may not practice acupuncture in this state unless the person holds a license to practice acupuncture issued by the acupuncture board under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.12, eff. September 1, 2005.

Sec. 205.202. ISSUANCE OF LICENSE. (a) The acupuncture board shall issue a license to practice acupuncture in this state to a person who meets the requirements of this chapter and the rules adopted under this chapter.

(b) The acupuncture board may delegate authority to medical board employees to issue licenses under this chapter to applicants who clearly meet all licensing requirements. If the medical board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the acupuncture board. A license issued under this subsection does not require formal acupuncture board approval.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.13, eff. September 1, 2005.

Sec. 205.203. LICENSE EXAMINATION. (a) An applicant for a license to practice acupuncture must pass an acupuncture examination and a jurisprudence examination approved by the acupuncture board as

provided by this section.

(b) To be eligible for the examination, an applicant must:

(1) be at least 21 years of age;

(2) have completed at least 60 semester hours of college courses, including basic science courses as determined by the acupuncture board; and

(3) be a graduate of an acupuncture school with entrance requirements and a course of instruction that meet standards set under Section 205.206.

(c) The acupuncture examination shall be conducted on practical and theoretical acupuncture and other subjects required by the acupuncture board.

(c-1) The jurisprudence examination shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the professional practice of acupuncture in this state.

(d) The examination may be in writing, by a practical demonstration of the applicant's skill, or both, as required by the acupuncture board.

(e) The medical board shall notify each applicant of the time and place of the examination.

(f) The acupuncture board shall adopt rules for the jurisprudence examination under Subsection (c-1) regarding:

(1) the development of the examination;

(2) applicable fees;

(3) administration of the examination;

(4) reexamination procedures;

(5) grading procedures; and

(6) notice of results.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.057(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.14, eff. September 1, 2005.

Sec. 205.204. APPLICATION FOR EXAMINATION. An application for examination must be:

(1) in writing on a form prescribed by the acupuncture

board;

- (2) verified by affidavit;
- (3) filed with the executive director; and
- (4) accompanied by a fee in an amount set by the medical

board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.2045. APPEARANCE OF APPLICANT BEFORE ACUPUNCTURE BOARD. An applicant for a license to practice acupuncture may not be required to appear before the acupuncture board or a committee of the acupuncture board unless the application raises questions concerning:

- (1) a physical or mental impairment of the applicant;
- (2) a criminal conviction of the applicant; or
- (3) revocation of a professional license held by the

applicant.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.057(b), eff. Sept. 1, 2001.

Sec. 205.205. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a licensing examination is administered under this chapter, the acupuncture board shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the acupuncture board shall notify examinees of the results of the examination not later than the 14th day after the date the acupuncture board receives the results from the testing service.

(b) If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the acupuncture board shall notify the examinee of the reason for the delay before the 90th day. The acupuncture board may require a testing service to notify examinees of the results of an examination.

(c) If requested in writing by a person who fails a licensing examination administered under this chapter, the acupuncture board shall furnish the person with an analysis of the person's performance on the examination if an analysis is available from the national testing service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.206. ACUPUNCTURE SCHOOLS. (a) A reputable acupuncture school, in addition to meeting standards set by the acupuncture board, must:

(1) maintain a resident course of instruction equivalent to not less than six terms of four months each for a total of not less than 1,800 instructional hours;

(2) provide supervised patient treatment for at least two terms of the resident course of instruction;

(3) maintain a course of instruction in anatomy-histology, bacteriology, physiology, symptomatology, pathology, meridian and point locations, hygiene, and public health; and

(4) have the necessary teaching force and facilities for proper instruction in required subjects.

(b) In establishing standards for the entrance requirements and course of instruction of an acupuncture school, the acupuncture board may consider the standards set by the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine.

(c) In addition to the other requirements of this section, an acupuncture school or degree program is subject to approval by the Texas Higher Education Coordinating Board unless the school or program qualifies for an exemption under Section 61.303, Education Code.

(d) In reviewing an acupuncture school or degree program as required by Subsection (c), the Texas Higher Education Coordinating Board shall seek input from the acupuncture board regarding the standards to be used for assessing whether a school or degree program adequately prepares an individual for the practice of acupuncture.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.15, eff. September 1, 2005.

Sec. 205.207. RECIPROCAL LICENSE. The medical board may waive any license requirement for an applicant after reviewing the



applicant's credentials and determining that the applicant holds a license from another state that has license requirements substantially equivalent to those of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.208. TEMPORARY LICENSE. (a) The acupuncture board may, through the executive director, issue a temporary license to practice acupuncture to an applicant who:

- (1) submits an application on a form prescribed by the acupuncture board;
- (2) has passed a national or other examination recognized by the acupuncture board relating to the practice of acupuncture;
- (3) pays the appropriate fee;
- (4) if licensed in another state, is in good standing as an acupuncturist; and
- (5) meets all the qualifications for a license under this chapter but is waiting for the next scheduled meeting of the medical board for the license to be issued.

(b) A temporary license is valid for 100 days after the date issued and may be extended only for another 30 days after the date the initial temporary license expires.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. LICENSE RENEWAL**

Sec. 205.251. ANNUAL RENEWAL REQUIRED. (a) The medical board by rule shall provide for the annual renewal of a license to practice acupuncture.

(b) The medical board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.252. NOTICE OF LICENSE EXPIRATION. Not later than the 30th day before the expiration date of a person's license, the medical board shall send written notice of the impending license expiration to the person at the person's last known address according to the records of the medical board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.253. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the medical board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed under this section or Section 205.254.

(b) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the medical board a fee in an amount equal to one and one-half times the required renewal fee.

(c) If the person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the medical board a fee in an amount equal to two times the required renewal fee.

(d) If the person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.254. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The medical board may renew without reexamination the license of a person who was licensed to practice acupuncture in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application.

(b) The person must pay to the medical board a fee in an amount equal to two times the required renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.255. CONTINUING EDUCATION. (a) The acupuncture board by rule may require a license holder to complete a certain number of hours of continuing education courses approved by the acupuncture board to renew a license.

(a-1) The acupuncture board shall establish written guidelines for granting continuing education credit that specify:

- (1) procedural requirements;
- (2) the qualifications needed to be considered a preferred provider of continuing education; and
- (3) course content requirements.

(b) The acupuncture board shall consider the approval of a course conducted by:

- (1) a knowledgeable health care provider; or
- (2) a reputable school, state, or professional organization.

(c) After guidelines are established under Subsection (a-1), the acupuncture board shall delegate to medical board employees the authority to approve course applications for courses that clearly meet the guidelines. Medical board employees shall refer any courses that are not clearly within the guidelines to the acupuncture board for review and approval.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.058(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.16, eff. September 1, 2005.

#### **SUBCHAPTER G. PRACTICE BY LICENSE HOLDER**

Sec. 205.301. REFERRAL BY OTHER HEALTH CARE PRACTITIONER REQUIRED. (a) A license holder may perform acupuncture on a person only if the person was:

- (1) evaluated by a physician or dentist, as appropriate, for the condition being treated within six months before the date acupuncture is performed; or
- (2) referred by a chiropractor within 30 days before the date acupuncture is performed.

(b) A license holder acting under Subsection (a)(1) must obtain reasonable documentation that the required evaluation has taken place. If the license holder is unable to determine that an evaluation has taken place, the license holder must obtain a written statement signed by the person on a form prescribed by the acupuncture board that states the person has been evaluated by a physician or dentist within the prescribed time. The form must contain a clear statement that the person should be evaluated by a physician or dentist for the condition being treated by the license holder.

(c) A license holder acting under Subsection (a)(2) shall refer the person to a physician after performing acupuncture 20 times or for 30 days, whichever occurs first, if substantial improvement does not occur in the person's condition for which the referral was made.

(d) The medical board, with advice from the acupuncture board, by rule may modify:

(1) the scope of the evaluation under Subsection (a)(1);

(2) the period during which treatment must begin under Subsection (a)(1) or (2); or

(3) the number of treatments or days before referral to a physician is required under Subsection (c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.302. AUTHORIZED PRACTICE WITHOUT REFERRAL. (a) After notice and public hearing, the medical board shall determine by rule whether an acupuncturist may treat a patient for alcoholism or chronic pain without a referral from a physician, dentist, or chiropractor. The medical board shall make the determination based on clinical evidence and what the medical board determines to be in the best interest of affected patients.

(b) Notwithstanding Section 205.301, a license holder may, without a referral from a physician, dentist, or chiropractor, perform acupuncture on a person for:

(1) smoking addiction;

(2) weight loss; or

(3) substance abuse, to the extent permitted by medical board rule adopted with advice from the acupuncture board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 719, Sec. 2, eff. Sept. 1, 2001.

Sec. 205.303. ACUDETOX SPECIALIST. (a) The medical board may certify a person as an acudetox specialist under this section if the person:

(1) provides to the medical board documentation that the person:

(A) is a licensed social worker, licensed professional counselor, licensed psychologist, licensed chemical dependency counselor, licensed vocational nurse, or licensed registered nurse; and

(B) has successfully completed a training program in acupuncture detoxification that meets guidelines approved by the medical board; and

(2) pays a certification fee in an amount set by the medical board.

(b) An acudetox specialist may practice acupuncture only:

(1) to the extent allowed by rules adopted by the medical board for the treatment of alcoholism, substance abuse, or chemical dependency; and

(2) under the supervision of a licensed acupuncturist or physician.

(c) A program that includes the services of an acudetox specialist shall:

(1) notify each participant in the program of the qualifications of the acudetox specialist and of the procedure for registering a complaint regarding the acudetox specialist with the medical board; and

(2) keep a record of each client's name, the date the client received the acudetox specialist's services, and the name, signature, and certification number of the acudetox specialist.

(d) The medical board may annually renew the certification of an acudetox specialist under this section if the person:

(1) provides to the medical board documentation that:

(A) the certification or license required under Subsection (a)(1)(A) is in effect; and

(B) the person has successfully met continuing education requirements established by the medical board under Subsection (e); and

(2) pays a certification renewal fee in an amount set by the medical board.

(e) The medical board shall establish continuing education requirements for an acudetox specialist that, at a minimum, include six hours of education in the practice of acupuncture and a course in either clean needle technique or universal infection control precaution procedures.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.059(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 892, Sec. 33, eff. Sept. 1, 2003.

Sec. 205.304. PROFESSIONAL REVIEW ACTION. Sections 160.002, 160.003, 160.006, 160.007(d), 160.013, 160.014, and 160.015 apply to professional review actions relating to the practice of acupuncture by an acupuncturist or acupuncturist student.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.060, eff. Sept. 1, 2001.

Sec. 205.305. LICENSE HOLDER INFORMATION. (a) Each license holder shall file with the acupuncture board:

- (1) the license holder's mailing address;
- (2) the address of the license holder's residence;
- (3) the mailing address of each office of the license holder; and
- (4) the address for the location of each office of the license holder that has an address different from the office's mailing address.

(b) A license holder shall:

- (1) notify the acupuncture board of a change of the license holder's residence or business address; and
- (2) provide the acupuncture board with the license holder's new address not later than the 30th day after the date the address change occurs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER H. DISCIPLINARY PROCEDURES**

Sec. 205.351. GROUND FOR LICENSE DENIAL OR DISCIPLINARY ACTION. (a) A license to practice acupuncture may be denied or, after notice and hearing, a license holder may be subject to disciplinary action under Section 205.352 if the license applicant or license holder:

- (1) intemperately uses drugs or intoxicating liquors to an extent that, in the opinion of the board, could endanger the lives of patients;
- (2) obtains or attempts to obtain a license by fraud or deception;
- (3) has been adjudged mentally incompetent by a court;
- (4) has a mental or physical condition that renders the person unable to perform safely as an acupuncturist;
- (5) fails to practice acupuncture in an acceptable manner consistent with public health and welfare;
- (6) violates this chapter or a rule adopted under this chapter;
- (7) has been convicted of a crime involving moral turpitude or a felony or is the subject of deferred adjudication or pretrial diversion for such an offense;
- (8) holds the person out as a physician or surgeon or any combination or derivative of those terms unless the person is also licensed by the medical board as a physician or surgeon;
- (9) fraudulently or deceptively uses a license;
- (10) engages in unprofessional or dishonorable conduct that is likely to deceive, defraud, or injure a member of the public;
- (11) commits an act in violation of state law if the act is connected with the person's practice as an acupuncturist;
- (12) fails to adequately supervise the activities of a person acting under the supervision of the license holder;
- (13) directly or indirectly aids or abets the practice of acupuncture by any person not licensed to practice acupuncture by the acupuncture board;
- (14) is unable to practice acupuncture with reasonable skill and with safety to patients because of illness, drunkenness, or excessive use of drugs, narcotics, chemicals, or any other type of material or because of any mental or physical condition;
- (15) is the subject of repeated or recurring meritorious health-care liability claims that in the opinion of the acupuncture

board evidence professional incompetence likely to injure the public;

(16) has had a license to practice acupuncture suspended, revoked, or restricted by another state or has been subject to other disciplinary action by another state or by the uniformed services of the United States regarding practice as an acupuncturist; or

(17) sexually abuses or exploits another person through the license holder's practice as an acupuncturist.

(b) If the acupuncture board proposes to suspend, revoke, or refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(c) A complaint, indictment, or conviction of a violation of law is not necessary for an action under Subsection (a)(11). Proof of the commission of the act while in the practice of acupuncture or under the guise of the practice of acupuncture is sufficient for action by the acupuncture board.

(d) A certified copy of the record of the state or uniformed services of the United States taking an action is conclusive evidence of the action for purposes of Subsection (a)(16).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.17, eff. September 1, 2005.

Sec. 205.352. DISCIPLINARY POWERS OF ACUPUNCTURE BOARD. (a) On finding that grounds exist to deny a license or take disciplinary action against a license holder, the acupuncture board by order may:

(1) deny the person's application for a license, license renewal, or certificate to practice acupuncture or revoke the person's license or certificate to practice acupuncture;

(2) require the person to submit to the care, counseling, or treatment of a health care practitioner designated by the acupuncture board as a condition for the issuance, continuance, or renewal of a license or certificate to practice acupuncture;

(3) require the person to participate in a program of education or counseling prescribed by the acupuncture board;

(4) suspend, limit, or restrict the person's license or certificate to practice acupuncture, including limiting the practice of the person to, or excluding from the practice, one or more



specified activities of acupuncture or stipulating periodic review by the acupuncture board;

(5) require the person to practice under the direction of an acupuncturist designated by the acupuncture board for a specified period of time;

(6) assess an administrative penalty against the person as provided by Subchapter J;

(7) require the person to perform public service considered appropriate by the acupuncture board;

(8) stay enforcement of an order and place the person on probation with the acupuncture board retaining the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation or impose any other remedial measure or sanction authorized by this section;

(9) require the person to continue or review professional education until the person attains a degree of skill satisfactory to the acupuncture board in those areas that are the basis of the probation under Subdivision (8);

(10) require the person to report regularly to the acupuncture board on matters that are the basis of the probation under Subdivision (8); or

(11) administer a public reprimand.

(b) The acupuncture board may reinstate or reissue a license or remove any disciplinary or corrective measure that the acupuncture board has imposed under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.18, eff. September 1, 2005.

Sec. 205.3522. SURRENDER OF LICENSE. (a) The acupuncture board may accept the voluntary surrender of a license.

(b) A surrendered license may not be returned to the license holder unless the acupuncture board determines, under acupuncture board rules, that the former holder of the license is competent to resume practice.

(c) The acupuncture board shall recommend rules to the medical board for determining the competency of a former license holder to

return to practice.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.19, eff. September 1, 2005.

Sec. 205.3523. PHYSICAL OR MENTAL EXAMINATION. (a) The acupuncture board shall adopt guidelines, in conjunction with persons interested in or affected by this section, to enable the board to evaluate circumstances in which an acupuncturist or applicant may be required to submit to an examination for mental or physical health conditions, alcohol and substance abuse, or professional behavior problems.

(b) The acupuncture board shall refer an acupuncturist or applicant with a physical or mental health condition to the most appropriate medical specialist. The acupuncture board may not require an acupuncturist or applicant to submit to an examination by a physician having a specialty specified by the board unless medically indicated. The acupuncture board may not require an acupuncturist or applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the acupuncturist or applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

(c) The guidelines adopted under this section do not impair or remove the acupuncture board's power to make an independent licensing decision.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.20, eff. September 1, 2005.

Sec. 205.354. RULES FOR DISCIPLINARY PROCEEDINGS. Rules of practice adopted by the medical board under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.3541. INFORMAL PROCEEDINGS. (a) The acupuncture board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must require that:

(1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled not later than the 180th day after the date the complaint is filed with the acupuncture board, unless good cause is shown by the acupuncture board for scheduling the informal meeting after that date;

(2) the acupuncture board give notice to the license holder of the time and place of the meeting not later than the 30th day before the date the meeting is held;

(3) the complainant and the license holder be provided an opportunity to be heard;

(4) at least one of the acupuncture board members participating in the informal meeting as a panelist be a member who represents the public;

(5) the acupuncture board's legal counsel or a representative of the attorney general be present to advise the acupuncture board or the medical board's staff; and

(6) an employee of the medical board be at the meeting to present to the acupuncture board's representative the facts the medical board staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing.

(c) An affected acupuncturist is entitled, orally or in writing, to:

(1) reply to the staff's presentation; and

(2) present the facts the acupuncturist reasonably believes the acupuncturist could prove by competent evidence or qualified witnesses at a hearing.

(d) After ample time is given for the presentations, the acupuncture board panel shall recommend that the investigation be closed or shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) If the license holder has previously been the subject of disciplinary action by the acupuncture board, the acupuncture board

shall schedule the informal meeting as soon as practicable but not later than the deadline prescribed by Subsection (b)(1).

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.21, eff. September 1, 2005.

Sec. 205.3542. ACUPUNCTURE BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal proceeding under Section 205.3541, at least two panelists shall be appointed to determine whether an informal disposition is appropriate.

(b) Notwithstanding Subsection (a) and Section 205.3541(b)(4), an informal proceeding may be conducted by one panelist if the affected acupuncturist waives the requirement that at least two panelists conduct the informal proceeding. If the acupuncturist waives that requirement, the panelist may be any member of the acupuncture board.

(c) The panel requirements described by Subsection (a) apply to an informal proceeding conducted by the acupuncture board under Section 205.3541, including a proceeding to:

(1) consider a disciplinary case to determine if a violation has occurred; or

(2) request modification or termination of an order.

(d) The panel requirements described by Subsection (a) do not apply to an informal proceeding conducted by the acupuncture board under Section 205.3541 to show compliance with an order of the acupuncture board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.22, eff. September 1, 2005.

Sec. 205.3543. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) An acupuncture board member that serves as a panelist at an informal meeting under Section 205.3541 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a medical board employee at any time.

(b) Medical board employees shall present a summary of the allegations against the affected acupuncturist and of the facts pertaining to the allegation that the employees reasonably believe

may be proven by competent evidence at a formal hearing.

(c) An acupuncture board or medical board attorney shall act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of participants in the informal meeting to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the acupuncture board or medical board, keep the proceedings focused on the case being discussed, and ensure that the medical board's employees and the affected acupuncturist have an opportunity to present information related to the case. During the panel's deliberation, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the acupuncture board or medical board.

(d) The panel and medical board employees shall provide an opportunity for the affected acupuncturist and the acupuncturist's authorized representative to reply to the board employees' presentation and to present oral and written statements and facts that the acupuncturist and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the medical board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected acupuncturist, the acupuncturist's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the attorney serving as counsel to the panel may be present during the deliberations.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected acupuncturist has violated a statute or acupuncture board rule, the panel may recommend board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected acupuncturist and the acupuncturist's authorized representative. The acupuncturist may accept the proposed settlement within the time established by the panel at the informal meeting. If the acupuncturist rejects the

proposed settlement or does not act within the required time, the acupuncture board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.23, eff. September 1, 2005.

Sec. 205.3544. LIMIT ON ACCESS TO INVESTIGATION FILES. The acupuncture board shall prohibit or limit access to an investigation file relating to a license holder in an informal proceeding in the manner provided by Section 164.007(c).

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.24, eff. September 1, 2005.

Sec. 205.355. REQUIRED DISCIPLINARY ACTION FOR FAILURE TO OBTAIN REFERRAL. Except as provided by Section 205.301(a)(2), a license to practice acupuncture shall be denied or, after notice and hearing, revoked if the applicant or license holder violates Section 205.301(a)(1).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.356. REHABILITATION ORDER. (a) The acupuncture board, through an agreed order or after a contested proceeding, may impose a nondisciplinary rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder based on:

(1) the person's intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician;

(2) the person's intemperate use of drugs or alcohol during the five years preceding the date of the report that could adversely affect the person's ability to safely practice as an acupuncturist, if the person:

(A) reported the use;

(B) has not previously been the subject of a substance abuse related order of the acupuncture board; and

(C) did not violate the standard of care as a result of

the impairment;

(3) a judgment by a court that the person is of unsound mind; or

(4) the results of a mental or physical examination, or an admission by the person, indicating that the person suffers from a potentially dangerous limitation or an inability to practice as an acupuncturist with reasonable skill and safety by reason of illness or as a result of any physical or mental condition.

(b) The acupuncture board may not issue an order under this section if, before the individual signs the proposed order, the board receives a valid complaint with regard to the individual based on the individual's intemperate use of drugs or alcohol in a manner affecting the standard of care.

(c) The acupuncture board must determine whether an individual has committed a standard of care violation described by Subsection (a)(2) before imposing an order under this section.

(d) The acupuncture board may disclose a rehabilitation order to a local or statewide private acupuncture association only as provided by Section 205.3562.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.25, eff. September 1, 2005.

Sec. 205.3561. EXPERT IMMUNITY. An expert who assists the acupuncture board is immune from suit and judgment and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding, or other action taken without fraud or malice in the course of assisting the board in a disciplinary proceeding. The attorney general shall represent the expert in any suit resulting from a service provided by the expert in good faith to the acupuncture board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.26, eff. September 1, 2005.

Sec. 205.3562. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS. (a) If a rehabilitation order imposed under Section 205.356 requires a

license holder to participate in activities or programs provided by a local or statewide private acupuncture association, the acupuncture board shall inform the association of the license holder's duties under the order. The information provided under this section must include specific guidance to enable the association to comply with any requirements necessary to assist in the acupuncturist's rehabilitation.

(b) The acupuncture board may provide to the association any information that the board determines to be necessary, including a copy of the rehabilitation order. Any information received by the association remains confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and may be disclosed only to the acupuncture board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.26, eff. September 1, 2005.

Sec. 205.357. EFFECT OF REHABILITATION ORDER. (a) A rehabilitation order imposed under Section 205.356 is a nondisciplinary private order. If entered by agreement, the order is an agreed disposition or settlement agreement for purposes of civil litigation and is exempt from the open records law.

(b) A rehabilitation order imposed under Section 205.356 must contain findings of fact and conclusions of law. The order may impose a revocation, cancellation, suspension, period of probation or restriction, or any other term authorized by this chapter or agreed to by the acupuncture board and the person subject to the order.

(c) A violation of a rehabilitation order may result in disciplinary action under the provisions of this chapter for contested matters or the terms of the agreed order.

(d) A violation of a rehabilitation order is grounds for disciplinary action based on:

(1) unprofessional or dishonorable conduct; or

(2) any provision of this chapter that applies to the conduct resulting in the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.358. AUDIT OF REHABILITATION ORDER. (a) The



acupuncture board shall keep rehabilitation orders imposed under Section 205.356 in a confidential file. The file is subject to an independent audit to ensure that only qualified license holders are subject to rehabilitation orders. The audit shall be conducted by a state auditor or private auditor with whom the acupuncture board contracts to perform the audit.

(b) An audit may be performed at any time at the direction of the acupuncture board. The acupuncture board shall ensure that an audit is performed at least once in each three-year period.

(c) The audit results are a matter of public record and shall be reported in a manner that maintains the confidentiality of each license holder who is subject to a rehabilitation order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.359. SUBPOENA. (a) On behalf of the acupuncture board, the executive director of the medical board or the presiding officer of the acupuncture board may issue a subpoena or subpoena duces tecum:

(1) for purposes of an investigation or contested proceeding related to:

(A) alleged misconduct by an acupuncturist; or

(B) an alleged violation of this chapter or other law related to practice as an acupuncturist or to the provision of health care under the authority of this chapter; and

(2) to determine whether to:

(A) issue, suspend, restrict, revoke, or cancel a license authorized by this chapter; or

(B) deny or grant an application for a license under this chapter.

(b) Failure to timely comply with a subpoena issued under this section is a ground for:

(1) disciplinary action by the acupuncture board or any other licensing or regulatory agency with jurisdiction over the individual or entity subject to the subpoena; and

(2) denial of a license application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## Sec. 205.360. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS.

(a) The acupuncture board may delegate to a committee of medical board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations. The disposition determined by the committee must be approved by the acupuncture board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceedings under Section 205.3541 if:

- (1) the committee of employees determines that the complaint should not be dismissed or settled;
  - (2) the committee is unable to reach an agreed settlement;
- or
- (3) the affected acupuncturist requests that the complaint be referred for informal proceedings.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.27, eff. September 1, 2005.

Sec. 205.361. TEMPORARY SUSPENSION. (a) The presiding officer of the acupuncture board, with that board's approval, shall appoint a three-member disciplinary panel consisting of acupuncture board members to determine whether a person's license to practice as an acupuncturist should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person licensed to practice as an acupuncturist would, by the person's continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

- (1) institution of proceedings for a hearing before the acupuncture board is initiated simultaneously with the temporary suspension; and
- (2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if

immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.28, eff. September 1, 2005.

Sec. 205.362. CEASE AND DESIST ORDER. (a) If it appears to the acupuncture board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of acupuncture, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Section 205.352.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.29, eff. September 1, 2005.

Sec. 205.363. REFUND. (a) Subject to Subsection (b), the acupuncture board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this subchapter.

(b) The amount of a refund ordered under Subsection (a) may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The acupuncture board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.30, eff. September 1, 2005.

Sec. 205.364. MODIFICATION OF FINDINGS OR RULINGS BY ADMINISTRATIVE LAW JUDGE. The acupuncture board may change a finding of fact or conclusion of law or vacate or modify an order of an administrative law judge only if the acupuncture board makes a determination required by Section 2001.058(e), Government Code.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.31, eff. September 1, 2005.

**SUBCHAPTER I. CRIMINAL PENALTIES AND OTHER ENFORCEMENT PROVISIONS**

Sec. 205.401. CRIMINAL PENALTY. (a) Except as provided by Section 205.303, a person commits an offense if the person practices acupuncture in this state without a license issued under this chapter.

(b) Each day a person practices acupuncture in violation of Subsection (a) constitutes a separate offense.

(c) An offense under Subsection (a) is a felony of the third degree.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.402. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The acupuncture board, the attorney general, or a district or county attorney may bring a civil action to compel compliance with this chapter or to enforce a rule adopted under this chapter.

(b) In addition to injunctive relief or any other remedy provided by law, a person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty in an amount not to exceed \$2,000 for each violation.

(c) Each day a violation continues or occurs is a separate violation for purposes of imposing a civil penalty.

(d) The attorney general, at the request of the acupuncture board or on the attorney general's own initiative, may bring a civil action to collect a civil penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.32, eff. September 1, 2005.

**SUBCHAPTER J. ADMINISTRATIVE PENALTIES**

Sec. 205.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The acupuncture board by order may impose an administrative penalty against a person licensed or regulated under this chapter who

violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.452. PROCEDURE. (a) The acupuncture board by rule shall prescribe the procedure by which it may impose an administrative penalty.

(b) A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.453. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.454. NOTICE OF VIOLATION AND PENALTY. (a) If the acupuncture board by order determines that a violation has occurred and imposes an administrative penalty, the acupuncture board shall notify the affected person of the board's order.

(b) The notice must include a statement of the right of the person to judicial review of the order.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.455. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the acupuncture board's order imposing the administrative penalty is final, the person shall:

- (1) pay the penalty;
- (2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or
- (3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account; or
  - (B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the acupuncture board's order is final; or
- (2) request the court to stay enforcement of the penalty by:
  - (A) filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and
  - (B) giving a copy of the affidavit to the presiding officer of the acupuncture board by certified mail.

(c) If the presiding officer of the acupuncture board receives a copy of an affidavit under Subsection (b)(2), the presiding officer may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is

financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.456. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the presiding officer of the acupuncture board may refer the matter to the attorney general for collection of the penalty.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.457. DETERMINATION BY COURT. (a) If on appeal the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.458. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest is paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

## CHAPTER 206. SURGICAL ASSISTANTS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 206.001. DEFINITIONS. In this chapter:

(1) "Advisory committee" means the advisory committee created under this chapter.

(2) "Delegating physician" means a physician who is licensed by the medical board either as a doctor of medicine or doctor of osteopathic medicine and who delegates, to a licensed surgical assistant, surgical assisting and oversees and accepts responsibility for that surgical assisting.

(3) "Direct supervision" means supervision by a delegating physician who is physically present and who personally directs delegated acts and remains immediately available to personally respond to any emergency until the patient is released from the operating room or care and has been transferred, as determined by medical board rule, to another physician.

(4) "Executive director" means the executive director of the medical board.

(5) "Medical board" means the Texas Medical Board.

(6) "Surgical assisting" means providing aid under direct supervision in exposure, hemostasis, and other intraoperative technical functions that assist a physician in performing a safe operation with optimal results for the patient, including the delegated authority to provide local infiltration or the topical application of a local anesthetic at the operation site. This term is synonymous with "first assisting."

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.  
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 4.01, eff. September 1, 2005.

Sec. 206.002. APPLICABILITY. (a) A person is not required to hold a license under this chapter if the person is:

(1) a student enrolled in a surgical assistant education



program approved by the medical board who is assisting in a surgical operation that is an integral part of the program of study;

(2) a surgical assistant employed in the service of the federal government while performing duties related to that employment;

(3) a person acting under the delegated authority of a licensed physician;

(4) a licensed health care worker acting within the scope of the person's license;

(5) a registered nurse; or

(6) a licensed physician assistant.

(b) This chapter does not affect the authority of a licensed physician to delegate acts under Subtitle B.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

#### **SUBCHAPTER B. ADVISORY COMMITTEE**

Sec. 206.051. ADVISORY COMMITTEE. (a) The advisory committee is an informal advisory committee to the medical board and is not subject to Chapter 2110, Government Code.

(b) The advisory committee has no independent rulemaking authority.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.052. APPOINTMENT OF ADVISORY COMMITTEE. (a) The advisory committee consists of six members appointed by the president of the medical board. One member must be a registered perioperative nurse with at least five years of clinical experience as a registered perioperative nurse. Each of the remaining members must be:

(1) a practicing surgical assistant who has at least five years of clinical experience as a surgical assistant; or

(2) a physician licensed in this state who supervises a surgical assistant.

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

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the advisory committee if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of surgical assisting; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of surgical assisting.

(c) A person may not be a member of the advisory committee if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the field of surgical assisting.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.054. TERMS; VACANCY. (a) Members of the advisory committee are appointed for two-year terms. The terms of the members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the president of the medical board shall appoint a new member to fill the unexpired term.

(c) An advisory committee member may not serve more than two consecutive full terms.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the advisory committee that a member:

(1) does not have at the time of appointment the qualifications required by Section 206.052;

(2) does not maintain during service on the advisory committee the qualifications required by Section 206.052;

(3) is ineligible for membership under Section 206.053; or

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term.

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

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.056. OFFICERS. The president of the medical board shall designate biennially a committee member as the presiding officer of the advisory committee to serve in that capacity at the will of the president.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.057. PER DIEM. An advisory committee member is not entitled to reimbursement for travel expenses or compensation.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.058. MEETINGS. (a) The advisory committee shall meet as requested by the medical board.

(b) A meeting may be held by telephone conference call.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

#### **SUBCHAPTER C. POWERS AND DUTIES OF MEDICAL BOARD**

Sec. 206.101. GENERAL POWERS AND DUTIES. The medical board shall:

- (1) establish qualifications for a surgical assistant to practice in this state;
- (2) establish requirements for an examination for a license to practice as a surgical assistant;
- (3) establish minimum education and training requirements necessary for a license to practice as a surgical assistant;
- (4) prescribe the application form for a license to practice as a surgical assistant; and

(5) develop an approved program of mandatory continuing education and the manner in which attendance at all approved courses, clinics, forums, lectures, programs, or seminars is monitored and recorded.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.103. GIFTS, GRANTS, AND DONATIONS. In addition to any fees paid to the medical board or money appropriated to the medical board, the medical board may receive and accept under this chapter a gift, grant, donation, or other item of value from any source, including the United States or a private source.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

**SUBCHAPTER D. PUBLIC INTEREST INFORMATION; COMPLAINT AND  
INVESTIGATIVE INFORMATION**

Sec. 206.151. PUBLIC PARTICIPATION. (a) The medical board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the medical board and speak on any issue relating to surgical assistants.

(b) The executive director of the medical board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the medical board's programs and services under this chapter.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.152. PUBLIC INTEREST INFORMATION. (a) The medical board shall prepare information of public interest describing the functions of the medical board and the procedures by which complaints are filed and resolved under this chapter.

(b) The medical board shall make the information available to the public and appropriate state agencies.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.153. COMPLAINTS. (a) The medical board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the medical board for the purpose of directing complaints about licensed surgical assistants to the medical board.

(b) The medical board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a licensed surgical assistant.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.154. RECORDS OF COMPLAINTS. (a) The medical board shall maintain a file on each written complaint filed with the medical board under this chapter. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the medical board;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the medical board closed the file without taking action other than to investigate the complaint.

(b) The medical board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the medical board's policies and procedures relating to complaint investigation and resolution. A person who reports a complaint by phone shall be given information on how to file a written complaint.

(c) The medical board, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.155. LICENSE HOLDER ACCESS TO COMPLAINT INFORMATION.

(a) The medical board shall provide a license holder who is the subject of a formal complaint filed under this chapter with access to all information in its possession that the medical board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint, subject to any other privilege or restriction established by rule, statute, or legal precedent. The medical board shall provide the information not later than the 30th day after receipt of a written request from the license holder or the license holder's counsel, unless good cause is shown for delay.

(b) Notwithstanding Subsection (a), the medical board is not required to provide:

- (1) medical board investigative reports;
- (2) investigative memoranda;
- (3) the identity of a nontestifying complainant;
- (4) attorney-client communications;
- (5) attorney work product; or

(6) other material covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) The provision of information does not constitute a waiver of privilege or confidentiality under this chapter or other law.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.156. HEALTH CARE ENTITY REQUEST FOR INFORMATION. On the written request of a health care entity, the medical board shall provide to the entity:

- (1) information about a complaint filed against a license holder that was resolved after investigation by:
  - (A) a disciplinary order of the medical board; or
  - (B) an agreed settlement; and
- (2) the basis of and current status of any complaint under active investigation that has been referred by the executive director or the director's designee for legal action.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.157. CONFIDENTIALITY OF INVESTIGATIVE INFORMATION. A complaint, adverse report, investigation file, or other report, the

identity of and reports made by a physician or surgical assistant performing or supervising compliance monitoring for the medical board, or other investigative information in the possession of or received or gathered by the medical board, medical board employee or agent relating to a license holder, a license application, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the medical board or medical board employee or agent involved in license holder discipline.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.1575. CONDUCT OF INVESTIGATION. The medical board shall complete a preliminary investigation of a complaint not later than the 30th day after the date of receiving the complaint. The medical board shall first determine whether the surgical assistant constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the medical board shall determine whether to officially proceed on the complaint. If the medical board fails to complete the preliminary investigation in the time required by this section, the medical board's official investigation is considered to commence on that date.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 4.02, eff. September 1, 2005.

Sec. 206.158. PERMITTED DISCLOSURE OF INVESTIGATIVE INFORMATION. (a) Investigative information in the possession of the medical board, medical board employee, or agent that relates to the discipline of a license holder may be disclosed to:

- (1) a licensing authority in another state or a territory or country in which the license holder is licensed or has applied for a license; or
- (2) a peer review committee reviewing:
  - (A) an application for privileges; or
  - (B) the qualifications of the license holder with respect to retaining privileges.

- (b) If the investigative information in the possession of the

medical board or a medical board employee or agent indicates a crime may have been committed, the medical board shall report the information to the proper law enforcement agency. The medical board shall cooperate with and assist all law enforcement agencies conducting criminal investigations of a license holder by providing information relevant to the investigation. Confidential information disclosed by the medical board to a law enforcement agency remains confidential and may not be disclosed by the law enforcement agency except as necessary to further the investigation.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.159. IMMUNITY AND REPORTING REQUIREMENTS. (a) A medical peer review committee in this state, a quality assurance committee in this state, a surgical assistant, a surgical assistant student, a physician practicing medicine in this state, or any person usually present in an operating room, including a nurse or surgical technologist, shall report relevant information to the advisory committee related to the acts of a surgical assistant in this state if, in that person's opinion, a surgical assistant poses a continuing threat to the public welfare through the person's practice as a surgical assistant. The duty to report under this section may not be nullified through contract.

(b) A person who, without malice, furnishes records, information, or assistance to the advisory committee under this section is immune from any civil liability arising from that action in a suit against the person brought by or on behalf of a surgical assistant who is reported under this section.

(c) Sections 160.002, 160.003, 160.006, 160.007, 160.009, 160.013, and 160.014 apply to medical peer review regarding a licensed surgical assistant.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

#### **SUBCHAPTER E. LICENSE REQUIREMENTS**

Sec. 206.201. LICENSE REQUIRED. (a) Except as provided by Section 206.002, a person may not practice as a surgical assistant unless the person is licensed under this chapter.

(b) Unless the person holds a license under this chapter, a



person may not use, in connection with the person's name:

- (1) the title "Licensed Surgical Assistant"; or
- (2) any other designation that would imply that the person is a licensed surgical assistant.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.202. LICENSE APPLICATION. An applicant for a license must:

- (1) file a written application with the medical board on a form prescribed by the medical board; and
- (2) pay the application fee set by the medical board.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.203. LICENSE ELIGIBILITY. (a) Except as provided by Section 206.206, to be eligible for a license, a person must:

- (1) be of good moral character;
- (2) have not been convicted of a felony or a crime involving moral turpitude;
- (3) not use drugs or alcohol to an extent that affects the applicant's professional competency;
- (4) not have had a license or certification revoked by a licensing agency or by a certifying professional organization; and
- (5) not have engaged in fraud or deceit in applying for a license under this chapter.

(b) In addition to meeting the requirements of Subsection (a), a person must:

- (1) pass the examination required by Section 206.204;
- (2) hold at least an associate's degree based on completion of an educational program that is substantially equivalent to the education required for a registered nurse or physician assistant who specializes in surgical assisting;
- (3) demonstrate to the satisfaction of the medical board the completion of full-time work experience performed in this country under the direct supervision of a physician licensed in this country and consisting of at least 2,000 hours of performance as an assistant in surgical procedures for the three years preceding the date of application; and

(4) possess a current certification by a national certifying body approved by the medical board.

(c) A degree program described by Subsection (b)(2) must contain a clinical component and must include courses in anatomy, physiology, basic pharmacology, aseptic techniques, operative procedures, chemistry, microbiology, and pathophysiology.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.204. EXAMINATION. An applicant for a surgical assistant license must pass a surgical assistant examination approved by the medical board. Any written portion of the examination must be validated by an independent testing professional.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.205. SPECIAL ELIGIBILITY FOR LICENSE. (a) A person who is otherwise eligible for a license under Section 206.203 is not required to take the examination required by Section 206.203(b)(1) if the person:

(1) passed a surgical assistant examination required for certification under Section 206.203(b)(4) that the medical board determines is substantially equivalent to the examination required by the medical board under this chapter; and

(2) applies for a license under this section before September 1, 2002.

(b) A person who is otherwise eligible for a license under Section 206.203 is not required to meet the educational requirements under Section 206.203(b)(2) if the person applies for a license under this section before September 1, 2002, and:

(1) will complete before the third anniversary of the date the license is issued under this subsection the following academic courses approved by the medical board:

- (A) anatomy;
- (B) physiology;
- (C) basic pharmacology;
- (D) aseptic techniques;
- (E) operative procedures;
- (F) chemistry; and

(G) microbiology; or

(2) has been continuously certified since September 30, 1995, as a surgical assistant by a national certifying body approved by the medical board and has practiced full-time as a surgical assistant under the direct supervision of a physician licensed in this country.

(c) A license issued under Subsection (b)(1) may not be renewed after the third anniversary of the date of issuance unless the license holder completes the academic courses described by Subsection (b)(1).

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.206. TEMPORARY LICENSE. (a) The medical board may, through the executive director, issue a temporary license to an applicant who:

(1) submits an application on a form prescribed by the medical board;

(2) has passed an examination required by the medical board relating to the practice of surgical assisting;

(3) pays the appropriate fee set by the medical board;

(4) if licensed in another state, is licensed in good standing; and

(5) meets all the qualifications for a license under this chapter and is waiting for the next scheduled meeting of the medical board for the license to be issued.

(b) A temporary license is valid until the 100th day after the date issued and may be extended until the 130th day after the date issued.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.207. ASSISTANCE BY MEDICAL BOARD. The medical board shall provide administrative and clerical employees as necessary to administer this subchapter.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.208. FEES. (a) The medical board shall set and collect fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing this chapter without the use of any other funds generated by the medical board.

(b) Fees collected by the medical board under this chapter shall be deposited by the medical board in the state treasury to the credit of an account in the general revenue fund and may be spent to cover the costs of administering and enforcing this chapter. At the end of each fiscal biennium, the comptroller shall transfer any surplus money remaining in the account to the general revenue fund.

(c) All money paid to the medical board under this chapter is subject to Subchapter F, Chapter 404, Government Code.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.209. ISSUANCE AND RENEWAL OF LICENSE. (a) The medical board shall issue a surgical assistant license in this state to a person who meets the requirements of this chapter and the rules adopted under this chapter.

(b) The medical board may delegate authority to board employees to issue licenses under this chapter to applicants who clearly meet all licensing requirements. If the medical board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the medical board. A license issued under this subsection does not require formal medical board approval.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 4.03, eff. September 1, 2005.

Sec. 206.210. LICENSE RENEWAL. (a) A surgical assistant license expires on the second anniversary of the date of issuance. The medical board by rule shall provide for the renewal of a surgical assistant license.

(b) The medical board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees shall be

prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.  
Amended by Acts 2003, 78th Leg., ch. 886, Sec. 1, eff. Sept. 1, 2003.

Sec. 206.211. NOTICE OF LICENSE RENEWAL. At least 30 days before the expiration of a person's license, the medical board shall send written notice of the impending license expiration to the person at the license holder's last known address according to the records of the medical board.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.212. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the medical board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed under this section.

(b) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the medical board one and one-half times the required renewal fee.

(c) If the person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the medical board two times the required renewal fee.

(d) If the person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.213. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) If the person was licensed as a surgical assistant in this state, moved to another state, and is currently

licensed as a surgical assistant and has been in practice as a surgical assistant in the other state for the two years preceding application, the person may renew an expired surgical assistant license without reexamination.

(b) The person must pay to the medical board a fee that is equal to two times the required renewal fee for the license.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.214. LICENSE HOLDER INFORMATION. (a) Each license holder shall file with the medical board:

- (1) the license holder's mailing address;
- (2) the address of the license holder's residence;
- (3) the mailing address of each of the license holder's offices; and
- (4) the address for the location of each of the license holder's offices if that address is different from the office's mailing address.

(b) A license holder shall:

- (1) notify the medical board of a change of the license holder's residence or business address; and
- (2) provide the medical board with the license holder's new address not later than the 30th day after the date the address change occurs.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

#### **SUBCHAPTER F. SCOPE OF PRACTICE**

Sec. 206.251. SCOPE OF PRACTICE. (a) The practice of a surgical assistant is limited to surgical assisting performed under the direct supervision of a physician who delegated the acts.

(b) The practice of a surgical assistant may be performed in any place authorized by a delegating licensed physician, including a clinic, hospital, ambulatory surgical center, or other institutional setting.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.252. SERVICE CONTRACTS. This chapter does not:

- (1) limit the employment arrangement of a surgical assistant licensed under this chapter;
- (2) require a surgeon or hospital to contract with a surgical assistant;
- (3) authorize a health maintenance organization, preferred provider organization, or health benefit plan to require a surgeon to contract with a surgical assistant; or
- (4) require a hospital to use a licensed surgical assistant for surgical assisting.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.2525. REIMBURSEMENT FOR SERVICES. (a) This chapter does not limit the way in which a surgical assistant licensed under this chapter may be reimbursed for services.

(b) A surgical assistant licensed under this chapter may directly bill a patient or third-party payor for services provided by the surgical assistant.

Added by Acts 2003, 78th Leg., ch. 886, Sec. 2, eff. Sept. 1, 2003.

Sec. 206.253. CERTAIN PROHIBITED PRACTICES. (a) This chapter does not authorize a person who holds a license issued under this chapter to engage in the practice of:

- (1) medicine, as defined by Subtitle B; or
- (2) nursing, as defined by Chapter 301.

(b) A health maintenance organization, preferred provider organization, or health benefit plan may not require a registered nurse or physician assistant to be licensed as a surgical assistant as a condition for reimbursement.

(c) A clinic, hospital, ambulatory surgical center, or other facility may not require a registered nurse or physician assistant to be licensed as a surgical assistant as a condition for assisting at surgery at the facility.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.016, eff. Feb. 1, 2004.

Sec. 206.254. ESTABLISHMENT OF CERTAIN FUNCTIONS AND STANDARDS. A surgical assistant and the surgical assistant's delegating physician shall ensure that:

- (1) the surgical assistant's scope of function is identified;
- (2) the delegation of medical tasks is appropriate to the surgical assistant's level of competence;
- (3) the relationship between the surgical assistant and the delegating physician and the access of the surgical assistant to the delegating physician are defined; and
- (4) a process is established for evaluating the surgical assistant's performance.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

#### **SUBCHAPTER G. DISCIPLINARY PROCEEDINGS**

Sec. 206.301. DISCIPLINARY ACTIONS BY THE MEDICAL BOARD. (a) Except as provided by Section 206.305, on a determination that an applicant or license holder committed an act described by Section 206.302, 206.303, or 206.304, the medical board by order shall take any of the following actions:

- (1) deny the person's license application or revoke the person's license;
- (2) require the person to submit to the care, counseling, or treatment of a health care practitioner designated by the medical board;
- (3) stay enforcement of an order and place the person on probation;
- (4) require the person to complete additional training;
- (5) suspend, limit, or restrict the person's license, including:
  - (A) limiting the practice of the person to, or excluding from the person's practice, one or more specified activities of surgical assisting; or
  - (B) stipulating periodic medical board review;
- (6) assess an administrative penalty against the person as provided by Section 206.351;



- (7) order the person to perform public service; or
- (8) administer a public reprimand.

(b) If the medical board stays enforcement of an order and places a person on probation, the medical board retains the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation or impose any other remedial measure or sanction authorized by this section.

(c) The medical board may restore or reissue a license or remove any disciplinary or corrective measure that the medical board has imposed.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.302. CONDUCT RELATED TO FRAUD OR MISREPRESENTATION.

The medical board may take action under Section 206.301 against an applicant or license holder who:

- (1) fraudulently or deceptively obtains or attempts to obtain a license;
- (2) fraudulently or deceptively uses a license;
- (3) falsely represents that the person is a physician;
- (4) acts in an unprofessional or dishonorable manner that is likely to deceive, defraud, or injure the public;
- (5) fraudulently alters any surgical assistant license, certificate, or diploma;
- (6) uses any surgical assistant license, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;
- (7) directly or indirectly aids or abets the practice as a surgical assistant by any person not licensed by the medical board to practice as a surgical assistant; or
- (8) unlawfully advertises in a false, misleading, or deceptive manner as defined by Section 101.201.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.303. CONDUCT RELATED TO VIOLATION OF LAW. (a) The medical board may take action under Section 206.301 against an applicant or license holder who:

- (1) violates this chapter or a rule adopted under this

chapter;

(2) is convicted of a felony, placed on deferred adjudication, or placed in a pretrial diversion program; or

(3) violates state law if the violation is connected with practice as a surgical assistant.

(b) A complaint, indictment, or conviction of a law violation is not necessary for the medical board to act under Subsection (a)(3). Proof of the commission of the act while in practice as a surgical assistant or under the guise of practice as a surgical assistant is sufficient for action by the medical board.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.304. CONDUCT INDICATING LACK OF FITNESS. (a) The medical board may take action under Section 206.301 against an applicant or license holder who:

(1) habitually uses drugs or intoxicating liquors to the extent that, in the medical board's opinion, the person cannot safely perform as a surgical assistant;

(2) has been adjudicated as mentally incompetent;

(3) has a mental or physical condition that renders the person unable to safely perform as a surgical assistant;

(4) has committed an act of moral turpitude;

(5) has failed to practice as a surgical assistant in an acceptable manner consistent with public health and welfare;

(6) has had the person's license or other authorization to practice as a surgical assistant suspended, revoked, or restricted;

(7) has had other disciplinary action taken by another state or by the uniformed services of the United States regarding practice as a surgical assistant;

(8) is removed or suspended or has disciplinary action taken by the person's peers in any professional association or society or is being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other disciplinary action, if that action, in the opinion of the medical board, was based on unprofessional conduct or professional incompetence that was likely to harm the public;

(9) has repeated or recurring meritorious health care liability claims that, in the medical board's opinion, are evidence

of professional incompetence likely to harm the public; or

(10) sexually abuses or exploits another person during the license holder's practice as a surgical assistant.

(b) For the purpose of Subsection (a)(7), a certified copy of the record of the state or uniformed services of the United States taking the action constitutes conclusive evidence of that action.

(c) An action described by Subsection (a)(8) does not constitute state action on the part of the association, society, or hospital medical staff.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.305. REHABILITATION ORDER. (a) The medical board, through an agreed order or after a contested case proceeding, may impose a rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder based on:

(1) the person's intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician;

(2) the person's intemperate use of drugs or alcohol during the five years preceding the date of the report that could adversely affect the person's ability to safely practice as a surgical assistant, if the person:

(A) reported the use;

(B) has not previously been the subject of a substance abuse related order of the medical board; and

(C) has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

(3) a judgment by a court that the person is of unsound mind; or

(4) the results of a mental or physical examination, or an admission by the person, indicating that the person suffers from a potentially dangerous limitation or an inability to practice as a surgical assistant with reasonable skill and safety because of illness or any other physical or mental condition.

(b) The medical board may not issue an order under this section if, before the individual signs the proposed order, the board receives a valid complaint with regard to the individual based on the individual's intemperate use of drugs or alcohol in a manner

affecting the standard of care.

(c) The medical board must determine whether an individual has committed a standard of care violation described by Subsection (a)(2) before imposing an order under this section.

(d) The medical board may disclose a rehabilitation order to a local or statewide private medical or surgical assistant association only as provided by Section 206.3075.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 4.04, eff. September 1, 2005.

Sec. 206.306. EFFECT OF REHABILITATION ORDER. (a) A rehabilitation order imposed under Section 206.305 is a nondisciplinary private order. If entered into by agreement, the order is an agreed disposition or settlement agreement for purposes of civil litigation and is exempt from Chapter 552, Government Code.

(b) The rehabilitation order must contain findings of fact and conclusions of law. The order may impose a license revocation or suspension, a period of probation or restriction, or any other sanction authorized by this chapter or agreed to by the medical board and the person subject to the order.

(c) A violation of a rehabilitation order may result in disciplinary action under this chapter or under the terms of the agreed order.

(d) A violation of a rehabilitation order is grounds for disciplinary action based on:

- (1) unprofessional or dishonorable conduct; or
- (2) any provision of this chapter that applies to the conduct that resulted in the violation.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.307. AUDIT OF REHABILITATION ORDER. (a) The medical board shall maintain a rehabilitation order imposed under Section 206.305 in a confidential file. The file is subject to an independent audit by the state auditor or a private auditor with whom the board contracts to perform the audit to ensure that only

qualified license holders are subject to rehabilitation orders.

(b) An audit may be performed at any time at the direction of the medical board. The medical board shall ensure that an audit is performed at least once in each three-year period.

(c) The audit results are a matter of public record and shall be reported in a manner that maintains the confidentiality of each license holder who is the subject of a rehabilitation order.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS. (a) If a rehabilitation order imposed under Section 206.305 requires a license holder to participate in activities or programs provided by a local or statewide private medical or surgical assistant association, the medical board shall inform the association of the license holder's duties under the order. The information provided under this section must include specific guidance to enable the association to comply with any requirements necessary to assist in the surgical assistant's rehabilitation.

(b) The medical board may provide to the association any information that the board determines to be necessary, including a copy of the rehabilitation order. Any information received by the association remains confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and may be disclosed only to the medical board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 4.05, eff. September 1, 2005.

Sec. 206.308. SUBPOENA. (a) The executive director, the director's designee, or the secretary-treasurer of the board may issue a subpoena or subpoena duces tecum:

(1) to conduct an investigation or a contested case proceeding related to:

(A) alleged misconduct by a surgical assistant;

(B) an alleged violation of this chapter or another law related to the practice of a surgical assistant; or

(C) the provision of health care under this chapter;

(2) for purposes of determining whether to issue, suspend,

restrict, or revoke a license under this chapter; or

(3) for purposes of determining whether to issue or deny a license under this chapter.

(b) Failure to timely comply with a subpoena issued under this section is a ground for:

(1) disciplinary action by the medical board or another licensing or regulatory agency with jurisdiction over the person subject to the subpoena; and

(2) denial of a license application.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.309. PROTECTION OF PATIENT IDENTITY. In a disciplinary investigation or proceeding conducted under this chapter, the medical board shall protect the identity of each patient whose medical records are examined and used in a public proceeding unless the patient:

(1) testifies in the public proceeding; or

(2) submits a written release in regard to the patient's records or identity.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.310. RULES FOR DISCIPLINARY PROCEEDINGS. Rules of practice adopted under this chapter by the medical board under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.311. REQUIRED SUSPENSION OF INCARCERATED SURGICAL ASSISTANT. Regardless of the offense, the medical board shall suspend the license of a surgical assistant serving a prison term in a state or federal penitentiary during the term of the incarceration.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.312. TEMPORARY SUSPENSION. (a) The president of the medical board, with medical board approval, shall appoint a three-member disciplinary panel consisting of medical board members to determine whether a surgical assistant's license should be temporarily suspended.

(b) If the disciplinary panel determines from the evidence or information presented to the panel that a person licensed to practice as a surgical assistant would, by the person's continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the medical board is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the disciplinary panel at one location is inconvenient for any member of the panel.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.313. INFORMAL PROCEEDINGS. (a) The medical board by rule shall adopt procedures under this chapter governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must require that:

(1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled not later than the 180th day after the date the medical board's official investigation of the complaint is commenced, unless good cause is shown by the board for scheduling the informal meeting after that date;

(2) the medical board give notice to the license holder of the time and place of the meeting not later than the 30th day before

the date the meeting is held;

(3) the complainant and the license holder be provided an opportunity to be heard;

(4) at least one of the medical board members or district review committee members participating in the informal meeting as a panelist be a member who represents the public;

(5) the medical board's legal counsel or a representative of the attorney general be present to advise the medical board or the board's staff; and

(6) a member of the medical board's staff be at the meeting to present to the panel the facts the staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing.

(c) An affected surgical assistant is entitled, orally or in writing, to:

(1) reply to the staff's presentation; and

(2) present the facts the surgical assistant reasonably believes the surgical assistant could prove by competent evidence or qualified witnesses at a hearing.

(d) After ample time is given for the presentations, the medical board panel shall recommend that the investigation be closed or shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) If the license holder has previously been the subject of disciplinary action by the medical board, the board shall schedule the informal meeting as soon as practicable but not later than the deadline prescribed by Subsection (b)(1).

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 4.06, eff. September 1, 2005.

Sec. 206.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) A medical board or district review committee member that serves as a panelist at an informal meeting under Section 206.313 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a medical board employee at any time.

(b) Medical board employees shall present a summary of the



allegations against the affected surgical assistant and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) A medical board attorney shall act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of participants in the informal meeting to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the medical board, keep the proceedings focused on the case being discussed, and ensure that the medical board's employees and the affected surgical assistant have an opportunity to present information related to the case. During the panel's deliberations, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the medical board.

(d) The panel and medical board employees shall provide an opportunity for the affected surgical assistant and the surgical assistant's authorized representative to reply to the board employees' presentation and to present oral and written statements and facts that the surgical assistant and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the medical board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected surgical assistant, the surgical assistant's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the medical board attorney serving as counsel to the panel may be present during the deliberations.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected surgical assistant has violated a statute or medical board rule, the panel may recommend board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected surgical assistant and the surgical assistant's authorized representative. The surgical assistant may accept the proposed settlement within the

time established by the panel at the informal meeting. If the surgical assistant rejects the proposed settlement or does not act within the required time, the medical board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 4.06, eff. September 1, 2005.

Sec. 206.315. MEDICAL BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal proceeding under Section 206.313, at least two panelists shall be appointed to determine whether an informal disposition is appropriate.

(b) The medical board may request members of a committee under Chapter 163 to participate in an informal meeting under Section 206.313.

(c) Notwithstanding Subsection (a) and Section 206.313(b)(4), an informal proceeding may be conducted by one panelist if the affected surgical assistant waives the requirement that at least two panelists conduct the informal proceeding. If the surgical assistant waives that requirement, the panelist may be either a physician or a member who represents the public.

(d) The panel requirements described by Subsection (a) do not apply to an informal proceeding conducted by the medical board under Section 206.313 to show compliance with an order of the board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 4.06, eff. September 1, 2005.

#### **SUBCHAPTER H. ADMINISTRATIVE PENALTY**

Sec. 206.351. ADMINISTRATIVE PENALTY. (a) The medical board by order may impose an administrative penalty against a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty may be in an amount not to exceed \$5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The medical board shall base the amount of the penalty on:

- (1) the severity of patient harm;

- (2) the severity of economic harm to any person;
- (3) the severity of any environmental harm;
- (4) the increased potential for harm to the public;
- (5) any attempted concealment of misconduct;
- (6) any premeditated or intentional misconduct;
- (7) the motive for the violation;
- (8) any prior misconduct of a similar or related nature;
- (9) the license holder's disciplinary history;
- (10) any prior written warnings or written admonishments from any government agency or official regarding statutes or rules relating to the misconduct;
- (11) whether the violation is of a board order;
- (12) the person's failure to implement remedial measures to correct or mitigate harm from the misconduct;
- (13) the person's lack of rehabilitative potential or likelihood of future misconduct of a similar nature;
- (14) any relevant circumstances increasing the seriousness of the misconduct; and
- (15) any other matter that justice may require.

(d) The medical board by rule shall prescribe the procedures by which it may impose an administrative penalty. A proceeding under this section is subject to Chapter 2001, Government Code.

(e) If the medical board by order determines that a violation has occurred and imposes an administrative penalty, the medical board shall give notice to the person of the order. The notice must include a statement of the person's right to judicial review of the order.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

#### **SUBTITLE D. DENTISTRY**

##### **CHAPTER 251. GENERAL PROVISIONS RELATING TO PRACTICE OF DENTISTRY**

Sec. 251.001. SHORT TITLE. This subtitle may be cited as the Dental Practice Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 251.002. DEFINITIONS. In this subtitle:

- (1) "Board" means the State Board of Dental Examiners.

(2) "Executive director" means the executive director of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 251.003. PRACTICE OF DENTISTRY. (a) For purposes of this subtitle, a person practices dentistry if the person:

(1) represents to the public that the person is a dentist or dental surgeon or uses or permits to be used for the person or another person the title of "Doctor," "Dr.," "Doctor of Dental Surgery," "D.D.S.," "Doctor of Dental Medicine," "D.M.D.," or another description, including the use of the terms "denturist" or "denturism," that, directly or indirectly, represents that the person is able to:

(A) diagnose, treat, or remove stains or concretions from human teeth; or

(B) provide surgical and adjunctive treatment for a disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums, jaws, or directly related and adjacent masticatory structures;

(2) performs or offers to perform by any means the:

(A) cleaning of human teeth;

(B) removal of stains, concretions, or deposits from teeth in the human mouth; or

(C) diagnosis, treatment, operation, or prescription for a disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums, or jaws;

(3) prescribes, makes, or causes to be made or offers to prescribe, make, or cause to be made by any means an impression of any portion of the human mouth, teeth, gums, or jaws:

(A) to diagnose, prescribe, or treat, or aid in the diagnosis, prescription, or treatment, of a physical condition of the human mouth, teeth, gums, or jaws; or

(B) to construct or aid in the construction of a dental appliance, denture, dental bridge, false teeth, dental plate of false teeth, or another substitute for human teeth;

(4) owns, maintains, or operates an office or place of business in which the person employs or engages under any type of

contract another person to practice dentistry;

(5) fits, adjusts, repairs, or substitutes or offers to fit, adjust, repair, or substitute in the human mouth or directly related and adjacent masticatory structures a dental appliance, structure, prosthesis, or denture;

(6) aids in the fitting, adjusting, repairing, or substituting or causes to be fitted, adjusted, repaired, or substituted in the human mouth or directly related and adjacent masticatory structures a dental appliance, structure, prosthesis, or denture;

(7) without a written prescription or work order signed by a dentist legally practicing dentistry in this state or in the jurisdiction in which the dentist maintains the dentist's office:

(A) makes, processes, reproduces, repairs, or relines a full or partial denture, fixed or removable dental bridge or appliance, dental plate of false teeth, artificial dental restoration, or a substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part for another; or

(B) offers, undertakes, aids, abets, or causes another person to engage in an activity described by Paragraph (A);

(8) directly or indirectly offers, undertakes, or causes another to perform for any person an act, service, or part of an act or service in the practice of dentistry, including:

(A) inducing, administering, prescribing, or dispensing anesthesia or an anesthetic drug, medicine, or an agent in any way related to the practice of dentistry;

(B) permitting or allowing another to use the person's license or certificate to practice dentistry in this state; or

(C) aiding or abetting the practice of dentistry by a person not licensed by the board to practice dentistry;

(9) controls, influences, attempts to control or influence, or otherwise interferes with the exercise of a dentist's independent professional judgment regarding the diagnosis or treatment of a dental disease, disorder, or physical condition; or

(10) represents that the person is a denturist or uses another title that is intended to convey to the public that the services offered by the person are included within the practice of dentistry.

(b) The practice of dentistry under Subsection (a)(9) does not:

(1) require an entity to pay for services that are not provided for in an agreement; or

(2) exempt a dentist who is a member of a hospital staff from following hospital bylaws, medical staff bylaws, or established policies approved by the governing board and the medical and dental staff of the hospital.

(c) In this subtitle, the practice of the dental specialty of oral and maxillofacial surgery includes the diagnosis of and the surgical and adjunctive treatment of diseases, injuries, and defects involving the functional and aesthetic aspects of the hard and soft tissues of the oral and maxillofacial region.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 251.004. EXEMPTION FROM PRACTICE OF DENTISTRY. (a) A person does not practice dentistry as provided by Section 251.003 if the person is:

(1) a faculty member of a reputable dental or dental hygiene school in which the member performs services for the sole benefit of the school;

(2) a student of a reputable dental school who performs the student's operations without pay, except for actual cost of materials, in the presence of and under the direct personal supervision of a demonstrator or teacher who is a faculty member of a reputable dental school;

(3) a person:

(A) who performs laboratory work only on inert matter; and

(B) who does not solicit or obtain work by any means from a person who is not a licensed dentist engaged in the practice of dentistry and does not act as the agent or solicitor of, and does not have any interest in, a dental office or practice or the receipts of a dental office or practice;

(4) a physician licensed in this state who does not represent that the person is practicing dentistry, including a physician who extracts teeth or applies pain relief in the regular practice of the physician's profession;

(5) a dental hygienist:

(A) who is authorized to practice dental hygiene in

this state; and

(B) who practices dental hygiene in strict conformity with the state law regulating the practice of dental hygiene;

(6) a person who is a member of an established church and practices healing by prayer only;

(7) an employee of a licensed dentist in this state who makes dental x-rays in the dental office under the supervision of the dentist;

(8) a Dental Health Service Corporation chartered under Section A(1), Article 2.01, Texas Non-Profit Corporation Act (Article 1396-2.01, Vernon's Texas Civil Statutes);

(9) a dental intern or dental resident as defined and regulated by board rules;

(10) a student:

(A) who is in a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association and operated at an accredited institution of higher education;

(B) who practices dental hygiene without pay under the general supervision of a dentist and under the supervision of a demonstrator or teacher who is a faculty member of the program:

(i) in a clinic operated for the sole benefit of the program's institution of higher education; or

(ii) in a clinic operated by a government or nonprofit organization that serves underserved populations as determined by board rule; and

(C) who practices in strict conformity with state law regulating the practice of dental hygiene;

(11) a dental assistant who performs duties permitted under Chapter 265, in strict conformity with state law;

(12) a dentist or dental hygienist licensed by another state or a foreign country who performs a clinical procedure only as a demonstration for professional and technical education purposes, if the dentist or dental hygienist first obtains from the board a temporary license for that purpose;

(13) a dental hygienist who is a faculty member of a dental or dental hygiene school while practicing dental hygiene:

(A) under the supervision of a dentist licensed in this state or of a teacher or demonstrator who is a dentist faculty member of the school; and

(B) in strict conformity with state law regulating the practice of dental hygiene;

(14) a dentist who is in a remedial training program sponsored by the Commission on Dental Accreditation of the American Dental Association at an accredited dental or dental hygiene school;

(15) a dental hygienist who is in a remedial training program sponsored by the Commission on Dental Accreditation of the American Dental Association at an accredited dental or dental hygiene school and who acts in strict conformity with state law regulating the practice of dental hygiene, except that supervision may be provided by a demonstrator or teacher who is a dentist member of the program;

(16) a dentist who is not licensed in this state and who is taking the dental clinical examination offered in this state by an examining body designated by the board;

(17) a dental hygienist who is not licensed in this state and who is taking the dental hygiene clinical examination offered in this state by an examining body designated by the board if participation is in strict conformity with state law regulating the practice of dental hygiene, except that supervision may be provided by a dentist whose services are secured by the examining body;

(18) a dentist whose license is in retired status or who is licensed in another state and is attending a continuing education clinical program offered at a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association; or

(19) a dental hygienist whose dental hygienist license is in retired status or who is licensed in another state and is attending a continuing education clinical program offered at a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association if tasks are performed in strict conformity with state law regulating the practice of dental hygiene, except that supervision may be provided by a dentist member of the program.

(b) A person's activities described by Subsections (a)(14), (15), and (18) are considered not to be the practice of dentistry only to the extent the person is participating in the specified program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended



by Acts 2001, 77th Leg., ch. 1420, Sec. 14.071(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 1, eff. September 1, 2005.

Sec. 251.005. APPLICATION OF SUNSET ACT. The State Board of Dental Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 1, eff. Sept. 1, 2003; Acts 2001, 77th Leg., ch. 1481, Sec. 1.02, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 17, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 3.06, eff. June 17, 2011.

#### **CHAPTER 252. STATE BOARD OF DENTAL EXAMINERS**

Sec. 252.001. BOARD MEMBERSHIP. (a) The State Board of Dental Examiners consists of 15 members appointed by the governor with the advice and consent of the senate as follows:

(1) eight reputable dentist members who reside in this state and have been actively engaged in the practice of dentistry for at least the five years preceding appointment;

(2) two reputable dental hygienist members who reside in this state and have been actively engaged in the practice of dental hygiene for at least the five years preceding appointment; and

(3) five members who represent the public.

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

(c) In making an appointment under this section, the governor shall attempt to appoint members of different minority groups, including females, African Americans, Hispanic Americans, Native Americans, and Asian Americans.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2003, 78th Leg., ch. 17, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1170, Sec. 8.01, eff. Sept. 1, 2003.

Sec. 252.002. MEMBER ELIGIBILITY. (a) A person is not eligible for appointment as a member if:

(1) the person's license to practice dentistry or dental hygiene has been revoked by the board for a violation of a statute of this state relating to the practice of dentistry or dental hygiene and the revocation is not overturned by final order of a court; or

(2) the person is an adverse party in civil litigation against the board.

(b) A person is not eligible for appointment as a dentist or dental hygienist member of the board if the person has a financial interest in any dental, dental hygiene, or medical school.

(c) A person is not eligible for appointment as a dental hygienist member of the board if the person is licensed to practice dentistry in this state.

(d) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;

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

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

(5) is employed by a board member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 1, eff. September 1, 2009.

Sec. 252.003. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a member or employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for B9 of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a board member and may not be a board employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for B9 of the position classification salary schedule.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.072(a), eff. Sept. 1, 2001.

Sec. 252.004. TERMS OF OFFICE. (a) Members of the board serve staggered six-year terms. The terms of one-third of the members expire February 1 of each odd-numbered year.

(b) A member may not serve more than two consecutive full terms. The completion of the unexpired portion of a term does not constitute service for a full term for purposes of this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 2, eff. September 1, 2009.

Sec. 252.005. PRIVILEGES OF OFFICE. Members of the board have full and identical privileges, except that only dentist members may participate in the decision to pass or fail an applicant for a license to practice dentistry during the clinical portion of the board examinations.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 252.006. OFFICERS. (a) The board shall elect a secretary from its members to serve for a one-year term.

(b) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor. The presiding officer must be a dentist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 4, eff. Sept. 1, 2003.

Sec. 252.007. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of appointment the qualifications required by Sections 252.001 and 252.002;

(2) does not maintain during the service on the board the qualifications required by Sections 252.001 and 252.002;

(3) is ineligible for membership under Section 252.003;

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

(5) is absent from more than half of the regularly scheduled board meetings the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney

general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 5, eff. Sept. 1, 2003.

Sec. 252.008. PER DIEM; REIMBURSEMENT. (a) Each board member is entitled to a per diem set by legislative appropriation for each day the member engages in board business.

(b) A board member may receive reimbursement for travel expenses, including expenses for meals and lodging, incurred in performing an official duty as prescribed by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 252.009. MEETINGS. The board shall hold meetings at least twice a year at times and places the board determines are most convenient for applicants for examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 1, eff. Sept. 1, 2001.

Sec. 252.010. BOARD MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

- (1) this subtitle;
- (2) the programs operated by the board;
- (3) the role and functions of the board;
- (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;

- (5) the current budget for the board;
- (6) the results of the most recent formal audit of the board;
- (7) the requirements of:
  - (A) the open meetings law, Chapter 551, Government Code;
  - (B) the public information law, Chapter 552, Government Code;
  - (C) the administrative procedure law, Chapter 2001, Government Code; and
  - (D) other laws relating to public officials, including conflict of interest laws; and
- (8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 6, eff. Sept. 1, 2003.

Sec. 252.011. OATH OF OFFICE. Before assuming the duties of office, each board member shall file with the secretary of state a copy of the constitutional oath of office taken by the member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **CHAPTER 253. EXECUTIVE DIRECTOR AND PERSONNEL**

Sec. 253.001. EXECUTIVE DIRECTOR. (a) The board may employ an executive director to assist the board in performing its duties.

(b) The board shall set the executive director's salary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 253.003. PERSONNEL. (a) The executive director, with the board's consent, may employ an assistant executive director to

perform the executive director's duties when the executive director is absent or unable to act.

(b) The board may employ:

(1) committees, clerks, advisors, consultants, dentists, hygienists, or examiners to assist the board in performing its duties; and

(2) other persons determined necessary:

(A) to assist the local prosecuting officers of a county in the enforcement of state laws prohibiting the unlawful practice of dentistry; and

(B) to carry out other purposes for which funds are appropriated.

(c) The board shall employ other employees as needed to assist the executive director in performing the executive director's duties and in carrying out the purposes of this subtitle.

(d) A person assisting a local prosecuting officer under this section is subject to the direction and control of the prosecuting officer. This subsection does not change the authority granted by law to the prosecuting officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.073(a), eff. Sept. 1, 2001.

Sec. 253.004. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly define the responsibilities of the board and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 253.005. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide, as often as necessary, to its members and employees information regarding:

(1) qualifications for office or employment under this subtitle; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## Sec. 253.006. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require the intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 253.007. EQUAL OPPORTUNITY POLICY; REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the board workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

(c) The governor shall deliver a biennial report to the



legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **CHAPTER 254. BOARD POWERS AND DUTIES**

Sec. 254.001. GENERAL RULEMAKING AUTHORITY. (a) The board may adopt and enforce rules necessary to:

(1) perform its duties; and  
 (2) ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

(b) The board may adopt rules governing:

(1) the board's proceedings; and  
 (2) the examination of applicants for a license to practice dentistry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 254.0011. RULES RELATING TO CONTROL OF DENTAL PRACTICE.

(a) The board may adopt rules relating to the practice of dentistry as described by Section 251.003(a)(9) to prohibit a dentist from engaging in contracts that allow a person who is not a dentist to influence or interfere with the exercise of the dentist's independent professional judgment.

(b) Rules adopted by the board under this subtitle may not preclude a dentist's right to contract with a management service organization. Rules affecting contracts for provision of management services apply the same to dentists contracting with management service organizations and to dentists otherwise contracting for management services.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.074(a), eff. Sept. 1, 2001.

Sec. 254.002. RULES REGARDING ADVERTISING AND COMPETITIVE BIDDING. (a) Except as provided by Section 259.005, the board may not adopt rules restricting advertising or competitive bidding except

to prohibit false, misleading, and deceptive practices by the license holder.

(b) The board may adopt and enforce reasonable restrictions to regulate advertising relating to the practice of dentistry by a person engaged in the practice of dentistry as provided by Section 259.005.

(c) The board may not include in the board's rules to prohibit false, misleading, or deceptive advertising under Subsection (a) a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts a person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of a person's advertisement; or
- (4) restricts the person's advertisement under a trade name, except the board may require that a trade name advertisement include the name of each dental owner of the practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 254.003. RULES REGARDING INFECTION CONTROL. The board shall investigate infection control in the dental profession and may adopt and enforce rules to control the spread of infection in the practice of dentistry as necessary to protect the public health and safety.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 254.004. FEES. (a) The board shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this subtitle.

(b) The amount of the dental application fee and dentist annual renewal fee is the amount set by the board under Subsection (a) and an additional charge of \$200. Of each fee increase collected under this subsection, \$50 shall be deposited to the credit of the foundation school fund and \$150 shall be deposited to the credit of the general revenue fund.

(c) The board shall collect an additional \$55 surcharge for each of the following fees:

- (1) the fee for the issuance of a dental license; and
- (2) the fee for the renewal of a dental license.

(d) The board shall deposit each surcharge collected to the credit of the dental public assurance account. The dental public assurance account is an account in the general revenue fund that shall be appropriated only to the board to pay for the board's enforcement program, including an expert panel.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.075(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. [3201](#)), Sec. 1, eff. September 1, 2013.

Sec. 254.005. SIGNATURE AND SEAL ON LICENSE REQUIRED. A license issued to a dentist must be signed by each board member and imprinted with the board's seal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 254.006. BOARD RECORDS AND CONFIDENTIALITY OF RECORDS.

(a) Except as provided by this section, the investigation files and other records of the board are public records and open to inspection at reasonable times.

(b) Investigation files and other records are confidential, except the board shall inform the license holder of the specific allegations against the license holder. The board may share investigation files and other records with another state regulatory agency or a local, state, or federal law enforcement agency.

(c) The exception from public disclosure of investigation files and records provided by this section does not apply to the disclosure of a disciplinary action of the board, including:

- (1) the revocation or suspension of a license;
- (2) the imposition of a fine on a license holder;
- (3) the placement on probation with conditions of a license holder whose license has been suspended;
- (4) the reprimand of a license holder; or
- (5) the issuance of a warning letter to a license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.076(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 2, eff. January 1, 2014.

Sec. 254.007. RECORDS REGARDING PERSONS AUTHORIZED TO PRACTICE.

(a) The board shall keep records of the name, permanent address, and place of business of each person authorized under this subtitle to practice dentistry, dental hygiene, or another profession or business under the board's jurisdiction as provided by law.

(b) The board shall collect annually from each licensed dentist the dentist's name, age, practice locations, hours worked each week, weeks worked each year, and number and type of auxiliaries employed.

(c) The information collected under Subsection (b) shall be compiled in report form by practice composition and by county reflecting the overall full-time equivalency tabulations as defined by the federal Department of Health and Human Services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.076(b), eff. Sept. 1, 2001.

Sec. 254.008. CIVIL LIABILITY. (a) In the absence of fraud, conspiracy, or malice, a member of the board, a full-time or part-time employee of the board, a person who contracts with the board, a witness called to testify by the board, or a consultant or hearing officer appointed by the board is not liable or subject to suit in a civil action for any damage caused by the person for an investigation, report, recommendation, statement, evaluation, finding, order, or award made in the performance of the person's official duties.

(b) The purpose of this section is to protect the persons designated by Subsection (a) from being harassed and threatened with legal action while performing official duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.077(a), eff. Sept. 1,

2001.

Sec. 254.009. ASSISTANCE OF PROSECUTOR. (a) The board shall aid in the enforcement of state law regulating the practice of dentistry.

(b) A board member may present to a prosecuting officer a complaint relating to a violation of state law regulating the practice of dentistry.

(c) The board and its members, officers, counsel, and agents may assist the prosecuting officer in the trial of a case involving an alleged violation of state law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 254.010. MONITORING OF LICENSE HOLDER. (a) The board by rule shall develop a system to monitor a license holder's compliance with this subtitle.

(b) Rules adopted under this section must include procedures to:

- (1) monitor for compliance a license holder who is ordered by the board to perform a certain act; and
- (2) identify and monitor each license holder who represents a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 254.011. AGREEMENT WITH HEALTH AND HUMAN SERVICES COMMISSION. The board shall enter into an agreement with the Health and Human Services Commission to improve coordination on issues relating to the state Medicaid program. The agreement must require each agency to:

- (1) refer to the other agency, as appropriate, cases involving fraud, abuse, or insufficient quality of care under the state Medicaid program;
- (2) maintain a log of cases referred to the other agency;
- (3) share information with the other agency, subject to confidentiality requirements, including investigative reports on cases within the jurisdiction of both agencies; and

(4) collaborate with the other agency in the investigation of cases and the initiation of appropriate disciplinary action whenever possible.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 8, eff. Sept. 1, 2003.

Sec. 254.012. INCLUSION OF MEDICAID-RELATED INFORMATION IN ANNUAL FINANCIAL REPORT. The board shall include in the annual financial report required by Section 2101.011, Government Code, information on all cases handled by the board during the preceding fiscal year involving fraud, abuse, or insufficient quality of care under the state Medicaid program, including:

- (1) the number of cases handled;
- (2) an explanation of the legal basis and reason for each case;
- (3) the action taken in each case; and
- (4) for each case the board closed without taking action, an explanation of the reason the case was closed without action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 9, eff. Sept. 1, 2003.

Sec. 254.013. PEACE OFFICERS. (a) The board may commission as a peace officer to enforce this subtitle an employee who has been certified as qualified to be a peace officer by the Texas Commission on Law Enforcement.

(b) An employee commissioned as a peace officer under this subtitle has the powers, privileges, and immunities of a peace officer while carrying out duties as a peace officer under this subtitle.

Added by Acts 2003, 78th Leg., ch. 474, Sec. 2, eff. June 20, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.56, eff. May 18, 2013.

Sec. 254.014. USE OF ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION PROCEDURES. (a) The board shall develop and implement a

policy to encourage the use of:

- (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and
  - (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.
- (b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.
- (c) The board shall designate a trained person to:
- (1) coordinate the implementation of the policy adopted under Subsection (a);
  - (2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and
  - (3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 10, eff. Sept. 1, 2003.

Sec. 254.015. USE OF TECHNOLOGY. The board shall develop and implement a policy requiring the executive director and board employees to research and propose appropriate technological solutions to improve the board's ability to perform its functions. The technological solutions must:

- (1) ensure that the public is able to easily find information about the board on the Internet;
- (2) ensure that persons who want to use the board's services are able to:
  - (A) interact with the board through the Internet; and
  - (B) access any service that can be provided effectively through the Internet; and
- (3) be cost-effective and developed through the board's planning processes.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 10, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 254.013 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(70), eff. September 1, 2005.

Sec. 254.016. INFORMATION PROVIDED TO LICENSE HOLDERS. At least once each biennium, the board shall provide to license holders information on:

- (1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;
- (2) abusive and addictive behavior of certain persons who use prescription pain medications;
- (3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and
- (4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 3, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 254.013 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(71), eff. September 1, 2005.

Sec. 254.017. POISON CONTROL CENTER INFORMATION. The board shall provide to license holders information regarding the services provided by poison control centers.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 3, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 254.014 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(72), eff. September 1, 2005.

Sec. 254.018. TESTIMONY. A member of the board may not express an oral or written opinion or serve as an expert witness in a civil action that is:

- (1) related to an administrative matter within the board's jurisdiction;
- (2) brought against or for a person licensed or registered under this subtitle; and
- (3) for the injury to or death of a patient or for a violation of the standard of care or the commission of malpractice.

Added by Acts 2007, 80th Leg., R.S., Ch. 1119 (H.B. 3876), Sec. 3, eff. September 1, 2007.



Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 3, eff. January 1, 2014.

Sec. 254.019. DEFINITIONS. (a) In this section:

(1) "Dental service agreement" means an agreement between a dental service organization and a dentist under which the dental service organization will:

(A) provide services related to the nonclinical business aspects of a dental practice, including arranging or providing financing, performing billing or payroll tasks, processing patient insurance claims, scheduling or otherwise interacting with patients, and performing other administrative tasks;

(B) supervise or manage the employees or contractors of the dentist; or

(C) employ or otherwise contract with a dentist in the dentist's capacity as a dentist.

(2) "Dental service organization" means an entity that:

(A) is owned wholly or partly by a person who is or is not a dentist; and

(B) under a dental service agreement, provides or offers to provide services to a dentist or employs or otherwise contracts with a dentist in the dentist's capacity as a dentist.

(b) The board shall collect the following information from dentists licensed by the board in conjunction with the issuance and renewal of each dental license:

(1) the number and type of dentists employed by the license holder, if any;

(2) the name under which the license holder provides dental services and each location at which those services are provided by that license holder;

(3) whether the license holder is a participating provider under the Medicaid program operated under Chapter 32, Human Resources Code, or the child health plan program operated under Chapter 62, Health and Safety Code;

(4) whether the license holder is employed by or contracts with a dental service organization and, if so, the name and address of the dental service organization;

(5) whether the license holder owns all or part of a dental

service organization and, if so, the name and address of the dental service organization and of each dental office at which the dental service organization provides services to patients;

(6) whether the license holder is a party to a dental service agreement and, if so, the name and address of the dental service organization that provides services under the agreement; and

(7) if the license holder owns all or part of a dental service organization, whether that practice is a party to a dental service agreement and, if so, the name and address of the dental service organization that provides services under the agreement.

(c) If requested by the board, a dental service organization shall provide to the board the address of the locations where the organization provides dental services in this state and the name of each dentist providing dental services at each location.

(d) The board shall provide an option for the electronic submission of the information required under this section.

(e) Not later than November 1 of each even-numbered year, the board shall provide a report to the legislature on the information collected under this section and on the board's use of the information in the exercise of the board's statutory authority to regulate the practice of dentistry.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. [3201](#)), Sec. 4, eff. September 1, 2013.

#### **CHAPTER 255. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 255.001. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 255.002. COMPLAINTS. (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The

board may provide for that notice:

(1) on each registration form, application, brochure, or written contract for services of a person regulated under this subtitle;

(2) on a sign prominently displayed in the place of business of each person regulated under this subtitle; or

(3) in a bill for service provided by a person regulated under this subtitle.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 255.003. ASSISTANCE WITH COMPLAINT. The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 255.004. RECORDS OF COMPLAINTS. (a) The board shall maintain a file on each written complaint filed with the board.

(b) The file must include:

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

(2) the date the complaint was received by the board;

(3) the subject matter of the complaint;

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

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

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

(c) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2003, 78th Leg., ch. 17, Sec. 11, eff. Sept. 1, 2003.

Sec. 255.005. NOTIFICATION OF INVESTIGATION STATUS. If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 11, eff. Sept. 1, 2003.

Sec. 255.006. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) A complaint received under this chapter must be filed with and reviewed by the board to determine jurisdiction. If the board has jurisdiction, the board shall complete a preliminary investigation of the complaint not later than the 60th day after the date of receiving the complaint. The board shall first determine whether the license holder constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the board shall determine whether to officially proceed on the complaint. If the board fails to complete the preliminary investigation in the time required by this subsection, the board's official investigation of the complaint is considered to commence on that date.

(b) The board may not consider a complaint that is filed with the board after the fourth anniversary of the date:

(1) the act that is the basis of the complaint occurred;

or

(2) the complainant discovered, or in the exercise of reasonable diligence should have discovered, the occurrence of the act that is the basis of the complaint.

(c) The board by rule shall:

(1) adopt a form to standardize information concerning complaints filed with the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(d) The board shall adopt rules concerning the investigation of

a complaint filed with the board. The rules adopted under this subsection must:

- (1) distinguish between categories of complaints;
  - (2) ensure that a complaint is not dismissed without appropriate consideration;
  - (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
  - (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;
  - (5) require that investigators used by the board be state employees; and
  - (6) establish procedures by which a board employee may dismiss a complaint if the investigation does not reveal a violation.
- (d-1) Procedures established under Subsection (d)(6) must:
- (1) ensure that the decision to dismiss a complaint is made with the appropriate level of review and necessary expertise and experience; and
  - (2) require the dismissal of a complaint to be reported to the board at a public meeting of the board.
- (d-2) Repealed by Acts 2005, 79th Leg., Ch. 810, Sec. 10, eff. September 1, 2005.
- (e) The board shall:
- (1) dispose of each complaint in a timely manner; and
  - (2) establish a schedule for conducting each phase of a complaint that is under the control of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 12, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 10, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 5, eff. January 1, 2014.

Sec. 255.0065. COMPOSITION OF EXPERT PANELS. (a) The board by rule shall provide for expert panels appointed by the board to assist

with complaints and investigations relating to professional competency by acting as expert dentist and dental hygienist reviewers.

(b) Each member of the expert dentist panel must be licensed to practice dentistry in this state. Each member of the expert dental hygienist panel must be licensed to practice dental hygiene in this state.

(c) The rules adopted under this section must include provisions governing the composition of the panel, qualifications for membership on the panel, length of time a member may serve on the panel, grounds for removal from the panel, the avoidance of conflicts of interest, including situations in which the affected license holder and the panel member live or work in the same geographical area or are competitors, and the duties to be performed by the panel.

(d) The board's rules governing grounds for removal from the panel must include providing for the removal of a panel member who is repeatedly delinquent in reviewing complaints and in submitting reports to the board.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. [3201](#)), Sec. 6, eff. January 1, 2014.

Sec. 255.0066. DETERMINATION OF COMPETENCY. (a) If the preliminary investigation under Section 255.006(a) indicates that an act by a license holder falls below an acceptable standard of care, the complaint shall be reviewed by an expert panel authorized under Section 255.0065 consisting of license holders who practice in the same specialty as the license holder who is the subject of the complaint or in another specialty that is similar to the license holder's specialty.

(b) The expert panel shall report in writing the panel's determinations based on the review of the complaint under Subsection (a). The report must specify the standard of care that applies to the facts that are the basis of the complaint and the clinical basis for the panel's determinations, including any reliance on peer-reviewed journals, studies, or reports.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. [3201](#)), Sec. 6, eff. January 1, 2014.

Sec. 255.0067. REPORTS; PROCEDURES FOR EXPERT REVIEW. (a) A license holder on an expert panel authorized by Section 255.0065 who is initially selected to review a complaint shall:

(1) determine whether the license holder who is the subject of the complaint has violated the standard of care applicable to the circumstances; and

(2) issue a preliminary written report of that determination.

(b) A second expert reviewer shall review the first expert reviewer's preliminary report and other information associated with the complaint. If the second reviewer agrees with the first reviewer, the first reviewer shall issue a final written report on the matter.

(c) If the second expert reviewer does not agree with the conclusions of the first expert reviewer, a third expert reviewer shall review the preliminary report and information and decide between the conclusions reached by the first two reviewers. The final written report shall be issued by the third reviewer or the reviewer with whom the third reviewer concurs.

(d) In reviewing a complaint, the expert reviewers assigned to examine the complaint may consult and communicate with each other about the complaint in formulating their opinions and reports.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 6, eff. January 1, 2014.

Sec. 255.007. NOTICE TO BOARD CONCERNING COMPLAINTS. (a) The executive director shall notify the board of a complaint that is unresolved after the second anniversary of the date the complaint is filed.

(b) The executive director shall explain to the board the reasons that the complaint has not been resolved. The executive director shall periodically provide the notice and explanation required by this section at regularly scheduled board meetings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 255.008. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a

reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction, except to the extent the communication would be ex parte under any law.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.078(a), eff. Sept. 1, 2001.

## **CHAPTER 256. LICENSING OF DENTISTS AND DENTAL HYGIENISTS**

### **SUBCHAPTER A. ISSUANCE OF LICENSE TO PRACTICE DENTISTRY**

Sec. 256.001. LICENSE REQUIRED. A person may not practice or offer to practice dentistry or dental surgery or represent that the person practices dentistry unless the person holds a license issued by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 256.002. MINIMUM QUALIFICATIONS OF DENTAL APPLICANT. (a) An applicant for a license to practice dentistry must:

- (1) be at least 21 years of age;
- (2) be of good moral character; and
- (3) present proof of:

(A) graduation from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association; or

(B) graduation from a dental school that is not accredited by the commission and successful completion of training in an American Dental Association approved specialty in an education program accredited by the commission that consists of at least two years of training as specified by the Council on Dental Education.

(b) The board shall grant a dental license to an applicant who:

- (1) meets the qualifications of this section;
- (2) pays an application fee set by the board; and
- (3) satisfactorily passes the examination required by the

board.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.079(a), eff. Sept. 1, 2001.

Sec. 256.003. EXAMINATION. (a) The board shall provide for the examination of an applicant for a dental license.

(b) The examination must consist of subjects and operations relating to dentistry, including:

- (1) anatomy;
- (2) physiology;
- (3) anaesthesia;
- (4) biochemistry;
- (5) dental materials;
- (6) diagnosis;
- (7) treatment planning;
- (8) ethics;
- (9) jurisprudence;
- (10) hygiene;
- (11) pharmacology;
- (12) operative dentistry;
- (13) oral surgery;
- (14) orthodontia;
- (15) periodontia;
- (16) prosthetic dentistry;
- (17) pathology;
- (18) microbiology; and
- (19) any other subject regularly taught in reputable dental schools that the board may require.

(c) The board shall contract with one or more independent or regional testing services for any required clinical examination. If the board uses one or more regional testing services, the board may contract for or otherwise use licensed dentists to provide assistance to the regional testing service or services.

(d) The board shall have the written portion of the board's jurisprudence examination validated by an independent testing professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 2, eff. Sept. 1, 2001; Acts

2001, 77th Leg., ch. 1420, Sec. 14.079(b), eff. Sept. 1, 2001.

Sec. 256.005. EXAMINATION RESULTS. (a) The board shall notify each examinee of the results of the examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify examinees of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of the examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the examination, the board shall provide to the person an analysis of the person's performance on the examination as prescribed by board rule.

(d) If the board contracts with an independent or regional testing service, this section does not apply. The contract with the testing service must provide for the notification of results as provided by Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.079(c), eff. Sept. 1, 2001.

Sec. 256.006. REEXAMINATION. (a) The board by rule shall establish the conditions under which and the number of times an applicant may retake an examination.

(b) The board may require an applicant who fails the examination to meet additional education requirements.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. ISSUANCE OF LICENSE TO DENTAL HYGIENIST**

Sec. 256.051. DEFINITION. In this chapter, "dental hygienist" means a person who practices dental hygiene under a license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 256.052. LICENSE REQUIRED. A person may not practice or offer to practice dental hygiene in this state unless the person is licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 256.053. ELIGIBILITY FOR LICENSE. (a) An applicant for a license to practice dental hygiene in this state must be:

- (1) at least 18 years of age;
- (2) of good moral character;
- (3) a graduate of an accredited high school or hold a certificate of high school equivalency; and
- (4) a graduate of a recognized school of dentistry or dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board or an alternative dental hygiene training program.

(b) A school of dentistry or dental hygiene described by Subsection (a)(4) must include at least two full academic years of instruction or its equivalent at the postsecondary level.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.080(a), eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1470, Sec. 3.01, eff. Sept. 1, 2001.

Sec. 256.0531. ALTERNATIVE DENTAL HYGIENE TRAINING PROGRAMS.

(a) It is the intent of the legislature that programs approved by the board under this section provide hygiene training that is substantially equivalent to training provided under traditional programs.

(b) An alternative dental hygiene training program must meet the following requirements:

- (1) the program must be determined to be eligible for accreditation by the Commission on Dental Accreditation of the American Dental Association before students can enroll in the program;
- (2) the program must require hygiene students to complete

four semesters of didactic education from a school of dentistry, dental hygiene school, or other educational institution approved by the board;

(3) didactic education shall be provided by instruction in the classroom or by distance learning, remote coursework, or similar modes of instruction offered by an institution accredited by the Commission on Dental Accreditation of the American Dental Association;

(4) didactic education shall include instruction in anatomy, pharmacology, x-ray, ethics, jurisprudence, hygiene, and any other subject regularly taught in reputable schools of dentistry and dental hygiene that the board may require;

(5) the program must require hygiene students to complete not less than 1,000 hours of clinical training under the direct supervision of a dentist qualified under Subsection (d) or a dental hygienist qualified under Subsection (f) during a 12-month period. Students must satisfactorily complete 75 full-mouth prophylaxes and demonstrate the ability to accurately record the location and extent of dental restorations, chart mobility, furcations, gingival recession, keratinized gingiva, and pocket depth on six aspects of each tooth; and

(6) clinical training may occur simultaneously with didactic education.

(c) Prior to commencing training, a hygiene student must have completed no less than two years of full-time employment in a position involving clinical duties with dental patients.

(d) To be qualified to train a hygiene student under this section, a dentist must:

(1) be licensed in Texas and have practiced in Texas for at least five years;

(2) have completed a certification or calibration course approved by the board for purposes of this section;

(3) meet recertification requirements at intervals of no more than three years;

(4) also practice in a dental office located outside a standard metropolitan statistical area, as defined by the United States Census Bureau, or practice in an area that the Texas Department of Health has determined is underserved or an area that has been designated by the United States as having a shortage of dental professionals; and

(5) have posted a notice visible to patients stating: "This practice has been approved as an alternative dental hygiene training program. Students in the program may be performing services."

(e) A hygiene student who completes the requirements of a program under this section must satisfactorily pass the examination required for all hygiene license applicants under this chapter.

(f) A dental hygienist may train hygiene students under this section if:

(1) the dental hygienist is employed by a dentist who provides training under this section and the hygienist works under the direct supervision of the dentist in the same office as the dentist;

(2) the dental hygienist has practiced full-time dental hygiene for the five years immediately preceding the time the training is provided; and

(3) the dental hygienist has completed a certification or calibration course approved by the board and meets recertification requirements at intervals of no more than five years.

(g) A dentist who supervises a dental hygienist trained under this section has the same liability for acts performed by the hygienist as if the hygienist were trained in a different manner.

(h) The board shall adopt an alternative dental hygiene training program no later than January 1, 2002.

(i) The board shall appoint an advisory committee to advise the board in developing the alternative dental hygiene training program. The advisory committee consists of the following members appointed by the board:

(1) two dental hygienists nominated by a statewide association of dental hygienists;

(2) two dentists nominated by a statewide association of dentists;

(3) two dental educators nominated by the State Board of Dental Examiners; and

(4) two dental hygienist educators nominated by the Dental Hygiene Advisory Committee to the State Board of Dental Examiners.

(j) In developing the program, the advisory committee shall consider the standards adopted by the Commission on Dental Accreditation.

(k) A student in an alternative dental hygiene training program

is not considered to be practicing dentistry as described by Section 251.003.

(l) The board shall adopt rules requiring the dentist to give written notice to patients, where applicable, that services will be performed by a student in an alternative dental hygiene training program, and requiring the dentist or the dentist's staff to give oral notice to patients, where applicable, at the time the patient's hygiene appointment is made or confirmed, that services will be performed by a student in an alternative dental hygiene training program.

(m) The board may adopt rules necessary to implement this section. The board shall adopt a rule requiring notification to dental hygiene students that accreditation of the alternative dental hygiene training program is a requirement for obtaining a license under this chapter.

Added by Acts 2001, 77th Leg., ch. 1470, Sec. 3.02, eff. Sept. 1, 2001.

Sec. 256.054. APPLICATION FOR EXAMINATION. To take the examination under Section 256.055, an applicant for a license must:

- (1) submit an application on a form prescribed by the board;
- (2) pay the application fee set by the board;
- (3) attach to the application:
  - (A) proof of current certification in cardiopulmonary resuscitation approved by the American Heart Association or American Red Cross; or
  - (B) if the applicant is not physically able to comply with the certification requirements of Paragraph (A), a written statement describing the person's physical incapacity executed by a licensed physician or an instructor in cardiopulmonary resuscitation approved by the American Heart Association or American Red Cross; and
- (4) provide any other information the board requires to determine the applicant's qualifications.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.081(a), eff. Sept. 1, 2001.

Sec. 256.055. LICENSE EXAMINATION. (a) The board shall provide for the examination of an applicant for a dental hygienist license.

(b) The examination must include subjects and operations relating to dentistry and dental hygiene, including:

- (1) anatomy;
- (2) pharmacology;
- (3) x-ray;
- (4) ethics;
- (5) jurisprudence;
- (6) hygiene;
- (7) dental hygiene treatment planning;
- (8) dental materials;
- (9) physiology;
- (10) pathology;
- (11) microbiology; and

(12) any other subject regularly taught in reputable schools of dentistry and dental hygiene that the board may require.

(c) The board shall contract with one or more independent or regional testing services for any required clinical examination. If the board uses one or more regional testing services, the board may contract for or otherwise use licensed dental hygienists to provide assistance to the regional testing service or services.

(d) The board shall have the written portion of the board's jurisprudence examination validated by an independent testing professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.081(b), eff. Sept. 1, 2001.

Sec. 256.056. EXAMINATION RESULTS. (a) The board shall notify each examinee of the results of the examination within a reasonable time after the date of the examination.

(b) If the board contracts with an independent or regional testing service, the contract with the service must provide for the notification of results.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.081(c), eff. Sept. 1, 2001.

Sec. 256.057. REEXAMINATION. (a) The board by rule shall establish the conditions under which and the number of times an applicant may retake an examination.

(b) The board may require an applicant who fails the examination to meet additional education requirements set by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 256.058. ISSUANCE OF LICENSE. The board shall issue a license to practice dental hygiene to an applicant who has passed all phases of the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. GENERAL LICENSE PROVISIONS**

Sec. 256.101. ISSUANCE OF LICENSE TO CERTAIN OUT-OF-STATE APPLICANTS. (a) The board shall issue a license to practice dentistry to a reputable dentist or a license to practice dental hygiene to a reputable dental hygienist who:

- (1) pays the fee set by the board;
- (2) is licensed in good standing as a dentist or dental hygienist in another state that has licensing requirements substantially equivalent to the requirements of this subtitle;
- (3) has not been the subject of a final disciplinary action and is not the subject of a pending disciplinary action in any jurisdiction in which the dentist or dental hygienist is or has been licensed;
- (4) has graduated from a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board under board rule;
- (5) has passed a national or other examination relating to dentistry or dental hygiene and recognized by the board;
- (6) has passed the board's jurisprudence examination;



(7) has submitted documentation of current cardiopulmonary resuscitation certification;

(8) has practiced dentistry or dental hygiene:

(A) for at least the three years preceding the date of application for a license under this section; or

(B) as a dental educator at a dental school or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association for at least the five years preceding the date of application for a license under this section;

(9) has been endorsed by the board of dentistry in the jurisdiction in which the applicant practices at the time of application; and

(10) meets any additional criteria established by board rule.

(a-1) The board by rule shall specify the circumstances under which the board may waive the requirement under Subsection (a)(8) that an applicant for a license under this section has been continuously engaged in the practice of dentistry or dental hygiene during the period required by that subsection if the applicant has engaged in the practice of dentistry or dental hygiene for a cumulative total of at least three years before the date of application for a license under this section.

(b) If the board does not complete the processing of an application under this section before the 181st day after the date all documentation and examination results required by this section have been received, the board shall issue a license to the applicant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 4, 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 17, Sec. 13, eff. Sept. 1, 2003.

Sec. 256.1013. PROVISIONAL LICENSE. (a) The board may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as a dentist or dental hygienist for at least two years in another jurisdiction that has licensing requirements substantially equivalent to the requirements of this subtitle;

(2) is a graduate of a recognized school of dentistry or

dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board;

(3) has passed a national or other examination recognized by the board relating to the practice of dentistry or dental hygiene, as appropriate; and

(4) is sponsored by a person who holds an appropriate license under this subtitle and with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The board may waive the requirement of Subsection (a)(4) for an applicant if the board determines that compliance with that subdivision would be a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this subtitle to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 256.101; or

(2) the provisional license holder passes the part of the examination under Section 256.003 or 256.055 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of dentistry or dental hygiene, as appropriate, in this state and:

(A) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this subtitle; and

(B) the provisional license holder satisfies any other licensing requirements under this subtitle.

(d) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(e) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 14, eff. Sept. 1, 2003.

Sec. 256.1015. TEMPORARY LICENSE. (a) The board, upon payment by the applicant of a fee set by the board, shall grant a temporary license to practice dentistry to any reputable dentist or a temporary license to practice dental hygiene to any reputable dental hygienist who:

(1) meets all requirements of Section 256.101 except those of Subsection (a)(8); and

(2) is employed by a nonprofit corporation that accepts Medicaid reimbursement.

(b) A license granted under this section expires immediately when a licensee fails to meet the requirements of this section.

Added by Acts 2001, 77th Leg., ch. 1470, Sec. 5.01, eff. Sept. 1, 2001.

Sec. 256.1016. TEMPORARY LICENSE FOR CHARITABLE PURPOSE. (a) In this section, "voluntary charity care" has the meaning assigned by board rule under Section 256.102.

(b) The board shall grant a temporary license for a dentist whose practice consists only of voluntary charity care to a reputable dentist who meets the requirements of Sections 256.101(a)(3), (4), and (5) and who:

(1) ceased practicing dentistry in another state that the board has determined has licensing requirements that are substantially similar to the requirements of this state not more than two years before the date the dentist applies for a license under this section and was licensed in good standing at the time the dentist ceased practicing dentistry; or

(2) is currently licensed in another state that the board has determined has licensing requirements that are substantially similar to the requirements of this state.

(c) A dentist issued a license under this section shall:

(1) confine the dentist's practice to voluntary charity care;

(2) practice only in a geographic area specified by the license; and

(3) practice only for the period specified by the license.

(d) The board shall adopt rules as necessary to implement this section.

(e) The board shall take disciplinary action against a dentist licensed under this section for a violation of this subtitle or board rules in the same manner as against a dentist licensed under Subchapter A.

Added by Acts 2013, 83rd Leg., R.S., Ch. 306 (H.B. 1491), Sec. 1, eff. June 14, 2013.

Sec. 256.102. RETIRED STATUS. (a) The board by rule may allow a license holder to place the person's license on retired status. A license holder must apply to the board for retired status, on a form prescribed by the board, before the expiration date of the person's license.

(b) In determining whether to grant retired status, the board shall consider the age, years of practice, and the status of the license holder at the time of the application.

(c) A license holder on retired status:

- (1) is not required to pay license renewal fees; and
- (2) except as provided by Subsection (f), may not perform any activity regulated under this subtitle.

(d) To reinstate a license placed on retired status, the license holder must submit a written request for reinstatement to the board. The board may return the license to active status and issue a renewal license if the license holder complies with any education or other requirement established by board rule and pays the renewal fee in effect at the time of the requested reinstatement.

(e) The board may charge a reasonable administrative fee to cover the cost of research and the preparation of documentation for the board's consideration of a request for reinstatement of a license on retired status.

(f) A dentist on retired status may perform an activity regulated under this subtitle if the dentist's practice consists only of voluntary charity care, as defined by board rule. The board's rules under this subsection must prescribe the scope of practice permitted for the retired dentist, the retired dentist's authority to prescribe and administer drugs, and any continuing education requirements applicable to the retired dentist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 3, eff. September 1, 2005.

Sec. 256.103. DISPLAY OF ANNUAL REGISTRATION CERTIFICATE. (a) A licensed dentist or dental hygienist shall display the person's current registration certificate in each office in which the person provides dental services. If the dentist or dental hygienist provides dental services at more than one location, the person may display a duplicate of the original registration certificate obtained from the board on payment of a duplicate certificate fee set by the board.

(b) A licensed dentist may not operate on a patient's mouth or treat lesions of the mouth or teeth unless the dentist displays the dentist's registration certificate.

(c) A person may practice without displaying the person's current registration certificate as required by Subsection (a) for not more than 30 days after the date the person receives from the board written confirmation that the person's original license was issued.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.083(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 4, eff. September 1, 2005.

Sec. 256.104. DUPLICATE LICENSE. (a) The board may issue a duplicate license to a person whose license is lost or destroyed if the person:

- (1) pays a reasonable fee; and
- (2) presents to the board an application for a duplicate license, including an affidavit explaining the loss or destruction and stating that the person is the same person originally granted the license.

(b) If board records do not show that the person was previously licensed, the board may refuse to issue a duplicate license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 256.105. NOTIFICATION OF CHANGE OF INFORMATION. (a) Each dentist, dental hygienist, and owner or manager of a dental laboratory licensed or registered with the board shall timely notify the board of:

- (1) any change of address of the person's place of business;
- (2) any change of employers for the dentist or dental hygienist and any change of owners or managers for the dental laboratory; and
- (3) any change of the person's mailing address.

(b) Notification under Subsection (a) is timely if the board receives the notice not later than the 60th day after the date the change occurs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 6, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 3, eff. September 1, 2009.

Sec. 256.106. DELEGATED AUTHORITY TO ISSUE LICENSES. The board may delegate authority to board employees to issue licenses under this subtitle to applicants who clearly meet all licensing requirements. If the board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the board. A license issued under this section does not require formal board approval.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 7, eff. January 1, 2014.

#### **CHAPTER 257. LICENSE RENEWAL**

Sec. 257.001. LICENSE EXPIRATION. (a) The board by rule may adopt a system under which licenses expire on various dates during the year.

(b) Dates of license suspension and reinstatement after failure to pay the license fee shall be adjusted accordingly.

(c) For the year in which the expiration date is changed, license fees payable on or before March 1 shall be prorated on a

monthly basis so that each license holder pays only that portion of the fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.

(d) An initial license issued under this subtitle expires on the 30th day after the date the license is issued if the holder of the license fails to pay the required license fee on or before that date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 4, eff. September 1, 2009.

Sec. 257.002. LICENSE RENEWAL. (a) A person required to hold a license as a practitioner under this subtitle who fails or refuses to apply for renewal of a license and pay the required fee on or before the specified date of each calendar year is:

(1) suspended from practice; and

(2) subject to the penalties imposed by law on any person unlawfully engaging in a practice regulated under this subtitle.

(b) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(c) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c-1) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(d) Except as provided by Subsection (d-1) or (d-2), a person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(d-1) A person who was licensed in this state, moved to another

state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.

(d-2) The board may renew the license of a person whose license has been expired for one year or more without requiring the person to comply with the requirements and procedures for an original license if the person places the person's renewed license on retired status and confines the person's practice solely to voluntary charity care under Section 256.102(f).

(e) Not later than the 30th day before the date a person's license is scheduled to expire, the board shall send written notice of the impending expiration to the person at the person's last known address according to the board's records.

(f) The requirements prescribed by this section relating to the payment of annual license fees and penalties for the failure to timely renew a license do not apply to license holders who are on active duty with the armed forces of the United States and are not engaged in private or civilian practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.084(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 17, Sec. 15, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 456 (H.B. 643), Sec. 1, eff. September 1, 2007.

Sec. 257.004. CARDIOPULMONARY RESUSCITATION REQUIREMENTS. (a) A person holding a dental or dental hygienist license must submit at the time the person applies for renewal of the license:

(1) a written statement executed by the person stating that the person has successfully completed a current program or course in cardiopulmonary resuscitation that includes a demonstration of skills and a written evaluation; or

(2) if the person is not physically able to comply with the requirements of Subdivision (1), a written statement describing the person's physical incapacity executed by a licensed physician.

(b) Repealed by Acts 2003, 78th Leg., ch. 17, Sec. 28, eff.



Sept. 1, 2003.

(c) A dentist or dental hygienist licensed by the board who resides in a country other than the United States on the renewal date of the person's license and has not practiced dentistry or dental hygiene in the United States during the year preceding the renewal date is exempt from the requirements of Subsection (a) if the person submits proof of foreign residence with the person's renewal application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 7, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 17, Sec. 16, 28, eff. Sept. 1, 2003.

Sec. 257.005. CONTINUING EDUCATION FOR DENTIST AND DENTAL HYGIENIST. (a) The board shall develop a mandatory continuing education program for licensed dentists and dental hygienists. The board by rule shall require a license holder to complete at least 12 hours of continuing education for each annual registration period to renew the license for a subsequent annual period.

(b) The board may:

(1) assess the continuing education needs of license holders; and

(2) require license holders to attend continuing education courses specified by the board.

(c) The board by rule shall:

(1) identify the key factors required for competent performance of professional duties under this subtitle;

(2) develop a process to evaluate and approve continuing education courses; and

(3) develop a process to assess a license holder's participation and performance in continuing education courses to evaluate the overall effectiveness of the program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.079(d), eff. Sept. 1, 2001.

**CHAPTER 258. PRACTICE BY DENTIST**  
**SUBCHAPTER A. DELEGATION BY DENTIST**

Sec. 258.001. IMPERMISSIBLE DELEGATIONS. A dentist may not delegate:

(1) an act to an individual who, by board order, is prohibited from performing the act;

(2) any of the following acts to a person not licensed as a dentist or dental hygienist:

(A) the removal of calculus, deposits, or accretions from the natural and restored surfaces of exposed human teeth and restorations in the human mouth;

(B) root planing or the smoothing and polishing of roughened root surfaces or exposed human teeth; or

(C) any other act the delegation of which is prohibited by board rule;

(3) any of the following acts to a person not licensed as a dentist:

(A) comprehensive examination or diagnosis and treatment planning;

(B) a surgical or cutting procedure on hard or soft tissue;

(C) the prescription of a drug, medication, or work authorization;

(D) the taking of an impression for a final restoration, appliance, or prosthesis;

(E) the making of an intraoral occlusal adjustment;

(F) direct pulp capping, pulpotomy, or any other endodontic procedure;

(G) the final placement and intraoral adjustment of a fixed or removable appliance; or

(H) the placement of any final restoration; or

(4) the authority to an individual to administer a local anesthetic agent, inhalation sedative agent, parenteral sedative agent, or general anesthetic agent if the individual is not licensed as:

(A) a dentist with a permit issued by the board for the procedure being performed, if a permit is required;

(B) a certified registered nurse anesthetist licensed by the Texas Board of Nursing, only if the delegating dentist holds a permit issued by the board for the procedure being performed, if a permit is required; or

(C) a physician anesthesiologist licensed by the Texas

Medical Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 37, eff. September 1, 2007.

Sec. 258.002. DELEGATION TO DENTAL ASSISTANT. (a) A licensed dentist may delegate to a qualified and trained dental assistant acting under the dentist's general or direct supervision any dental act that a reasonable and prudent dentist would find is within the scope of sound dental judgment to delegate if:

(1) in the opinion of the delegating dentist, the act:

(A) can be properly and safely performed by the person to whom the dental act is delegated; and

(B) is performed in a customary manner and is not in violation of this subtitle or any other statute;

(2) the person to whom the dental act is delegated does not represent to the public that the person is authorized to practice dentistry; and

(3) the person to whom the dental act is delegated holds the appropriate certificate, if a certificate is required to perform the act.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 476, Sec. 8(1), eff. September 1, 2009.

(c) The board by rule shall establish guidelines regarding the types of dental acts that may be properly or safely delegated by a dentist, including a determination of which delegated dental acts, if any, require competency testing before a person may perform the act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1470, Sec. 4.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1144, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 8(1), eff. September 1, 2009.

Sec. 258.003. RESPONSIBILITY OF DELEGATING DENTIST. A delegating dentist is responsible for a dental act performed by the person to whom the dentist delegates the act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. GENERAL PRACTICE PROVISIONS**

Sec. 258.051. DENTIST RECORDS. (a) The records of a diagnosis made and treatment performed for and on a dental patient are the property of the dentist performing the dental service.

(b) A dentist's records may not be sold, pledged as collateral, or transferred to any person other than the patient unless the transfer is made in compliance with Subchapter C and board rules.

(c) This section does not prevent the voluntary submission of records to an insurance company to determine benefits when consent for the disclosure has been granted under Section 258.104.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(a), eff. Sept. 1, 2001.

Sec. 258.0511. ACCESS TO DENTAL RECORDS. (a) An owner, shareholder, partner, or executive officer of a clinic or other entity that provides dental services for the public shall designate a license holder as the dental custodian of records to provide records to the board or a dentist who has provided dental treatment and to comply with other law regulating dental patient records.

(b) On demand, the dental custodian of records shall give access to the board and produce for the board all records or other evidence related to the investigation or prosecution of an alleged violation of this subtitle or another law regulating the practice of dentistry in this state.

(c) The board shall adopt rules regarding the designation and duties of a dental custodian of records.

(d) Section 264.101 applies to a violation of this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1119 (H.B. [3876](#)), Sec. 1, eff. September 1, 2007.

Sec. 258.052. CASE HISTORIES AND PHYSICAL EVALUATIONS. (a) A dentist may take a complete case history and perform a complete physical evaluation that may be used to admit a patient to a hospital for the practice of dentistry if the activity is necessary in the exercise of due care in the practice of dentistry.

(b) A dentist is not automatically entitled to membership on a hospital's medical staff or to exercise clinical privileges at a hospital solely because the dentist is licensed in this state or because the dentist is authorized to take a case history and perform a physical evaluation.

(c) A dentist may not be denied membership on a hospital's medical staff or the right to the exercise of clinical privileges at a hospital solely because the person is a dentist rather than a physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 258.053. USE OF CERTAIN DRUGS. (a) In this section, "narcotic drugs," "dangerous drugs," and "controlled substances" have the meanings defined or recognized by federal law or the law of this state.

(b) A dentist may not:

(1) prescribe, provide, obtain, order, administer, possess, dispense, give, or deliver to or for any person a narcotic drug, dangerous drug, or controlled substance:

(A) that is not necessary or required; or

(B) the use or possession of which would promote addiction to the drug or substance; or

(2) aid, abet, or cause another person to engage in an action described by Subdivision (1).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 258.054. USE OF X-RAY EQUIPMENT. (a) A dentist may authorize a qualified person to perform beam calibration and characterization, quality assurance, instrument specification, acceptance testing, shielding design, or protection analysis on radiation-emitting equipment or radiopharmaceuticals for a procedure that involves the diagnosis or treatment of disease or another dental

condition in humans.

(b) A dentist's authorization and the performance of authorized activities by a qualified person does not constitute the practice of medical physics under Chapter 602.

(c) A dentist may not authorize a dental assistant to make a dental x-ray unless the dental assistant holds an x-ray certificate issued under Section 265.005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 5, eff. September 1, 2005.

Sec. 258.055. PRACTICE OF DENTISTRY ON CERTAIN CHILDREN. (a) The parent or guardian of a child younger than 18 years of age may be present in the treatment room during the child's dental treatment or procedure, unless the dentist determines in the dentist's professional judgment that the presence of the parent or guardian in the treatment room is likely to have an adverse effect on the treatment or the child.

(b) In this section, "parent or guardian" includes a person authorized by law to consent for the medical or dental treatment of a child younger than 18 years of age.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 8, eff. January 1, 2014.

#### **SUBCHAPTER C. DENTAL PRIVILEGE**

Sec. 258.101. DEFINITIONS. In this subchapter:

(1) "Dental record" means dental information about a patient:

- (A) created or maintained by a dentist; and
- (B) relating to the history or treatment of the

patient.

(2) "Dentist" means a person licensed to practice dentistry.

(3) "Patient" means a person who consults with a dentist to receive dental care.

(4) "Privilege" means the confidentiality privilege created

by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.102. SCOPE OF PRIVILEGE. (a) The following information is privileged and may not be disclosed except as provided by this subchapter:

(1) a communication between a dentist and a patient that relates to a professional service provided by the dentist; and  
(2) a dental record.

(b) The privilege described by this section applies regardless of when the patient received the professional service from the dentist.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.103. HOLDER OF PRIVILEGE. (a) The patient is the holder of the privilege.

(b) The following persons may claim the privilege on the patient's behalf:

(1) a person authorized to act on the patient's behalf;  
(2) a dentist acting on the patient's behalf; and  
(3) an agent or employee of a person listed in Subdivision (1) or (2).

(c) A person's authority to claim the privilege is presumed in the absence of evidence to the contrary.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.104. CONSENT TO DISCLOSURE OF PRIVILEGED INFORMATION. (a) A person may disclose privileged information if the patient consents to the disclosure as provided in this section.

(b) Consent for the release of privileged information must be in writing and be signed by:

(1) the patient;

(2) a parent or legal guardian of the patient, if the patient is a minor;

(3) a legal guardian of the patient, if the patient has been adjudicated incompetent to manage the patient's personal affairs;

(4) an attorney ad litem appointed for the patient, as authorized by:

- (A) Chapter 107, Family Code;
- (B) Subtitle B, Title 6, Health and Safety Code;
- (C) Subtitle C, Title 7, Health and Safety Code;
- (D) Subtitle D, Title 7, Health and Safety Code;
- (E) Subtitle E, Title 7, Health and Safety Code;
- (F) Chapter V, Texas Probate Code; or
- (G) any other law; or

(5) a personal representative of the patient, if the patient is deceased.

(c) The consent required under this section must specify:

- (1) the information covered by the release;
- (2) the person to whom the information is to be released;

and

- (3) the purpose for the release.

(d) A person may withdraw consent granted under this section by notifying in writing the person who maintains the information. Withdrawal of consent does not affect information disclosed before the written notice of the withdrawal is delivered.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.105. EXCEPTION TO PRIVILEGE FOR CERTAIN PROCEEDINGS.

(a) The privilege does not apply in a court or administrative proceeding if the proceeding is:

- (1) brought by the patient against a dentist, including a malpractice, criminal, or license revocation proceeding, and the disclosure is relevant to a claim or defense of the dentist; or
- (2) to collect on a claim for dental services rendered to the patient.

(b) The privilege does not apply to the disclosure of a dental record:



(1) to the board in a disciplinary investigation or proceeding against a dentist conducted under this subtitle; or

(2) in a criminal investigation or proceeding against a dentist in which the board is participating or assisting by providing a record obtained from the dentist.

(c) The board may not reveal the identity of a patient whose dental record is disclosed under Subsection (b).

(d) Privileged information is discoverable in a criminal prosecution if:

(1) the patient is a victim, witness, or defendant; and

(2) the court in which the prosecution is pending rules, after an in camera review, that the information is relevant for discovery purposes.

(e) Privileged information is admissible in a criminal prosecution if:

(1) the patient is a victim, witness, or defendant; and

(2) the court in which the prosecution is pending rules, after an in camera review, that the information is relevant.

(f) The privilege does not apply to a grand jury subpoena.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.106. EXCEPTION TO PRIVILEGE FOR CERTAIN DISCLOSURES BY DENTIST. (a) The privilege does not apply to the disclosure of information by a dentist to:

(1) a governmental agency, if:

(A) the disclosure is required by another law; and

(B) the agency agrees to keep confidential the identity of a patient whose dental record is disclosed;

(2) medical or law enforcement personnel, if the dentist determines that it is more likely than not that the following will occur:

(A) imminent physical injury to the patient, the dentist, or others; or

(B) immediate mental or emotional injury to the patient;

(3) a person in relation to a management or financial audit, program evaluation, or research, if the person agrees to keep

confidential the identity of a patient whose dental record is disclosed;

(4) a person involved in the payment or collection of fees for services rendered by a dentist, if necessary; or

(5) another dentist, or a person under the direction of the dentist, who participates in the diagnosis, evaluation, or treatment of the patient.

(b) A person who receives information under Subsection (a)(3) may not disclose a patient's identity in writing.

(c) A record reflecting a charge or specific service provided may be disclosed only when necessary in the collection of fees for a service provided by a dentist, professional association, or other entity qualified to provide or arrange for a service.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.107. EXCEPTION TO PRIVILEGE FOR CERTAIN LEGISLATIVE INQUIRIES. A state hospital or state school may disclose a dental record if:

(1) the state hospital or state school created the record;

(2) an inquiry authorized by the legislature requests the information; and

(3) the entity receiving the record agrees not to disclose a patient's identity.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.108. LIMIT ON DISCLOSURE. A person who receives privileged information may disclose the information to another person only to the extent consistent with the purpose for which the information was obtained.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.109. REQUEST FOR DENTAL RECORD: TIMING; EXCEPTION.

(a) If disclosure of a dental record is authorized under this subchapter, a dentist shall disclose the dental record within a reasonable period after it is requested but not later than:

(1) the 30th day after the date on which it is requested from the dentist; or

(2) a date ordered by a court.

(b) A dentist may refuse to disclose the requested record if the dentist determines that providing the information would be harmful to the physical, mental, or emotional health of the patient, except that requests from the board may not be refused. If the dentist determines that disclosing the record would be harmful, the dentist shall notify the person requesting the record and explain why the information would be harmful. The person requesting the record may challenge in court the dentist's refusal to disclose the record. If the court finds that the dentist made the refusal in bad faith, the court may order the disclosure of the record and award costs and attorney's fees incurred by the person to obtain the information.

(c) In disclosing a dental record under this section, a dentist shall redact privileged information about another person.

(d) A dentist may charge a reasonable fee for providing a dental record under this section. For purposes of this subsection, a fee established under Section 241.154, Health and Safety Code, is a reasonable fee.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

#### **SUBCHAPTER D. ENTERAL ADMINISTRATION OF ANESTHESIA**

Sec. 258.151. DEFINITION. In this subchapter, "enteral" means any technique of administering anesthesia in which the anesthetic is absorbed through the gastrointestinal tract or oral mucosa. Examples of enterally administering anesthesia include administering an anesthetic orally, rectally, sublingually, or intranasally.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.

Sec. 258.152. APPLICABILITY. Rules adopted by the board under this subchapter do not apply to:

(1) the regional injection of an anesthetic to reduce or

eliminate sensation, especially pain, in one part of the body; or  
(2) the administration of anxiolytics and analgesics that are not being used in conjunction with the administration of nitrous oxide and that are administered in doses that do not have the probability of placing the dental patient at risk for loss of the dental patient's life-preserving protective reflexes.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.

Sec. 258.153. RULES. (a) The board shall establish by rule the minimum standards for the enteral administration of anesthesia by a dentist.

(b) The rules must be designed to protect the health, safety, and welfare of the public and must include requirements relating to:

(1) the methods used to enterally administer an anesthetic and the anesthetic agents that may be used;

(2) dental patient evaluation, diagnosis, counseling, and preparation;

(3) dental patient monitoring to be performed and equipment to be used during a procedure and during postprocedure monitoring;

(4) emergency procedures, drugs, and equipment, including education, training, and certification of personnel, as appropriate, and including protocols for transfers to a hospital;

(5) the documentation necessary to demonstrate compliance with this subchapter; and

(6) the period in which protocols or procedures covered by rules of the board shall be reviewed, updated, or amended.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.

Sec. 258.154. COMPLIANCE WITH ANESTHESIA RULES. (a) On and after August 31, 2002, a dentist who practices dentistry in this state and who enterally administers anesthesia or performs a procedure for which anesthesia is enterally administered shall comply with the rules adopted under this subchapter.

(b) The board may require a dentist to submit and comply with a corrective action plan to remedy or address any current or potential deficiencies with the dentist's enteral administration of anesthesia in accordance with this subtitle or rules of the board.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.

Sec. 258.155. ANNUAL PERMIT. (a) Not later than September 1, 2002, the board shall require each dentist who enterally administers anesthesia or performs a procedure for which anesthesia is enterally administered to annually obtain a permit from the board by completing a form prescribed by the board. The board shall set and impose a fee for the permit in an amount designed to recover the costs of regulating a permit holder under this subchapter.

(b) The board shall coordinate the times at which a permit must be renewed with the times at which a dentist's license must be renewed under Chapter 257 so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimum of administrative burden to the board and to dentists.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.

Sec. 258.156. INSPECTIONS. (a) The board may conduct inspections to enforce this subchapter, including inspections of an office site and of documents of a dentist's practice that relate to the enteral administration of anesthesia. The board may contract with another state agency or qualified person to conduct these inspections.

(b) Unless it would jeopardize an ongoing investigation, the board shall provide at least five business days' notice before conducting an on-site inspection under this section.

(c) This section does not require the board to make an on-site inspection of a dentist's office.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.

Sec. 258.157. REQUESTS FOR INSPECTION AND ADVISORY OPINION.

(a) The board may consider a request by a dentist for an on-site inspection. The board may, in its discretion and on payment of a fee in an amount established by the board, conduct the inspection and issue an advisory opinion.

(b) An advisory opinion issued by the board under this section

is not binding on the board, and the board, except as provided by Subsection (c), may take any action under this subtitle in relation to the situation addressed by the advisory opinion that the board considers appropriate.

(c) A dentist who requests and relies on an advisory opinion of the board may use the opinion as mitigating evidence in an action or proceeding to impose an administrative or civil penalty under this subtitle. The board or court, as appropriate, shall take proof of reliance on an advisory opinion into consideration and mitigate the imposition of administrative or civil penalties accordingly.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.

**CHAPTER 259. PROHIBITED OR RESTRICTED COMMERCIAL OR PROFESSIONAL ACTIVITIES**

Sec. 259.001. FALSE STATEMENTS TO PATIENTS. A dentist may not, in the practice of dentistry, make a misrepresentation or a false or misleading statement to a patient or prospective patient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 259.002. NOTIFICATION OF QUALIFICATIONS. Each dental office shall post at or near the entrance of the office the name of, each degree received by, and each school attended by each dentist practicing in the office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 259.003. USE OF TRADE NAME. (a) A person may use a corporation, company, association, or trade name, provided that each patient shall be given the name of the treating dentist, in writing, either before or after each office visit.

(b) An advertisement under a corporation, company, association, or trade name must include prominently the name of at least one dentist practicing under the name.

(c) A person using a business or trade name described by Subsection (b) shall file with the board a list of each dentist who practices under that name and a list of each trade name used if that

name is different from the name described by Subsection (b).

(d) If information provided under Subsection (c) changes, the person must file updated information with the board not later than the 30th day after the date of the change.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.087(a), eff. Sept. 1, 2001.

Sec. 259.004. DUTIES OF DENTIST IN CERTAIN EMPLOYMENT OR CONTRACTUAL ARRANGEMENTS. (a) A person providing dental services under an agreement that allows another person to control or influence any aspect of the delivery of dental services, including a business or professional aspect, shall report to the board on request and in accordance with board rules:

(1) information concerning the agreement;

(2) the manner in which patients are billed;

(3) the manner in which the dental service provider is paid and any information provided to patients concerning payment agreements; and

(4) information concerning the service provider agreement provided to shareholders of organizations contracting with a dental service provider.

(b) A person who practices dentistry and has another dentist practicing with or under the person is responsible for all professional acts performed under the name of the person, regardless of whether the dentist has an ownership interest or an employment or contractual relationship. This section does not affect an individual license holder's responsibilities and rights under this subtitle.

(c) A statute relating to the practice of dentistry in this state may not be construed to prohibit a licensed dentist from maintaining more than one office in this state if the dentist:

(1) assumes full legal responsibility and liability for the dental services provided in each office; and

(2) complies with the requirements prescribed by board rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 259.005. AUTHORIZED ADVERTISING RESTRICTIONS. Board rules adopted under Section 254.002 to regulate advertising may include restrictions that prohibit communications to the public that:

- (1) are false, misleading, or deceptive;
- (2) state an opinion regarding the quality of dental services;
- (3) appeal to an individual's anxiety in an excessive or unfair way;
- (4) intimidate or exert undue pressure or undue influence over a prospective patient;
- (5) create unjustified expectations concerning the potential result of a dental treatment;
- (6) refer to benefits or other attributes of dental procedures or products that involve significant risks without including realistic assessments of the safety and efficacy of those procedures or products;
- (7) contain statistical data, representations, or other information that is not susceptible to reasonable verification by the public;
- (8) refer to a fee for dental services without disclosing that additional fees may be involved in individual cases, if the possibility of additional fees may be reasonably predicted;
- (9) offer a discount for dental services without disclosing the total fee to which the discount will apply; or
- (10) fail to make truthful disclosure of the source and authorship of any message published under a dentist's byline.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 259.006. UNLAWFUL ADVERTISING IN GENERAL. (a) A person may not engage in false, misleading, or deceptive advertising in connection with the practice of dentistry.

(b) A person regulated by the board may not engage in advertising that does not comply with the reasonable restrictions adopted by the board under Section 259.005.

(c) For the first violation of the board's advertising restrictions, a person may not be prosecuted under this subtitle before the 31st day after the date the person has been given notice by certified or registered mail, return receipt requested, of the



alleged violation. The notice must:

- (1) include a copy of the applicable portions of this subtitle and all board rules relating to advertising;
- (2) describe the alleged unlawful advertising;
- (3) identify the board restriction violated; and
- (4) include a statement informing the person that the person has 30 days from the date of the notice to cure the violation.

(d) A person may be prosecuted if the violation is not cured within the prescribed time.

(e) Subsection (c) does not apply to a subsequent violation of the board's advertising restrictions.

(f) This section does not authorize the board to discipline a dentist for an act of an advertising agent that results in a communication to the public that violates the restrictions adopted by the board under Section 259.005 if the advertisement does not specify the name of the dentist or the name under which the dentist practices unless:

- (1) the advertising agent is owned or controlled by the dentist;
- (2) the dentist provided to the advertising agent for distribution to the public any information that does not comply with the board's restrictions; or
- (3) the content of the advertising is determined by the dentist.

(g) The board may bring an action in district court to enjoin an advertising agent from using any advertisement, marketing scheme, or practice that violates the restrictions adopted by the board under Section 259.005. Notwithstanding any other provision of this subtitle, an injunction under this section is the board's sole remedy against an advertising or marketing agent for a violation of this section.

(h) The remedies provided in this section are in addition to the procedures and remedies provided for in Subchapter E, Chapter 17, Business & Commerce Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 259.007. UNLAWFUL ADVERTISING: OUT-OF-STATE PROVIDER. A person who is not domiciled and located in this state and subject to

the laws of this state may not advertise or cause or permit to be advertised, published, directly or indirectly, printed, or circulated in this state a notice, statement, or offer of any service, drug, or fee relating to the practice of dentistry, unless the advertising conspicuously discloses that the person is not licensed to practice dentistry in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 259.008. UNPROFESSIONAL CONDUCT. A person may not directly or indirectly engage in unprofessional conduct relating to dentistry, including:

(1) obtaining or attempting to collect a fee by fraud or misrepresentation;

(2) orally soliciting dental business if the solicitation is:

(A) directed to an individual or a group of less than five individuals; and

(B) made for the primary purpose of attracting the individual or the group to a particular dental practice;

(3) employing, directly or indirectly, or permitting an unlicensed person to perform dental services on a person, except as authorized by law;

(4) claiming or circulating a statement of:

(A) professional superiority; or

(B) performance of professional services in a superior manner;

(5) forging, altering, or changing a legal document relating to the practice of dentistry, including a diploma, license, registration certificate, or transcript;

(6) being a party to or benefiting from the forgery, alteration, or changing of a legal document relating to the practice of dentistry;

(7) making a false statement or misusing a legal document relating to the practice of dentistry;

(8) accepting employment as a dentist under a false, misleading, or deceptive referral scheme;

(9) advertising the performance of dental work without pain or discomfort to the patient; or

(10) advertising a prediction of future satisfaction or success of a dental service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.088(a), eff. Sept. 1, 2001.

#### **CHAPTER 260. OPERATION OF CERTAIN DENTAL PRACTICES**

Sec. 260.001. EMPLOYMENT BY ESTATE OF DENTIST OR PERSON ACTING FOR MENTALLY INCOMPETENT DENTIST. (a) This subtitle does not prevent a person who is the administrator or executor of the estate of a dentist or a person who is legally authorized to act for a dentist adjudicated to be mentally incompetent from employing a licensed dentist to:

(1) carry on the deceased or mentally incompetent dentist's practice for a reasonable period, as determined by the board; or

(2) conclude the affairs of the practice, including the sale of any assets.

(b) This subtitle does not prevent a licensed dentist from working for a person described by Subsection (a) during the administration of the estate or the period of incompetency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 260.002. EMPLOYMENT BY CERTAIN NONPROFIT HEALTH ORGANIZATIONS. (a) The board shall, on a form and under rules adopted by the board, approve and certify a health organization to contract with or employ dentists licensed by the board if the organization, in its application to the board, presents satisfactory proof to the board that the organization:

(1) is a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501); and

(2) is organized and operated as:

(A) a migrant, community, or homeless health center under 42 U.S.C. Section 254b or 254c; or

(B) a federally qualified health center under 42 U.S.C. Section 1396d(1)(2)(B).

(b) A dentist providing dental services under Subsection (a) shall provide those services free of charge or at a reduced fee equal to the patient's ability to pay in strict compliance with 42 U.S.C. Section 254b or 254c.

(c) The board may refuse to approve or certify a health organization that applies to the board under this section if the board determines that the nonprofit corporation is established, organized, or operated in violation of or with the intent to circumvent this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 260.003. EMPLOYMENT BY ORGANIZATIONS SERVING UNDERSERVED POPULATIONS. A dentist licensed by the board may be employed by or contract with an organization if:

(1) the organization is a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501); and

(2) the organization is:

(A) approved by the board as an organization that provides services to underserved populations for no fee or a reduced fee; or

(B) a clinic that provides dental services primarily to individuals who have acquired immune deficiency syndrome or the human immunodeficiency virus.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 260.004. EMPLOYMENT BY GOVERNMENTAL ENTITY. A dentist licensed by the board may be employed by or contract with a governmental entity that provides dental services under federal or state law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**CHAPTER 261. CONFIDENTIALITY AND IMMUNITY OF DENTAL PEER REVIEW  
COMMITTEE**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 261.001. DEFINITIONS. In this chapter:

(1) "Dental association" means an organization that is composed of members who are dentists and incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or exempt from the payment of federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 as an organization described by Section 501(c) of the Internal Revenue Code of 1986.

(2) "Dental peer review committee" means a peer review, judicial, or grievance committee of a dental association authorized to evaluate the quality of dental services or the competence of dentists. The term includes a member, employee, assistant, investigator, attorney, or other agent serving the committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER B. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION**

Sec. 261.051. CONFIDENTIALITY OF PROCEEDINGS. (a) Except as otherwise provided by this chapter:

(1) a dental peer review committee's proceedings and records are confidential; and

(2) communications made to a dental peer review committee are privileged.

(b) If a court makes a preliminary finding that the proceedings or records of or the communications made to a dental peer review committee are relevant to an anticompetitive action or an action brought under federal civil rights provisions (42 U.S.C. Section 1983), the proceedings, records, or communications are not confidential to the extent they are relevant to the action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.052. DISCLOSURE OF INFORMATION. Communications made to a dental peer review committee and the records and proceedings of the committee may be disclosed to:

- (1) another dental peer review committee;
- (2) an appropriate state or federal agency;
- (3) a national accreditation body; or

(4) the registration or licensing entity in any state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.053. DISCLOSURE TO AFFECTED DENTIST. (a) Disclosure to the affected dentist of confidential peer review committee information pertinent to the matter under review does not waive the confidentiality provisions of this chapter.

(b) If a dental peer review committee takes action that may result in censure or a license suspension, restriction, limitation, or revocation by the board or in the denial of membership or privileges in a health care entity, the committee shall give the affected dentist:

(1) a written copy of the recommendation of the committee; and

(2) a copy of the final decision, including a statement of the basis for the decision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.054. COMMITTEE'S EVIDENTIARY PRIVILEGE. (a) Unless disclosure is required or authorized by law, records or determinations of or communications to a dental peer review committee are not subject to subpoena or discovery and are not admissible as evidence in a civil judicial or administrative proceeding unless the committee executes in writing a waiver of the confidentiality privilege.

(b) The evidentiary privilege created by this chapter may be invoked by any person in any civil judicial or administrative proceeding unless the person has secured a waiver of the privilege executed in writing by the presiding officer, assistant presiding officer, or secretary of the affected dental peer review committee.

(c) If a dental peer review committee or a person participating in peer review named as a defendant in a civil action filed as a result of participation in peer review may use otherwise confidential information in the person's defense or in a claim or suit under Section 261.104, the plaintiff in the proceeding may disclose the records or determinations of a peer review committee or communications made to a peer review committee in rebuttal to

information supplied by the defendant.

(d) A person seeking access to privileged information must plead and prove waiver of the privilege.

(e) A member, employee, or agent of a dental peer review committee who provides access to privileged communications or records in cooperation with a law enforcement authority in a criminal investigation is not considered to have waived a privilege established under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.055. COMPLIANCE WITH BOARD SUBPOENAS. (a) A person, including the governing body and medical staff of a health care entity, shall comply with a subpoena for a document or information issued by the board as authorized by law.

(b) The disclosure of a document or information under a board subpoena does not constitute a waiver of the privilege established under this chapter.

(c) Failure to comply with a board subpoena constitutes grounds for disciplinary action against the facility or individual by the appropriate licensing board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. CIVIL LIABILITY**

Sec. 261.101. COMMITTEE IMMUNITY FROM SUIT. (a) In the absence of fraud, conspiracy, or malice, a dental peer review committee is not subject to a suit for damages arising from investigating a disagreement or complaint, holding a hearing to determine facts, or making an evaluation, recommendation, decision, or award involving a dentist who is a member of a dental association or another dentist, a dental patient, or a third party requesting the committee's services.

(b) The purpose of this section is to protect a dental peer review committee from being harassed and threatened with legal action in performing official duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.102. COMMITTEE PARTICIPANTS' IMMUNITY FROM SUIT. A cause of action does not accrue against a member, agent, or employee of a dental peer review committee for an act, statement, determination, or recommendation made or an act reported, without malice, in the course of peer review under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.103. IMMUNITY FROM SUIT. A person is immune from civil liability if:

(1) the person reports or furnishes information to a dental peer review committee or the board in good faith;

(2) the person:

(A) is a member, employee, or agent of the board, of a dental peer review committee, or of a dental organization committee or a dental organization who takes an action or makes a recommendation within the scope of the functions of a peer review program; and

(B) acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the person; or

(3) the person, including a health care entity or dental peer review committee, without malice participates in a dental peer review activity or furnishes a record, information, or assistance to a dental peer review committee or the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.104. COUNTERCLAIM FOR FRIVOLOUS SUIT. A dental peer review committee, a person participating in peer review, or any other person named as a defendant in a civil action filed as a result of participation in peer review may file a counterclaim in a pending action or may prove a cause of action in a subsequent suit to recover defense costs, including court costs, attorney's fees, and damages incurred as a result of the civil action, if the plaintiff's original suit is determined:

(1) to be frivolous; or

(2) to have been brought in bad faith.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**CHAPTER 262. REGULATION OF DENTAL HYGIENISTS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 262.001. DEFINITIONS. In this chapter:

(1) "Advisory committee" means the Dental Hygiene Advisory Committee.

(2) "Dental hygienist" means a person who practices dental hygiene under a license issued by the board under Chapter 256.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 262.002. PRACTICE OF DENTAL HYGIENE. (a) A person practices dental hygiene if the person:

(1) removes accumulated matter, tartar, deposits, accretions, or stains, other than mottled enamel stains, from the natural and restored surface of exposed human teeth and restorations in the human mouth;

(2) smoothes roughened root surfaces;

(3) polishes exposed human teeth, restorations in the human mouth, or roughened root surfaces;

(4) topically applies drugs to the surface tissues of the human mouth or the exposed surface of human teeth;

(5) makes dental x-rays; and

(6) performs any other service, task, or procedure prescribed by board rule.

(b) A person legally practicing dental hygiene does not violate state law regulating the practice of dentistry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 262.003. EXEMPTIONS. This chapter does not apply to:

(1) a licensed dentist practicing dentistry in this state, except as provided by Subchapter D;

(2) a physician authorized to practice medicine in this state; or

(3) an employee of a licensed dentist who makes dental x-rays in the office of and under the supervision of a dentist

practicing dentistry in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER B. DENTAL HYGIENE ADVISORY COMMITTEE**

Sec. 262.051. DENTAL HYGIENE ADVISORY COMMITTEE. The advisory committee shall advise the board on matters relating to dental hygiene.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 262.052. ADVISORY COMMITTEE MEMBERSHIP. The advisory committee consists of six members as follows:

- (1) three dental hygienist members appointed by the governor;
- (2) one dentist member appointed by the board; and
- (3) two members who represent the public appointed by the governor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 262.053. MEMBERSHIP RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the advisory committee if:

- (1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care;
- (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care;

or

- (3) the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the advisory committee.

(c) A person is not eligible for appointment as a member of the

advisory committee if the person is a member of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 17, eff. Sept. 1, 2003.

Sec. 262.054. TERMS. (a) Members of the advisory committee serve staggered six-year terms with the terms of one-third of the members expiring on February 1 of each odd-numbered year.

(b) A member may not serve more than two consecutive full terms. The completion of the unexpired portion of a term does not constitute service for a full term for purposes of this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 8, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 5, eff. September 1, 2009.

Sec. 262.055. PRESIDING OFFICER. The advisory committee shall elect a presiding officer from its members to serve a one-year term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 262.0555. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the advisory committee that a member:

- (1) does not have at the time of taking office the qualifications required by Section 262.052;
- (2) does not maintain during service on the advisory committee the qualifications required by Section 262.052;
- (3) is ineligible for membership under Section 262.053;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled advisory committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the advisory committee.

(b) The validity of an action of the advisory committee is not affected by the fact that it is taken when a ground for removal of an

advisory committee member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the advisory committee of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the advisory committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 18, eff. Sept. 1, 2003.

Sec. 262.056. PER DIEM; REIMBURSEMENT. (a) An advisory committee member is entitled to the per diem set by the General Appropriations Act for each day the member engages in committee business.

(b) An advisory committee member may receive reimbursement for travel expenses, including expenses for meals and lodging.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.089(a), eff. Sept. 1, 2001.

#### **SUBCHAPTER C. POWERS AND DUTIES OF BOARD RELATING TO DENTAL HYGIENISTS**

Sec. 262.101. BOARD POWERS AND DUTIES. The board shall:

- (1) administer this chapter; and
- (2) regulate all matters concerning dental hygienists and the practice of dental hygiene.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 262.102. RULEMAKING AUTHORITY OF BOARD. (a) The board shall adopt and enforce rules that are necessary and advisable to carry out the purposes of and to enforce this chapter, including rules relating to professional conduct for dental hygienists.

(b) As necessary to protect public health and safety, the board

may adopt and enforce a rule to establish the number of dental hygienists a dentist may employ.

(c) The board may not adopt a rule relating to the practice of dental hygiene before the 31st day after the date the proposed rule is submitted to the advisory committee for review and comment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 262.1025. AUTHORITY OF ADVISORY COMMITTEE TO RECOMMEND RULES; ADOPTION BY BOARD. (a) The advisory committee may make a recommendation to the board relating to the regulation of the practice of dental hygiene. A recommendation under this subsection may include a proposed rule in a form suitable for publication in the Texas Register.

(b) The board may:

- (1) adopt a rule in accordance with the recommendation; or
- (2) reject the recommendation.

(c) If the board fails to take action on the recommendation before the 91st day after the date the recommendation is submitted to the board, the board shall adopt a rule in accordance with the recommendation.

(d) Except as provided by Subsection (e), Section 262.102(c) applies to the adoption of a rule under this section.

(e) If the recommendation includes a proposed rule, the board is not required to comply with Section 262.102(c) before adopting the proposed rule.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 19, eff. Sept. 1, 2003.

Sec. 262.103. NOTICE OF MEETINGS. To ensure that the advisory committee properly exercises its advisory powers, the board shall provide the advisory committee with timely notice of each board meeting and a copy of the minutes of each meeting.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. PRACTICE BY LICENSE HOLDER**

Sec. 262.151. DELEGATION OF DUTIES BY DENTIST. (a) A licensed

dentist may delegate orally or in writing a service, task, or procedure to a dental hygienist who is under the supervision and responsibility of the dentist, if:

- (1) the dental hygienist is licensed to perform the service, task, or procedure;
  - (2) the supervising dentist examines the patient:
    - (A) at the time the service, task, or procedure is performed by the dental hygienist; or
    - (B) during the 12 calendar months preceding the date of performance of the service, task, or procedure by the dental hygienist; and
  - (3) the dental hygienist does not:
    - (A) diagnose a dental disease or ailment;
    - (B) prescribe a treatment or a regimen;
    - (C) prescribe, order, or dispense medication; or
    - (D) perform any procedure that is irreversible or involves the intentional cutting of soft or hard tissue by any means.
- (b) A licensed dentist may delegate to a dental hygienist any act that a dentist may delegate to a dental assistant.
- (c) A dentist is not required to be on the premises when the dental hygienist performs a delegated act.
- (d) This chapter does not prevent a dentist from authorizing a dental hygienist employed by the dentist to:
- (1) instruct and educate a patient in proper oral hygiene; or
  - (2) provide to a patient a medication ordered by the dentist.
- (e) This chapter does not prevent a dental hygienist from incidentally removing cementum during root planing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 262.1515. DELEGATION OF DUTIES TO DENTAL HYGIENIST PRACTICING IN CERTAIN FACILITIES. (a) A licensed dentist may delegate a service, task, or procedure, pursuant to this section, to a dental hygienist, without complying with Section 262.151(a)(2) if:

- (1) the dental hygienist has at least two years' experience in the practice of dental hygiene; and
- (2) the service, task, or procedure is performed in one of

the following locations:

(A) a nursing facility as defined in Section 242.301, Health and Safety Code;

(B) a school-based health center established under Subchapter B, Chapter 38, Education Code; or

(C) a community health center as defined by Section 136.002, Human Resources Code.

(b) The patient must be referred to a licensed dentist after the completion of a service, task, or procedure performed under Subsection (a).

(c) A dental hygienist may only perform delegated tasks or procedures with respect to a patient for six months unless the patient has been examined by a dentist in compliance with Section 262.151(a)(2).

(d) A dental hygienist may not perform any service, task, or procedure under this section without the express authorization of a dentist.

(e) The facility under Subsection (a)(2) shall note each delegated service, task, or procedure performed by the dental hygienist under this section in the patient's medical records.

Added by Acts 2001, 77th Leg., ch. 1470, Sec. 4.02, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.0045, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 270 (S.B. 97), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 270 (S.B. 97), Sec. 2, eff. September 1, 2009.

Sec. 262.152. PERFORMANCE OF DELEGATED DUTIES. Except as provided by Section 262.1515, a dental hygienist shall practice dental hygiene:

(1) in the dental office of a supervising dentist licensed by the board; or

(2) in an alternate setting, including a nursing home, the patient's home, a school, a hospital, a state institution, a public health clinic, or another institution, under the supervision of a

supervising dentist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.091(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 270 (S.B. 97), Sec. 3, eff. September 1, 2009.

**SUBCHAPTER E. PROHIBITED PRACTICES; CIVIL LIABILITY; PENALTIES**

Sec. 262.201. PROHIBITED PRACTICE. A dental hygienist may not practice or offer to practice dental hygiene under a name other than the name appearing on the person's license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 262.202. CIVIL LIABILITY. A dental hygienist who administers to a person cardiopulmonary resuscitation or other emergency care in an emergency situation is not liable to the person for damages unless the emergency care is performed in a wilfully or wantonly negligent manner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**CHAPTER 263. LICENSE DENIAL AND DISCIPLINARY PROCEEDINGS**

Sec. 263.001. GROUNDS FOR REFUSAL TO ISSUE LICENSE. The board may refuse to issue a license by examination to a dental or dental hygiene applicant if the person:

- (1) presents to the board fraudulent or false evidence of the person's qualification for examination or license;
- (2) is guilty of any illegality, fraud, or deception during the examination or the process to secure a license;
- (3) is habitually intoxicated or is addicted to drugs;
- (4) commits a dishonest or illegal practice in or connected to dentistry or dental hygiene;
- (5) is convicted of a felony under a federal law or law of this state; or
- (6) is found to have violated a law of this state relating



to the practice of dentistry within the 12 months preceding the date the person filed an application for a license to practice dentistry or dental hygiene.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.092(a), eff. Sept. 1, 2001.

Sec. 263.002. GROUNDS FOR DISCIPLINARY ACTION IN GENERAL. (a) The board, after notice and hearing, may reprimand a person who holds a license issued under this subtitle, issue a warning letter to a person licensed under this subtitle, impose a fine on a person licensed under this subtitle, impose an administrative penalty under Subchapter A, Chapter 264, on a person who holds a license under this subtitle, place on probation with conditions a person whose license has been suspended, or revoke or suspend a person's license issued under this subtitle if the person:

- (1) is adjudged under the law to be insane;
- (2) is convicted of a misdemeanor involving fraud or a felony under federal law or the law of any state;
- (3) practices dentistry or dental hygiene in a manner that constitutes dishonorable conduct;
- (4) fails to treat a patient according to the standard of care in the practice of dentistry or dental hygiene;
- (5) engages in deception or misrepresentation in soliciting or obtaining patronage;
- (6) obtains a license by fraud or misrepresentation;
- (7) is addicted to or habitually intemperate in the use of alcoholic beverages or drugs or has improperly obtained, possessed, used, or distributed habit-forming drugs or narcotics;
- (8) holds a dental license and employs, permits, or has employed or permitted a person not licensed to practice dentistry to practice dentistry in an office of the dentist that is under the dentist's control or management;
- (9) fails to use proper diligence in the person's practice or fails to safeguard the person's patients against avoidable infections;
- (10) violates or refuses to comply with a law relating to the regulation of dentists or dental hygienists;

(11) is physically or mentally incapable of practicing in a manner that is safe for the person's dental patients;

(12) is negligent in performing dental services and that negligence causes injury or damage to a dental patient;

(13) holds a license or certificate to practice dentistry or dental hygiene in another state and that state, based on an act by the person that is the same as an act described in this section:

(A) reprimands the person;

(B) suspends or revokes the person's license or certificate or places the person on probation; or

(C) imposes another restriction on the person's practice; or

(14) knowingly provides or agrees to provide dental care in a manner that violates a federal or state law that:

(A) regulates a plan to provide, arrange for, pay for, or reimburse any part of the cost of dental care services; or

(B) regulates the business of insurance.

(b) If a person holds a license to practice dentistry or dental hygiene, the board may reprimand or impose a fine on the person, issue a warning letter to the person, place the person's license on probation, or suspend or revoke the person's license under Subsection (a)(10) only if a majority of the board determines that the person has committed an act described by Subsection (a)(10).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.092(b), eff. Sept. 1, 2001.

Sec. 263.003. HEARING. A person is entitled to a hearing under Chapter 2001, Government Code, if the board proposes to:

(1) refuse to issue a license by examination to the person;

(2) reprimand or impose a fine on the person;

(3) place the person on probation after the person's license has been suspended; or

(4) suspend or revoke the license of the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.092(c), eff. Sept. 1, 2001.

Sec. 263.004. TEMPORARY SUSPENSION IN EMERGENCY. (a) If the board or an executive committee of the board determines from the evidence or information presented that the continued practice by a person licensed under this subtitle, or the continued performance by a person licensed under this subtitle of a procedure for which the person holds a permit issued by the board, would constitute a clear, imminent, or continuing threat to a person's physical health or well-being, the board or the executive committee shall temporarily suspend the person's license or permit, as applicable.

(b) The board may not temporarily suspend a license or permit under this section without notice or hearing unless at the time of the temporary suspension the board or the executive committee requests the State Office of Administrative Hearings to set a date for a hearing on the temporary suspension.

(c) The State Office of Administrative Hearings shall hold a hearing not later than the 30th day after the date the license or permit is suspended unless the license or permit holder requests a continuance. The State Office of Administrative Hearings shall hold a second hearing on the suspension and on any other action to be taken against the license or permit holder not later than the 60th day after:

(1) the date the license or permit is temporarily suspended; or

(2) the date specified in the continuance requested by the license or permit holder.

(d) If the State Office of Administrative Hearings does not hold a hearing within the time provided by Subsection (c), the suspended license or permit is automatically reinstated.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 9, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 6, eff. September 1, 2005.

Sec. 263.005. PROBATION. If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board;  
or

(3) continue or review professional education until the license holder attains a degree of skill satisfactory to the board in the areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 263.006. SUSPENSION OR REVOCATION REQUIRED FOR CERTAIN DRUG OFFENSES. (a) The board shall suspend a license holder's license issued under this subtitle on proof that the person has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal Code; or

(E) a misdemeanor under Section 25.071, Penal Code; or

(2) subject to an initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code;

(B) Section 485.033, Health and Safety Code; or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection (a), the board shall revoke the person's license.

(c) The board may not reinstate or reissue a license suspended or revoked under this section unless an express determination is made that the reinstatement or reissuance of the license is in the best interests of the public and the person whose license was suspended or revoked. The board must base that determination on substantial evidence contained in an investigative report.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 7, eff. September 1, 2005.

## Sec. 263.0065. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS.

(a) The board may delegate to a committee of board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations.

(b) The disposition determined by the committee must be approved by the board at a public meeting.

(c) A complaint delegated under this section shall be referred for informal proceedings under Section 263.0075 if:

(1) the committee of employees determines that the complaint should not be dismissed or settled;

(2) the committee is unable to reach an agreed settlement;  
or

(3) the affected license holder requests that the complaint be referred for informal proceedings.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. [3201](#)), Sec. 9, eff. January 1, 2014.

Sec. 263.007. INFORMAL PROCEEDING. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must:

(1) provide the complainant, if applicable and permitted by law, an opportunity to be heard;

(2) provide the license holder an opportunity to be heard;  
and

(3) require the presence of a member of the board's legal staff, if the board has a legal staff, or, if the board does not have a legal staff, an attorney from the attorney general's office to advise the board or the board's employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## Sec. 263.0075. INFORMAL SETTLEMENT CONFERENCE; RESTITUTION.

(a) The board by rule shall establish procedures by which a panel of

board employees may conduct an informal settlement conference to resolve a complaint against a person licensed under this subtitle.

(b) Procedures established under this section must:

(1) permit involvement of a board member in an informal settlement conference conducted by a panel of board employees;

(2) ensure that the panel of board employees conducting the conference has the necessary expertise and experience;

(3) require the panel of board employees conducting the conference to use the standardized penalty schedule adopted by the board to determine the appropriate disciplinary action, if any, to recommend to the board;

(4) require a settlement of the complaint recommended by the panel of board employees to be approved by the board;

(5) permit the board to modify a recommended settlement of the complaint with the approval of the license holder; and

(6) permit the panel of board employees to refer the complaint to the State Office of Administrative Hearings for a formal hearing and require the panel to notify the board of the referral.

(c) Subject to Subsection (d), the board may order a person licensed under this subtitle to pay restitution to a patient as provided in an agreement resulting from an informal settlement conference instead of or in addition to assessing an administrative penalty under Subchapter A, Chapter 264.

(d) The amount of restitution ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the patient paid to the license holder for a service regulated by this subtitle. The board may not require payment of other damages or estimate harm in a restitution order.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 20, eff. Sept. 1, 2003.

Sec. 263.0076. INFORMAL SETTLEMENT CONFERENCE NOTICE. (a) If an informal settlement conference will be held under Section 263.0075, notice of the time and place of the conference must be given to the license holder not later than the 45th day before the date the conference is held.

(b) The notice required by Subsection (a) must be accompanied by a written statement of the specific allegations against the license holder and the information the board intends to use at the

informal settlement conference. If the board does not provide the statement or information when the notice is provided, the license holder may use that failure as grounds for rescheduling the conference.

(c) The license holder must provide to the board the license holder's rebuttal not later than the 15th day before the date of the conference in order for that information to be considered at the conference.

(d) On request by a license holder under review, the board shall make a recording of the informal settlement conference. The recording is a part of the investigative file and may not be released to a third party unless authorized under this subtitle. The board may charge the license holder a fee to cover the cost of recording the conference. The board shall provide a copy of the recording to the license holder on the license holder's request.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. [3201](#)), Sec. 9, eff. January 1, 2014.

Sec. 263.0077. REMEDIAL PLAN. (a) The board may issue and establish the terms of a remedial plan to resolve the investigation of a complaint filed under this subtitle.

(b) A remedial plan may not contain a provision that:

(1) revokes, suspends, limits, or restricts a person's license or other authorization to practice dentistry or dental hygiene; or

(2) assesses an administrative penalty against a person.

(c) A remedial plan may not be imposed to resolve a complaint:

(1) concerning:

(A) a patient death;

(B) the commission of a felony; or

(C) a matter in which the license holder engaged in inappropriate sexual behavior or contact with a patient or became financially or personally involved with a patient in an inappropriate manner; or

(2) in which the appropriate resolution may involve a restriction on the manner in which a license holder practices dentistry or dental hygiene.

(d) The board may not issue a remedial plan to resolve a

complaint against a license holder if the license holder has previously entered into a remedial plan with the board for the resolution of a different complaint filed under this subtitle.

(e) The board may assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan.

(f) A remedial plan is public information.

(g) In civil litigation, a remedial plan is a settlement agreement under Rule 408, Texas Rules of Evidence.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. [3201](#)), Sec. 9, eff. January 1, 2014.

Sec. 263.008. SUBPOENA. (a) The board may request and, if necessary, compel by subpoena the attendance of witnesses for examination under oath and the production for examination and copying of books, accounts, records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter or another state law relating to the practice of dentistry.

(b) The board may request the attorney general to file suit against a person who fails to comply with a subpoena issued by the board to enforce the subpoena. The suit must be filed in a Travis County district court.

(c) The court on finding that good cause exists for the issuance of the subpoena shall order the person to comply with the subpoena.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.093(a), eff. Sept. 1, 2001.

Sec. 263.009. APPEAL. A person aggrieved by a decision of the board under this chapter is entitled to appeal as provided by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



**CHAPTER 264. PENALTIES AND ENFORCEMENT PROVISIONS****SUBCHAPTER A. ADMINISTRATIVE PENALTY**

Sec. 264.001. IMPOSITION OF PENALTY. The board may impose an administrative penalty on a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.002. AMOUNT OF PENALTY. (a) The amount of the administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The executive director or a board subcommittee, of which, at least one member is a public member of the board, shall determine the amount of the penalty based on a standardized penalty schedule. The board by rule shall develop the schedule based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard or potential hazard created to the health, safety, or welfare of the public;

(2) the economic damage to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts made to correct the violation; and

(6) any other matter that justice may require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.003. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the executive director or a board subcommittee determines that a violation has occurred, the executive director or board subcommittee may issue to the board a report stating:

(1) the facts on which the determination is based; and

(2) the recommendation of the executive director or the subcommittee on the imposition of the administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is approved by the board, the executive director shall give written notice of the report to the person on whom the penalty may be imposed. The notice may be given by certified mail. The notice must:

- (1) include a notice of each alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.004. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person may:

(1) accept, in writing, the executive director's or subcommittee's determination and recommended administrative penalty; or

(2) make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty, the board by order shall approve the determination and impose the recommended penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.005. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the executive director shall set a hearing and give notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.006. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the board by order may determine that:

- (1) a violation occurred and impose an administrative penalty; or
- (2) a violation did not occur.

(b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.007. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

- (1) pay the administrative penalty;
- (2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or
- (3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account; or
  - (B) giving to the court a supersedeas bond that is approved by the court and that is:
    - (i) for the amount of the penalty; and
    - (ii) effective until judicial review of the board's order is final; or
- (2) request the court to stay enforcement of the penalty by:
  - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and
  - (B) giving a copy of the affidavit to the executive director by certified mail.

(c) On receipt of a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.008. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.009. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation has occurred after the court reviews the board's order imposing an administrative penalty, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.010. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the penalty is reduced or not upheld by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate

charged on loans to depository institutions by the New York Federal Reserve Bank. The interest is paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.011. INFORMAL ASSESSMENT OF ADMINISTRATIVE PENALTY. This subchapter does not prevent the board from assessing an administrative penalty using an informal proceeding under Section 263.003.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.0115. ALTERNATIVE INFORMAL ASSESSMENT OF ADMINISTRATIVE PENALTY. (a) The board by rule may establish procedures for the alternative informal assessment of administrative penalties for violations of this subtitle that do not involve the provision of direct patient care by a person licensed or regulated under this subtitle.

(b) A penalty assessed under this section may consist only of a monetary penalty that does not exceed \$1,000 for each violation. The total amount of penalties assessed against a person under this section may not exceed \$3,000 in a calendar year. If the board establishes penalties under this section, the board by rule shall adopt a standardized schedule of the penalties.

(c) The assessment of a penalty under this section is not valid unless the person against whom the penalty is assessed receives a notice of violation that contains at a minimum:

(1) a clear statement of the violation, including a citation to the relevant section of this subtitle;

(2) the amount of the penalty assessed for each violation;

and

(3) a statement that the person may either pay the penalty or appeal the penalty in writing.

(d) If the board establishes penalties under this section, the board shall establish procedures for categorizing the penalties.

(e) A person who is assessed an administrative penalty under this section is entitled to a hearing under Chapter 2001, Government

Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 6, eff. September 1, 2009.

Sec. 264.012. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER B. INJUNCTION; CEASE AND DESIST ORDER**

Sec. 264.051. INJUNCTION. (a) The state shall file suit for injunction against a person who practices or intends to practice dentistry in violation of state law. The suit shall be filed in the county in which the defendant practices or intends to practice dentistry.

(b) The state is not required to demonstrate that any person was injured by the alleged prohibited practice.

(c) If the defendant is found to have been unlawfully practicing dentistry or to be about to provide services in a manner that is the unlawful practice of dentistry, the court shall permanently enjoin the defendant from practicing dentistry in violation of law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.052. REPRESENTATION OF STATE. The attorney general or the district attorney or county attorney of the county in which the unlawful acts occurred shall represent the state in a suit under Section 264.051.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 22, eff. Sept. 1, 2003.

Sec. 264.0525. CEASE AND DESIST ORDER. (a) The board may serve a proposed cease and desist order on a person the board believes is engaging or is likely to engage in an activity without a

license or registration certificate required by this subtitle. The order must:

(1) be delivered by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;

(2) state the acts or practices alleged to be an unauthorized activity; and

(3) state the effective date of the order, which may not be before the 21st day after the date the proposed order is delivered or mailed.

(b) Unless the person against whom the proposed order is directed requests a hearing in writing before the effective date of the order, the order takes effect and is final and nonappealable as to that person.

(c) A requested hearing on a proposed order shall be held not later than the 30th day after the date the board receives the written request for a hearing unless the parties agree to a later hearing date. A hearing under this subsection is subject to Chapter 2001, Government Code.

(d) After the hearing, the board shall issue or decline to issue a cease and desist order. The proposed order may be modified as necessary to conform to the findings at the hearing. An order issued under this subsection:

(1) is immediately final for purposes of enforcement and appeal; and

(2) must require the person to immediately cease and desist from the unauthorized activity.

(e) The board may release to the public a final cease and desist order issued under this section or information relating to the existence of the order if the board determines that the release would enhance the effective enforcement of the order or will serve the public interest.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 23, eff. Sept. 1, 2003.

Sec. 264.0526. EMERGENCY CEASE AND DESIST ORDER. (a) The board may issue an emergency cease and desist order to a person if the board reasonably believes that:

(1) the person is engaging or is likely to engage in an

activity without a license or registration certificate required by this subtitle; and

(2) the unauthorized activity constitutes a clear, imminent, or continuing threat to a person's physical health or well-being.

(b) The order must:

(1) be delivered on issuance to the person affected by the order by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;

(2) state the acts or practices alleged to be an unauthorized activity and require the person immediately to cease and desist from the unauthorized activity; and

(3) contain a notice that a request for hearing may be filed under this section.

(c) Unless the person against whom the emergency order is directed requests a hearing in writing before the 11th day after the date it is served on the person, the emergency order is final and nonappealable as to that person. A request for a hearing must:

(1) be in writing and directed to the board; and

(2) state the grounds for the request to set aside or modify the order.

(d) On receiving a request for a hearing, the board shall serve notice of the time and place of the hearing by personal delivery or registered or certified mail, return receipt requested. The hearing must be held not later than the 10th day after the date the board receives the request for a hearing unless the parties agree to a later hearing date. A hearing under this subsection is subject to Chapter 2001, Government Code.

(e) After the hearing, the board shall affirm, modify, or set aside in whole or in part the emergency cease and desist order. An order affirming or modifying the emergency cease and desist order is immediately final for purposes of enforcement and appeal.

(f) An order continues in effect unless the order is stayed by the board. The board may impose any condition before granting a stay of the order.

(g) The board may release to the public a final cease and desist order issued under this section or information regarding the existence of the order if the board determines that the release would enhance the effective enforcement of the order or will serve the public interest.



Added by Acts 2003, 78th Leg., ch. 17, Sec. 23, eff. Sept. 1, 2003.

Sec. 264.0527. APPEAL OF CEASE AND DESIST ORDER. (a) A person affected by a cease and desist order issued, affirmed, or modified after a hearing may file a petition for judicial review.

(b) A filed petition for judicial review does not stay or vacate the order unless the court, after hearing, specifically stays or vacates the order.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 23, eff. Sept. 1, 2003.

Sec. 264.053. REMEDIES CUMULATIVE. The remedies provided by this subchapter are in addition to criminal prosecution and cumulative of other remedies provided to prevent the unlawful practice of dentistry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 24, eff. Sept. 1, 2003.

#### **SUBCHAPTER C. CIVIL PENALTY**

Sec. 264.101. CIVIL PENALTY. (a) A person who violates a provision of this subtitle is liable to the state for a civil penalty in an amount not to exceed \$5,000.

(b) Each day a violation continues or occurs is a separate violation for the purpose of imposing the civil penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.102. COLLECTION OF CIVIL PENALTY. At the board's request, the attorney general or the district attorney or county attorney of the county in which the violation is alleged to have occurred shall file suit to collect the civil penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. CRIMINAL PENALTY**

Sec. 264.151. CRIMINAL PENALTIES. (a) A person commits an offense if the person violates Section 256.001. An offense under this subsection is a felony of the third degree. Each day of a violation is a separate offense.

(b) A person commits an offense if the person violates Section 256.052. An offense under this subsection is a Class A misdemeanor. If it is shown at the trial of an offense under this subsection that the defendant has previously been convicted of an offense for a violation of Section 256.052, the offense is a felony of the third degree.

(c) A person commits an offense if the person violates Subchapter D, Chapter 262. An offense under this subsection is a Class A misdemeanor. Each day of a violation is a separate offense.

(d) A person commits an offense if the person is a dentist or dental hygienist and violates an injunction or cease and desist order issued under Subchapter B. An offense under this subsection is a Class A misdemeanor. If it is shown at the trial of an offense under this subsection that the defendant was previously convicted of an offense for a violation of an injunction or cease and desist order issued under Subchapter B, the offense is a felony of the third degree. Each day of a violation is a separate offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 7, eff. September 1, 2009.

Sec. 264.152. CRIMINAL PENALTY: DENTAL RECORDS ACCESS. (a) A person commits an offense if the person violates Section 258.0511.

(b) Notwithstanding Section 264.151, an offense under this section is a Class B misdemeanor.

(c) If it is shown at the trial of an offense under this section that the defendant was previously convicted under this section, the offense is a Class A misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 1119 (H.B. 3876), Sec. 2, eff. September 1, 2007.

## CHAPTER 265. REGULATION OF DENTAL ASSISTANTS

Sec. 265.0001. DEFINITIONS. In this chapter:

(1) "Coronal polishing" means the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces using an appropriate rotary instrument with rubber cup or brush and polishing agent, including the use of a toothbrush.

(2) "Interim treatment of a minor emergency dental condition" means treatment of a condition that:

- (A) arises unexpectedly;
- (B) causes pain or discomfort to the patient;
- (C) is considered reversible;
- (D) does not require cutting hard or soft tissue; and
- (E) in the opinion of the treating dentist, may be performed by a properly trained dental assistant.

Added by Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 2, eff. September 1, 2009.

Sec. 265.001. REGISTRATION. The board may adopt and enforce rules requiring the registration of dental assistants as necessary to protect the public health and safety.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 265.002. SUPERVISION, DIRECTION, AND RESPONSIBILITY. (a) In this subtitle, a dental assistant is under the direct supervision, direction, and responsibility of a dentist if the dentist:

(1) employs the dental assistant or is in charge of the dental assistant; and

(2) is physically present in the dental office when the dental assistant performs a delegated dental act.

(b) For purposes of Subsection (a)(2), physical presence does not require that the supervising dentist be in the treatment room when the dental assistant performs the service as long as the dentist is in the dental office.

(c) In this subtitle, a dental assistant is under the general supervision, direction, and responsibility of a dentist if the dentist:

(1) employs the dental assistant or is in charge of the dental assistant; and

(2) is responsible for supervising the services to be performed by the dental assistant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 3, eff. September 1, 2009.

Sec. 265.003. PERMITTED DUTIES. (a) A dental assistant who is not professionally licensed may be employed by and work in the office of a licensed and practicing dentist and perform one or more delegated dental acts under:

(1) the direct supervision, direction, and responsibility of the dentist, including:

(A) the application of a pit and fissure sealant;

(B) coronal polishing, if the dental assistant holds a certificate under Section 265.006; and

(C) the application of fluoride varnish; or

(2) the general supervision, direction, and responsibility of the dentist, limited to:

(A) the making of dental x-rays in compliance with Section 265.005; and

(B) the provision of interim treatment of a minor emergency dental condition to an existing patient of the treating dentist.

(a-1) A treating dentist who delegates the provision of interim treatment of a minor emergency dental condition to a dental assistant under Subsection (a)(2)(B) shall:

(1) delegate the procedure orally or in writing before the dental assistant performs the procedure;

(2) retain responsibility for the procedure; and

(3) schedule a follow-up appointment with the patient within a reasonable time.

(b) A dental assistant who applies a pit and fissure sealant under Subsection (a) may cleanse the occlusal and smooth surfaces of the teeth immediately before and for the sole purpose of preparing the tooth area for the placement of the pit and fissure sealant or orthodontic bonding resin. A procedure performed by a dental assistant under this subsection may not be billed as a prophylaxis.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1470, Sec. 4.03, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1144, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 4, eff. September 1, 2009.

Sec. 265.004. PIT AND FISSURE SEALANT CERTIFICATE. (a) The board shall issue a pit and fissure sealant certificate to a dental assistant who qualifies under this section.

(b) To qualify for a certificate, an applicant must:

(1) have at least two years' experience as a dental assistant; and

(2) have successfully completed a minimum of eight hours of clinical and didactic education in pit and fissure sealants taken through an accredited dental hygiene program or a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board.

(c) The educational program under Subsection (b) must include courses on:

(1) infection control;

(2) cardiopulmonary resuscitation;

(3) treatment of medical emergencies;

(4) microbiology;

(5) chemistry;

(6) dental anatomy;

(7) ethics related to pit and fissure sealant application;

(8) jurisprudence related to pit and fissure sealant application; and

(9) the correct application of sealants, including the actual clinical application of sealants.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 476, Sec. 8(2), eff. September 1, 2009.

(e) The board shall adopt rules as necessary to implement this section, including rules regarding renewal requirements for a certificate issued under this section.

Added by Acts 2001, 77th Leg., ch. 1470, Sec. 4.04, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 8, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 8(2), eff. September 1, 2009.

Sec. 265.005. X-RAY CERTIFICATE. (a) A dental assistant may not make dental x-rays unless the dental assistant holds a certificate of registration issued by the board under this section.

(b) To qualify for a certificate of registration, a dental assistant must pay a fee in an amount determined by the board and:

(1) pass an examination administered under this section on completion of a course covering:

(A) the procedure for making dental x-rays;

(B) jurisprudence; and

(C) infection control; or

(2) complete a course and pass an examination covering the subject described by Subdivision (1)(B) and be certified as a dental assistant by the Dental Assisting National Board if the board determines that the requirements for certification by that board are sufficient to protect the public.

(c) The course and examination described by Subsection (b)(1) must be tailored to a dental assistant's responsibilities and role in a dental office.

(d) A course and examination described by Subsection (b) may be offered through self-study, interactive computer courses, or lecture courses and may be offered through the Internet. The course and examination must comply with rules adopted under Subsection (f) and be approved by the board.

(e) The board shall create an advisory committee consisting of dentists, dental assistants, and dental assistant educators to advise the board in adopting rules under Subsection (f).

(f) The board by rule shall set:

(1) objectives for the examination and course under Subsection (b)(1); and

(2) procedures to ensure the examination's integrity.

(g) The course and examination under Subsection (b)(1) shall

comply with board rules. Any school or program accredited by the Commission on Dental Accreditation of the American Dental Association or any dental industry professional organization may offer a course and examination that complies with board rules.

(h) The board, in consultation with the advisory committee, shall develop a program to ensure that courses and examinations developed or administered under this section comply with board rules.

(i) A certificate of registration issued under this section must be renewed annually. Except as otherwise provided by this subsection, the board may not require a person who has successfully completed the course and examination required under Subsection (b) to complete an additional course or examination to renew the registration. The board may require a person to complete a new course and examination if the person fails to renew the person's certificate of registration before the second anniversary of the date the certificate expired.

(j) Repealed by Acts 2009, 81st Leg., R.S., Ch. 476, Sec. 8(3), eff. September 1, 2009.

(k) Repealed by Acts 2009, 81st Leg., R.S., Ch. 476, Sec. 8(3), eff. September 1, 2009.

(l) A dental assistant who is hired as a dental assistant for the first time and who has not previously been issued a certificate under this section may make dental x-rays without complying with this section until the first anniversary of the date on which the dental assistant is hired.

(m) A dental assistant who holds a certificate of registration issued under this section shall display the person's current certificate of registration in each office in which the person makes dental x-rays. If the person makes dental x-rays at more than one location, the person may display a duplicate of the original registration certificate obtained from the board on payment of a duplicate certificate fee set by the board.

(n) A dental assistant who holds a certificate of registration issued under this section shall timely notify the board of:

(1) any change of address of the person's place of business;

(2) any change of employers; and

(3) any change of the person's mailing address.

(o) An initial certificate of registration issued under this section expires on the 30th day after the date the certificate is

issued if the holder of the certificate fails to pay the required certificate fee on or before that date.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 25, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 9, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 8(3), eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 8, eff. September 1, 2009.

Sec. 265.006. CORONAL POLISHING CERTIFICATE. (a) The board shall issue a coronal polishing certificate to a dental assistant who qualifies under this section.

(b) To qualify for a coronal polishing certificate, an applicant must have at least two years' experience as a dental assistant and:

(1) have successfully completed at least eight hours of clinical and didactic education in coronal polishing taken through a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board that includes courses on:

(A) oral anatomy and tooth morphology relating to retention of plaque and stain;

(B) indications, contraindications, and complications of coronal polishing;

(C) principles of coronal polishing, including armamentarium, operator and patient positioning, technique, and polishing agents;

(D) infection control procedures;

(E) polishing coronal surfaces of teeth; and

(F) jurisprudence relating to coronal polishing; or

(2) present proof to the board that the assistant has:

(A) graduated from a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board that includes specific didactic course work and clinical training in coronal polishing; or

(B) received certification of completion of



requirements specified by the Dental Assisting National Board and approved by the board.

Added by Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 6, eff. September 1, 2009.

Sec. 265.007. CONTINUING EDUCATION FOR CERTIFICATE HOLDERS.

(a) To renew a certificate issued under this chapter, a dental assistant must complete six hours of continuing education each year in areas covering dental assistant duties.

(b) A dental assistant holding two or more certificates authorized by this chapter is required to complete 12 hours of continuing education each year to renew all of the certificates held by the assistant.

(c) A dental assistant may fulfill continuing education requirements through board-approved self-study, interactive computer courses, or lecture courses.

Added by Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 7, eff. September 1, 2009.

**CHAPTER 266. REGULATION OF DENTAL LABORATORIES**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 266.001. DEFINITIONS. In this chapter:

(1) "Council" means the Dental Laboratory Certification Council.

(2) "Dental laboratory" means a place in which a person performs or offers to perform a dental laboratory service.

(3) "Dental laboratory service" means:

(A) the making, assembly, processing, production, repair, relining, or adjustment of a prosthetic or orthodontic dental appliance, a full or partial denture, a fixed or removable dental bridge, a dental plate of false teeth, an artificial restoration, or a substitute or corrective device for any part of the human teeth, gums, jaws, or alveolar process; or

(B) the fitting of a dental appliance, a denture, a bridge, a plate, false teeth, an artificial restoration, or a substitute or corrective device for the human teeth, gums, or jaws to or on a dental model, impression, or cast of any part of the human

teeth, gums, jaws, or alveolar process.

(4) "Dental technician" means a person who performs, offers to perform, or aids, abets, or causes another to perform or offer to perform a dental laboratory service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 266.002. EXEMPTIONS. This chapter does not apply to:

- (1) a student enrolled in a program of a school of dentistry;
- (2) a licensed dentist engaged in the practice of dentistry in this state who performs a dental laboratory service for compensation or an employee of the dentist or of the professional corporation or partnership in which the dentist is an officer, partner, or employee if the service is performed:
  - (A) for a patient of the dentist or of the professional corporation or partnership in which the dentist is an officer, partner, or employee; and
  - (B) on the premises in which the dentist practices dentistry; or
- (3) a manufacturer of materials or component parts, used in the fabrication of a dental prosthetic appliance and for sale or use by a dental laboratory, that are not directly fitted to a dental model or cast of the human teeth, gums, jaws, or alveolar process.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1240, Sec. 1, eff. Sept. 1, 2003.

#### **SUBCHAPTER B. DENTAL LABORATORY CERTIFICATION COUNCIL**

Sec. 266.051. APPOINTMENT OF COUNCIL; MEMBERSHIP. The Dental Laboratory Certification Council consists of three members appointed by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 266.052. MEMBER ELIGIBILITY. (a) A person is eligible for appointment to the council if the person:

- (1) is a dental technician who is certified as described by

Section 266.152(a); and

(2) is an owner, manager, or employee of a dental laboratory registered with the board.

(b) A person is not eligible for appointment to the council if the person or the person's spouse is:

- (1) licensed by the board to practice dentistry;
- (2) a board employee; or
- (3) an employee of a dentist licensed by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 266.053. TERMS. (a) Council members serve two-year terms.

(b) A member may not serve more than four terms.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 266.054. PRESIDENT. The council shall elect from its members a presiding officer to serve a one-year term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 266.055. PER DIEM. A council member is entitled to the per diem set for members of state boards and commissions by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 266.056. MEETINGS. The council:

- (1) shall meet at least once each year; and
- (2) may meet at other times at the call of the presiding officer of the council if the presiding officer of the board approves.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 266.057. CIVIL LIABILITY. A member of the council is not liable in a civil action for an act performed in good faith while performing duties as a council member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER C. POWERS AND DUTIES OF COUNCIL AND BOARD**

Sec. 266.101. COUNCIL POWERS AND DUTIES. (a) The council shall review each application for registration or renewal of registration to determine if the applicant meets the requirements of this chapter.

(b) The council may:

- (1) recommend to the board rules relating to dental laboratories; and
- (2) perform additional duties as requested by the board.

(c) The council may not exercise rulemaking authority.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 9, eff. September 1, 2009.

Sec. 266.102. BOARD POWERS AND DUTIES. (a) The board shall:

- (1) not later than the 30th day after the date the board receives a recommended rule from the council, consider the rule under the process prescribed by Chapter 2001, Government Code; and
- (2) provide to the council the board's reasons if the board amends or rejects the proposed rule.

(b) The board may adopt rules regarding dental laboratories in only the following areas:

- (1) processing registration applications;
- (2) prescribing:
  - (A) requirements for registration;
  - (B) the form and content of registration applications and other forms required to administer this chapter;
  - (C) procedures for renewal of certificates of registration; and
  - (D) fees necessary to administer this chapter;
- (3) monitoring records necessary to administer this

chapter;

(4) establishing continuing education requirements for dental technicians employed by dental laboratories, including prescribing the content of continuing education courses; and

(5) regulating:

(A) infection control;

(B) shade-taking procedures authorized by a prescription from a licensed dentist;

(C) computer-imaging procedures for an oral cavity authorized by a prescription from a licensed dentist;

(D) referral of dental prescriptions to out-of-state laboratories to be filled; and

(E) the transportation and manufacture of dental prosthetic devices or other dental work performed by a dental laboratory located in another state or a foreign country for use in this state.

(c) In prescribing the content of continuing education courses under Subsection (b)(4), the board shall require the course content to be at least as comprehensive as a course approved by a recognized board of certification for dental technology.

(d) The board shall allow the council to review and comment on a proposed rule under Subsection (b) for 30 days following the date the rule is proposed by the board.

(e) The board shall provide annually to each dentist licensed in this state a list of dental laboratories registered under this chapter. The list must include the expiration date of each laboratory's registration certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1240, Sec. 2, eff. Sept. 1, 2003.

#### **SUBCHAPTER D. CERTIFICATION, REGISTRATION, AND RENEWAL REQUIREMENTS**

Sec. 266.151. REGISTRATION REQUIRED. (a) In this section, "person" means an individual or a private legal entity, including a corporation, association, or partnership.

(b) A person may not operate or offer to operate a dental laboratory or provide or offer to provide dental laboratory services unless the person holds a registration certificate issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 266.152. CERTIFIED DENTAL TECHNICIAN. (a) A dental laboratory must have at least one dental technician working on the laboratory's premises who is certified by a recognized board of certification for dental technology.

(b) A dental laboratory is exempt from Subsection (a) if the laboratory is:

(1) owned by a licensed dentist engaged in the practice of dentistry in this state or by a professional corporation or partnership in which that dentist is an officer, partner, or employee; and

(2) located on the premises within which the dentist practices dentistry.

(c) The exemption under Subsection (b) does not apply to a dental laboratory if the laboratory employs three or more dental technicians.

(d) The owner of a dental laboratory registered with the board on September 1, 1987, is exempt from Subsection (a) if:

(1) the registration of the laboratory has been renewed each year since that date, and all registration fees have been paid;

(2) the beneficial ownership of at least 51 percent of the laboratory has not been transferred; and

(3) the owner is employed on the laboratory's premises for not less than 30 hours each week.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.094(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1240, Sec. 3, eff. Sept. 1, 2003.

Sec. 266.153. APPLICATION FOR REGISTRATION. (a) An owner or manager of a dental laboratory shall annually:

(1) apply to the board for the registration of each dental laboratory doing business in this state to which the owner or manager is connected or in which the owner or manager has an interest; and

(2) pay the application fee set by the board.

(b) The application must include:

(1) evidence satisfactory to the board that the dental

laboratory meets the requirements prescribed by Section 266.152(a), if applicable; and

(2) any other information required by the board.

(c) The board may issue a certificate of registration only to a dental laboratory that complies with the requirements of this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1240, Sec. 4, eff. Sept. 1, 2003.

Sec. 266.154. REGISTRATION RENEWAL. (a) An applicant for renewal of a dental laboratory registration must provide evidence satisfactory to the board that at least one employee who works on the dental laboratory's premises:

(1) has completed at least 12 hours of continuing education during the previous registration period; or

(2) is certified as required by Section 266.152(a), if applicable.

(b) An owner or manager of a dental laboratory may renew an unexpired registration certificate for a dental laboratory if the owner or manager:

(1) pays the required renewal fee to the board on or before the expiration date; and

(2) complies with any other renewal requirements.

(c) If the owner or manager of a dental laboratory fails to renew the dental laboratory's registration and pay the annual renewal fee before the date the registration expires, the board shall suspend the registration certificate of the laboratory.

(d) An owner or manager of a dental laboratory whose registration certificate has been expired for 90 days or less may renew the registration certificate if the person pays to the board the required renewal fee and a fee equal to one-half of the amount of the renewal fee. If the registration certificate has been expired for more than 90 days but less than one year, the owner or manager may renew the certificate by paying to the board all unpaid renewal fees and a fee equal to the amount of the initial registration fee.

(e) An owner or manager of a dental laboratory may not renew a registration certificate that has been expired for one year or more. The owner or manager may obtain a new certificate by complying with

the requirements for obtaining an original certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.094(b), eff. Sept. 1, 2001.

Sec. 266.155. INITIAL REGISTRATION CERTIFICATE FEE. An initial registration certificate issued under this subchapter expires on the 30th day after the date the registration certificate is issued if the holder of the registration certificate fails to pay the required registration certificate fee on or before that date.

Added by Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 10, eff. September 1, 2009.

#### **SUBCHAPTER E. PRACTICE BY REGISTRATION HOLDER**

Sec. 266.201. PRESCRIPTION REQUIRED. (a) A dentist who orders a dental laboratory service shall prepare and deliver to the dental laboratory a prescription or work order for the service to be performed.

(b) The prescription or work order must contain:

- (1) the signature and Texas dental license number of the dentist;
- (2) the date the prescription or work order is signed;
- (3) the patient's name; and
- (4) a description of the dental laboratory service ordered.

(c) A dentist shall keep a copy of each prescription or work order at the dentist's office in a separate file for two years for inspection by the board's officers, agents, or employees.

(d) A dentist shall label as provided by board rule a removable dental prosthesis fabricated in this state by the dentist or by a person under a prescription or work order prepared by the dentist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1240, Sec. 5, eff. Sept. 1, 2003.

Sec. 266.202. RELIANCE ON PRESCRIPTION. (a) The owner, manager, or employee of a dental laboratory or a dental technician



may not perform or aid or abet another person in performing a dental laboratory service unless:

(1) the service was ordered by and any resulting item will be delivered to:

(A) a dentist engaged in the practice of dentistry in this state or in a jurisdiction in which the dentist maintains a dental office and engages in the practice of dentistry; or

(B) an employee of the dentist, if the service is performed for and on behalf of the dentist; and

(2) the dental laboratory receives a prescription or work order for the service in accordance with Section 266.201.

(b) If a dental laboratory receives a prescription or work order for dental laboratory services and refers the work to another laboratory, the referral must be accompanied by a written statement that the prescription or work order is on file with the original laboratory.

(c) A dental laboratory owner or manager shall maintain on the premises of a dental laboratory as a part of the laboratory's records a record of each prescription or work order completed at the dental laboratory until the second anniversary of the date the prescription or work order is furnished. The owner or manager shall also maintain the record in an alphabetized file in a separate place.

(d) The premises of a dental laboratory, the records of a dental laboratory or a dental technician employed by the dental laboratory pertaining to dental prescriptions or work orders, and records relating to the referral of work to a dental technician or the owner or manager of a dental laboratory shall be open and available for inspection by a member, officer, employee, investigator, or agent of the board during regular office hours.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 266.203. TRANSPORTATION OF DENTAL MATERIAL PERMITTED. This chapter does not prohibit a person who is subject to and complies with this chapter from using the United States mail, a railway express agency, Western Union, or a messenger or common or contract carrier to handle, accept from, or transport or deliver to a dentist or dental laboratory an item in any form or state of completion on which a dental laboratory service will be or has been

offered or ordered to be performed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. DISCIPLINARY ACTIONS**

Sec. 266.251. GROUND FOR DISCIPLINARY ACTION. (a) The board may refuse to issue a registration certificate, may impose a fine on a person who holds a registration certificate, may suspend or revoke a person's registration certificate, or may probate any portion of the suspension if, after a hearing, the board determines that the applicant or certificate holder has:

- (1) violated or aided another person in violating a law regulating the practice of dentistry; or
- (2) required or allowed a person under the direction or control of the person to violate a law regulating the practice of dentistry.

(b) In this section, an applicant for or holder of a registration certificate includes a person who has at least a 20 percent ownership interest in or is the general partner or managing partner in a dental laboratory that is registered under this chapter or for which an application for registration has been filed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 266.252. PROCEDURES FOR DISCIPLINARY ACTION. The board shall follow the procedures under Chapter 263 in a complaint or disciplinary action under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. PROHIBITED PRACTICES, ENFORCEMENT, AND PENALTIES**

Sec. 266.301. DENTAL PROSTHETIC APPLIANCE. (a) In this section, "person" means an individual or a private legal entity, including a corporation, association, or partnership.

(b) A person may not fill a prescription to prepare or repair a dental prosthetic appliance that is to be delivered to a dental patient by a licensed dentist unless the person is a dental laboratory or dental technician.

(c) A dental laboratory that prepares or repairs a dental prosthetic appliance for a dentist shall provide to the dentist in writing at the time of the delivery the dental laboratory's assigned registration number and the expiration date of the dental laboratory's registration certificate.

(d) A dentist may not knowingly prescribe, order, or receive a dental prosthetic appliance that is to be prepared or has been prepared by an unregistered dental laboratory.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 266.302. INJUNCTION. The board may apply for a restraining order or injunction to enforce this chapter or a board rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 266.303. CRIMINAL PENALTIES. (a) A person commits an offense if the person:

(1) is a dentist and provides a dental laboratory service without being exempt under Section 266.002(2); or

(2) violates Section 266.151 or 266.301.

(b) An offense for a violation of Section 266.151 or Section 266.301(b) is a felony of the third degree.

(c) An offense for a violation of Section 266.301(c) is a Class C misdemeanor. If it is shown on the trial of an offense under this section that the defendant has previously been convicted for an offense for a violation of Section 266.301(c), the offense is a Class A misdemeanor.

(d) An offense for a violation of Section 266.301(d) is a Class B misdemeanor. If it is shown on the trial of an offense under this section that the defendant has previously been convicted of an offense for a violation of Section 266.301(d), the offense is a Class A misdemeanor.

(e) Each day of a violation is a separate offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 11, eff.

September 1, 2009.

**CHAPTER 267. LICENSING OF FACULTY MEMBERS OF DENTAL OR DENTAL HYGIENE SCHOOLS**

Sec. 267.001. LICENSE REQUIRED. (a) A person may not serve as a faculty member of a dental school unless the person holds a dental school faculty member license issued under this chapter.

(b) A person may not serve as a faculty member of a dental hygiene school unless the person holds a dental school faculty member license or dental hygiene school faculty member license issued under this chapter.

(c) This section does not apply to a person who does not have direct patient contact.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. March 1, 2004.

Sec. 267.002. EXEMPTIONS. (a) A person is exempt from the requirements of Section 267.001(a) if the person is licensed to practice dentistry in this state.

(b) A person is exempt from the requirements of Section 267.001(b) if the person is licensed to practice dentistry or dental hygiene in this state.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. Sept. 1, 2003.

Sec. 267.003. QUALIFICATIONS FOR LICENSE. (a) To qualify for a dental school faculty member license, a person must:

(1) file an application with the board that presents proof that the applicant holds:

(A) a degree from a dental school; and

(B) a full-time or part-time salaried faculty position at a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;

(2) submit an endorsement of the application from the dean, department chair, or program director of the school described by Subdivision (1)(B);

(3) pay the application fee set by the board; and

(4) pass an examination covering jurisprudence administered

by the board or by a testing service under an agreement with the board.

(b) To qualify for a dental hygiene school faculty member license, a person must:

(1) file an application with the board that presents proof that the applicant holds:

(A) a degree from a dental hygiene school; and

(B) a full-time or part-time salaried faculty position at a dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association;

(2) submit an endorsement of the application from the dean, department chair, or program director of the school described by Subdivision (1)(B);

(3) pay the application fee set by the board; and

(4) pass an examination covering jurisprudence administered by the board.

(c) An applicant for a license under this chapter must:

(1) file an application for the license not later than the 30th day after the date the person begins employment with the dental or dental hygiene school; and

(2) pass the examination not later than the sixth month after the date the person begins employment with the school.

(d) The board shall set the application fee in an amount sufficient to cover the cost of administering this chapter.

(e) Notwithstanding Section 267.001, an applicant may have direct patient contact before the applicant passes the examination.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. Sept. 1, 2003.

Sec. 267.004. LICENSE RENEWAL. A license issued under this chapter must be renewed annually.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. Sept. 1, 2003.

Sec. 267.005. LICENSE EXPIRATION. (a) A license issued under this chapter expires on the termination of the license holder's employment with the dental or dental hygiene school.

(b) A license holder whose employment with a dental or dental hygiene school terminates and who is subsequently employed by the

same or a different dental or dental hygiene school must comply with the requirements for obtaining an original license, except that the person is not required to retake the examination.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. Sept. 1, 2003.

Sec. 267.006. PRACTICE OF DENTISTRY OR DENTAL HYGIENE PROHIBITED. A license issued under this chapter does not authorize the license holder to engage in the practice of dentistry or dental hygiene.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. Sept. 1, 2003.

#### **SUBTITLE E. REGULATION OF NURSING**

##### **CHAPTER 301. NURSES**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 301.001. SHORT TITLE. This chapter may be cited as the Nursing Practice Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Nursing.

(1-a) "Chief nursing officer" means the registered nurse who is administratively responsible for the nursing services at a facility.

(1-b) "Patient safety committee" has the meaning assigned by Section 303.001.

(2) "Professional nursing" means the performance of an act that requires substantial specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing. The term does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures. Professional nursing involves:

(A) the observation, assessment, intervention, evaluation, rehabilitation, care and counsel, or health teachings of

a person who is ill, injured, infirm, or experiencing a change in normal health processes;

(B) the maintenance of health or prevention of illness;

(C) the administration of a medication or treatment as ordered by a physician, podiatrist, or dentist;

(D) the supervision or teaching of nursing;

(E) the administration, supervision, and evaluation of nursing practices, policies, and procedures;

(F) the requesting, receiving, signing for, and distribution of prescription drug samples to patients at practices at which an advanced practice registered nurse is authorized to sign prescription drug orders as provided by Subchapter B, Chapter 157;

(G) the performance of an act delegated by a physician under Section 157.0512, 157.054, 157.058, or 157.059; and

(H) the development of the nursing care plan.

(3) "Nurse" means a person required to be licensed under this chapter to engage in professional or vocational nursing.

(4) "Nursing" means professional or vocational nursing.

(5) "Vocational nursing" means a directed scope of nursing practice, including the performance of an act that requires specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of vocational nursing. The term does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures. Vocational nursing involves:

(A) collecting data and performing focused nursing assessments of the health status of an individual;

(B) participating in the planning of the nursing care needs of an individual;

(C) participating in the development and modification of the nursing care plan;

(D) participating in health teaching and counseling to promote, attain, and maintain the optimum health level of an individual;

(E) assisting in the evaluation of an individual's response to a nursing intervention and the identification of an individual's needs; and

(F) engaging in other acts that require education and training, as prescribed by board rules and policies, commensurate

with the nurse's experience, continuing education, and demonstrated competency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 112, Sec. 4, eff. May 11, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 1.002, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 3, eff. May 20, 2005.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 15, eff. November 1, 2013.

Sec. 301.003. APPLICATION OF SUNSET ACT. The Texas Board of Nursing is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.003, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 2, eff. September 1, 2007.

Sec. 301.004. APPLICATION OF CHAPTER. (a) This chapter does not apply to:

- (1) gratuitous nursing care of the sick that is provided by a friend;
- (2) nursing care provided during a disaster under the state emergency management plan adopted under Section 418.042, Government Code, if the person providing the care does not hold the person out as a nurse unless the person is licensed in another state;
- (3) nursing care in which treatment is solely by prayer or spiritual means;
- (4) an act performed by a person under the delegated authority of a person licensed by the Texas Medical Board;



(5) an act performed by a person licensed by another state agency if the act is authorized by the statute under which the person is licensed except that if the person also holds a license under this chapter and the act is within the practice of nursing, the board may take action against that license based on that act;

(6) the practice of nursing that is incidental to a program of study by a student enrolled in a nursing education program approved under Section 301.157(d) leading to an initial license as a nurse; or

(7) the practice of nursing by a person licensed in another state who is in this state on a nonroutine basis for a period not to exceed 72 hours to:

(A) provide care to a patient being transported into, out of, or through this state;

(B) provide nursing consulting services; or

(C) attend or present a continuing nursing education program.

(b) This chapter does not authorize the practice of medicine as defined by Chapter 151.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.004, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 3, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 1, eff. September 1, 2013.

Sec. 301.005. REFERENCE IN OTHER LAW. (a) A reference in any other law to the former Board of Nurse Examiners means the Texas Board of Nursing.

(b) A reference in any other law to an "advanced nurse practitioner" or "advanced practice nurse" means an advanced practice registered nurse.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 4, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 16, eff. November 1, 2013.

**SUBCHAPTER B. TEXAS BOARD OF NURSING**

Sec. 301.051. BOARD MEMBERSHIP. (a) The Texas Board of Nursing consists of 13 members appointed by the governor with the advice and consent of the senate as follows:

(1) six nurse members, including:

(A) one advanced practice nurse;

(B) two registered nurses who are not advanced practice nurses or members of a nurse faculty; and

(C) three vocational nurses who are not members of a nurse faculty;

(2) three members who are nurse faculty members of schools of nursing:

(A) one of whom is a nurse faculty member of a school of nursing offering a baccalaureate degree program in preparing registered nurses;

(B) one of whom is a nurse faculty member of a school of nursing offering an associate degree program in preparing registered nurses; and

(C) one of whom is a nurse faculty member of a school of nursing at an institution of higher education preparing vocational nurses; and

(3) four members who represent the public.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.006, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 6, eff. September 1, 2007.

Sec. 301.052. MEMBER ELIGIBILITY. (a) A person is not eligible for appointment as a registered nurse or vocational nurse member of the board unless the person has practiced nursing in the role for which the member was appointed for at least three of the five years preceding the date of appointment.

(b) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that:

(A) provides health care services;

(B) sells, manufactures, or distributes health care supplies or equipment; or

(C) is regulated by or receives money from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that:

(A) provides health care services;

(B) sells, manufactures, or distributes health care supplies or equipment; or

(C) is regulated by or receives money from the board;

or

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.007, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 7, eff. September 1, 2007.

Sec. 301.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for the purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 8, eff. September 1, 2007.

Sec. 301.054. TERMS. Members of the board serve staggered six-year terms, with the terms of as near to one-third of the members as possible expiring on January 31 of each odd-numbered year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.008, eff. Sept. 1, 2003.

Sec. 301.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 301.051(a);

(2) does not maintain during service on the board the qualifications required by Section 301.051(a);

(3) is ineligible for membership under Section 301.053;

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

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

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

(c) If the executive director has knowledge that a potential

ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 9, eff. September 1, 2007.

Sec. 301.056. PER DIEM; REIMBURSEMENT. (a) Each board member is entitled to receive a per diem as set by the General Appropriations Act for each day the member engages in the business of the board.

(b) A board member is entitled to reimbursement for travel expenses incurred while conducting board business, including expenses for transportation, meals, and lodging, as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 10, eff. September 1, 2007.

Sec. 301.057. OFFICERS. (a) The governor shall designate a member of the board as presiding officer to serve in that capacity at the pleasure of the governor.

(b) The board shall elect other officers from its members.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.058. MEETINGS. The presiding officer shall call a special board meeting on the written request of at least two board members.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) the legislation that created the board and the board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 889, Sec. 74(1), eff. September 1, 2007.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 11, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 74(1), eff. September 1, 2007.

#### **SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL**

Sec. 301.101. EXECUTIVE DIRECTOR. (a) The board shall employ an executive director. The executive director may not be a member of the board.

(b) Under the direction of the board, the executive director

shall perform the duties required by this chapter or designated by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.103. PUBLIC RECORDS; REGISTRY. (a) The executive director shall keep:

- (1) a record of each meeting of the board; and
- (2) a registry of the name of each nurse registered under this chapter.

(b) Information maintained under this section is open to public inspection at all times.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.104. PERSONNEL; EMPLOYMENT PRACTICES. The board shall employ persons as necessary to carry on the work of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.105. DIVISION OF RESPONSIBILITIES. (a) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.

(b) The board shall determine the salaries and compensation to be paid to employees and persons retained by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.106. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide, as often as necessary, to its members and employees information regarding their:

- (1) qualifications for office or employment under this chapter; and
- (2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## Sec. 301.107. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all nonentry level positions concurrently with any public posting.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## Sec. 301.108. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

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

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with the requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the board workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

(c) The governor shall deliver a biennial report to the



legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports to the legislature.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. GENERAL POWERS AND DUTIES OF BOARD**

Sec. 301.151. GENERAL RULEMAKING AUTHORITY. The board may adopt and enforce rules consistent with this chapter and necessary to:

- (1) perform its duties and conduct proceedings before the board;
- (2) regulate the practice of professional nursing and vocational nursing;
- (3) establish standards of professional conduct for license holders under this chapter; and
- (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.009, eff. Sept. 1, 2003.

Sec. 301.152. RULES REGARDING SPECIALIZED TRAINING. (a) In this section, "advanced practice registered nurse" means a registered nurse licensed by the board to practice as an advanced practice registered nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse."

(b) The board shall adopt rules to:

- (1) license a registered nurse as an advanced practice registered nurse;
- (2) establish:
  - (A) any specialized education or training, including pharmacology, that an advanced practice registered nurse must have to prescribe or order a drug or device as delegated by a physician under Section 157.0512 or 157.054;
  - (B) a system for approving an advanced practice

registered nurse to prescribe or order a drug or device as delegated by a physician under Section 157.0512 or 157.054 on the receipt of evidence of completing the specialized education and training requirement under Paragraph (A); and

(C) a system for issuing a prescription authorization number to an advanced practice registered nurse approved under Paragraph (B); and

(3) concurrently renew any license or approval granted to an advanced practice registered nurse under this subsection and a license renewed by the advanced practice registered nurse under Section 301.301.

(c) At a minimum, the rules adopted under Subsection (b)(2) must:

(1) require completion of pharmacology and related pathophysiology education for initial approval; and

(2) require continuing education in clinical pharmacology and related pathophysiology in addition to any continuing education otherwise required under Section 301.303.

(d) The signature of an advanced practice registered nurse attesting to the provision of a legally authorized service by the advanced practice registered nurse satisfies any documentation requirement for that service established by a state agency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.121(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 17, eff. November 1, 2013.

Sec. 301.153. RULES REGARDING ADVERTISING AND COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the use of a trade name in advertising by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.154. RULES REGARDING DELEGATION OF CERTAIN MEDICAL ACTS. (a) The board may recommend to the Texas State Board of Medical Examiners the adoption of rules relating to the delegation by physicians of medical acts to registered nurses and vocational nurses licensed by the board. In making a recommendation, the board may distinguish between nurses on the basis of special training and education.

(b) A recommendation under Subsection (a) shall be treated in the same manner as a petition for the adoption of a rule by an interested party under Chapter 2001, Government Code.

(c) The board in recommending a rule and the Texas State Board of Medical Examiners in acting on a recommended rule shall, to the extent allowable under state and federal statutes, rules, and regulations, act to enable the state to obtain its fair share of the federal funds available for the delivery of health care in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.010, eff. Sept. 1, 2003.

Sec. 301.1545. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION OR DEFERRED ADJUDICATION. (a) The board shall adopt rules and guidelines necessary to comply with Chapter 53, except to the extent the requirements of this subtitle are stricter than the requirements of that chapter.

(b) In its rules under this section, the board shall list the offenses for which a conviction would constitute grounds for the board to take action under Section 53.021 or for which placement on deferred adjudication community supervision would constitute grounds for the board to take action under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 12, eff. September 1, 2007.

Sec. 301.155. FEES. (a) The board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering this chapter. The board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

(b) The board may adopt a fee in an amount necessary for a periodic newsletter to produce and disseminate to license holders the information required under Section 301.158.

(c) The board shall assess a surcharge of not less than \$3 or more than \$5 for a registered nurse and a surcharge of not less than \$2 or more than \$3 for a vocational nurse to the fee established by the board under Subsection (a) for a license holder to renew a license under this chapter. The board may use nine cents of the registered nurse surcharge and six cents of the vocational nurse surcharge to cover the administrative costs of collecting and depositing the surcharge. The board quarterly shall transmit the remainder of each surcharge to the Department of State Health Services to be used only to implement the nursing resource section under Section 105.002, Health and Safety Code. The board is not required to collect the surcharge if the board determines the funds collected are not appropriated for the purpose of funding the nursing resource section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 728, Sec. 12, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 4, eff. May 20, 2005.

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 1, eff. June 19, 2009.

Sec. 301.156. GIFTS AND GRANTS. The board may receive gifts, grants, or other funds or assets.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

For expiration of Subsections (d-8), (d-9), (d-10), and (d-11), see Subsection (d-11).

Sec. 301.157. PROGRAMS OF STUDY AND APPROVAL. (a) The board shall prescribe three programs of study to prepare a person to receive an initial license as a registered nurse under this chapter as follows:

- (1) a baccalaureate degree program that is conducted by an educational unit in nursing that is a part of a senior college or university and that leads to a baccalaureate degree in nursing;
- (2) an associate degree program that is conducted by an educational unit in nursing within the structure of a college or a university and that leads to an associate degree in nursing; and
- (3) a diploma program that is conducted by a single-purpose school, usually under the control of a hospital, and that leads to a diploma in nursing.

(a-1) A diploma program of study in this state that leads to an initial license as a registered nurse under this chapter and that is completed on or after December 31, 2014, must entitle a student to receive a degree on the student's successful completion of a degree program of a public or private institution of higher education accredited by an agency recognized by the Texas Higher Education Coordinating Board.

(b) The board shall:

- (1) prescribe two programs of study to prepare a person to receive an initial vocational nurse license under this chapter as follows:
  - (A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and
  - (B) a program conducted by a hospital;
- (2) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses;
- (3) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses;
- (4) approve schools of nursing and educational programs that meet the board's requirements;
- (5) select one or more national nursing accrediting agencies, recognized by the United States Department of Education and

determined by the board to have acceptable standards, to accredit schools of nursing and educational programs; and

(6) deny or withdraw approval from a school of nursing or educational program that:

(A) fails to meet the prescribed course of study or other standard under which it sought approval by the board;

(B) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the board under Subdivision (5) under which it was approved or sought approval by the board; or

(C) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

(b-1) The board may not require accreditation of the governing institution of a school of nursing. The board shall accept the requirements established by the Texas Higher Education Coordinating Board for accrediting the governing institution of a school of nursing. The governing institution of a professional nursing school, not including a diploma program, must be accredited by an agency recognized by the Texas Higher Education Coordinating Board or hold a certificate of authority from the Texas Higher Education Coordinating Board under provisions leading to accreditation of the institution in due course.

(c) A program approved to prepare registered nurses may not be less than two academic years or more than four calendar years.

(d) A person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of a school of nursing or educational program that:

(1) is approved by the board;

(2) is accredited by a national nursing accreditation agency determined by the board to have acceptable standards; or

(3) is approved by a state board of nursing of another state and the board, subject to Subsection (d-4).

(d-1) A school of nursing or educational program is considered approved by the board and, except as provided by Subsection (d-7), is exempt from board rules that require ongoing approval if the school or program:

(1) is accredited and maintains accreditation through a national nursing accrediting agency selected by the board under

Subsection (b)(5); and

(2) maintains an acceptable pass rate as determined by the board on the applicable licensing examination under this chapter.

(d-2) A school of nursing or educational program that fails to meet or maintain an acceptable pass rate on applicable licensing examinations under this chapter is subject to review by the board. The board may assist the school or program in its effort to achieve compliance with the board's standards.

(d-3) A school or program from which approval has been withdrawn under this section may reapply for approval.

(d-4) The board may recognize and accept as approved under this section a school of nursing or educational program operated in another state and approved by a state board of nursing or other regulatory body of that state. The board shall develop policies to ensure that the other state's standards are substantially equivalent to the board's standards.

(d-5) The board shall streamline the process for initially approving a school of nursing or educational program under this section by identifying and eliminating tasks performed by the board that duplicate or overlap tasks performed by the Texas Higher Education Coordinating Board or the Texas Workforce Commission.

(d-6) The board, in cooperation with the Texas Higher Education Coordinating Board and the Texas Workforce Commission, shall establish guidelines for the initial approval of schools of nursing or educational programs. The guidelines must:

(1) identify the approval processes to be conducted by the Texas Higher Education Coordinating Board or the Texas Workforce Commission;

(2) require the approval process identified under Subdivision (1) to precede the approval process conducted by the board; and

(3) be made available on the board's Internet website and in a written form.

(d-7) A school of nursing or educational program approved under Subsection (d-1) shall:

(1) provide the board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the board;

(2) notify the board of any change in accreditation status; and

(3) provide other information required by the board as necessary to evaluate and establish nursing education and workforce policy in this state.

(d-8) For purposes of Subsection (d-4), a nursing program is considered to meet standards substantially equivalent to the board's standards if the program:

(1) is part of an institution of higher education located outside this state that is approved by the appropriate regulatory authorities of that state;

(2) holds regional accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation;

(3) holds specialty accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation, including the National League for Nursing Accrediting Commission;

(4) requires program applicants to be a licensed practical or vocational nurse, a military service corpsman, or a paramedic, or to hold a college degree in a clinically oriented health care field with demonstrated experience providing direct patient care; and

(5) graduates students who:

(A) achieve faculty-determined program outcomes, including passing criterion-referenced examinations of nursing knowledge essential to beginning a registered nursing practice and transitioning to the role of registered nurse;

(B) pass a criterion-referenced summative performance examination developed by faculty subject matter experts that measures clinical competencies essential to beginning a registered nursing practice and that meets nationally recognized standards for educational testing, including the educational testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and

(C) pass the National Council Licensure Examination for Registered Nurses at a rate equivalent to the passage rate for students of approved in-state programs.

(d-9) A graduate of a clinical competency assessment program operated in another state and approved by a state board of nursing or other regulatory body of another state is eligible to apply for an initial license under this chapter if:



(1) the board allowed graduates of the program to apply for an initial license under this chapter continuously during the 10-year period preceding January 1, 2007;

(2) the program does not make any substantial changes in the length or content of its clinical competency assessment without the board's approval;

(3) the program remains in good standing with the state board of nursing or other regulatory body in the other state; and

(4) the program participates in the research study under Section 105.008, Health and Safety Code.

(d-10) In this section, the terms "clinical competency assessment program" and "supervised clinical learning experiences program" have the meanings assigned by Section 105.008, Health and Safety Code.

(d-11) Subsections (d-8), (d-9), (d-10), and (d-11) expire December 31, 2017. As part of the first review conducted under Section 301.003 after September 1, 2009, the Sunset Advisory Commission shall:

(1) recommend whether Subsections (d-8) and (d-9) should be extended; and

(2) recommend any changes to Subsections (d-8) and (d-9) relating to the eligibility for a license of graduates of a clinical competency assessment program operated in another state.

(e) The board shall give each person, including an organization, affected by an order or decision of the board under this section reasonable notice of not less than 20 days and an opportunity to appear and be heard regarding the order or decision. The board shall hear each protest or complaint from a person affected by a rule or decision regarding:

(1) the inadequacy or unreasonableness of any rule or order the board adopts; or

(2) the injustice of any order or decision of the board.

(f) Not later than the 30th day after the date an order is entered and approved by the board, a person is entitled to bring an action against the board in a district court of Travis County to have the rule or order vacated or modified, if that person:

(1) is affected by the order or decision;

(2) is dissatisfied with any rule or order of the board;

and

(3) sets forth in a petition the principal grounds of

objection to the rule or order.

(g) An appeal under this section shall be tried de novo as if it were an appeal from a justice court to a county court.

(h) The board, in collaboration with the nursing educators, the Texas Higher Education Coordinating Board, and the Texas Health Care Policy Council, shall implement, monitor, and evaluate a plan for the creation of innovative nursing education models that promote increased enrollment in this state's nursing programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.011, 1.012, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 13, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. [3961](#)), Sec. 2, eff. June 19, 2009.

Sec. 301.158. DISSEMINATION OF INFORMATION. The board shall disseminate, at least twice a year and at other times the board determines necessary, information that is of significant interest to nurses and employers of nurses in this state, including summaries of final disciplinary action taken against nurses by the board since its last dissemination of information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.013, eff. Sept. 1, 2003.

Sec. 301.1581. INFORMATION PROVIDED TO LICENSE HOLDERS. At least once each biennium, the board shall provide to license holders information on:

(1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;

(2) abusive and addictive behavior of certain persons who use prescription pain medications;

(3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and

(4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 4, eff. Sept. 1, 2003.

Sec. 301.1582. POISON CONTROL CENTER INFORMATION. The board shall provide to license holders information regarding the services provided by poison control centers.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 4, eff. Sept. 1, 2003.

Sec. 301.159. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

(1) adopt a form to standardize information concerning complaints made to the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.1595. ADVISORY COMMITTEES. (a) The board may appoint advisory committees to perform the advisory functions assigned by the board.

(b) An advisory committee shall provide independent expertise on board functions and policies, but may not be involved in setting board policy.

(c) The board shall adopt rules regarding the purpose, structure, and use of advisory committees, including rules on:

(1) the purpose, role, responsibility, and goal of an advisory committee;

(2) the size and quorum requirements for an advisory committee;

(3) the composition and representation of an advisory committee;

(4) the qualifications of advisory committee members, such

as experience or area of residence;

(5) the appointment procedures for advisory committees;

(6) the terms of service for advisory committee members;

(7) the training requirements for advisory committee members, if necessary;

(8) the method the board will use to receive public input on issues addressed by an advisory committee; and

(9) the development of board policies and procedures to ensure advisory committees meet the requirements for open meetings under Chapter 551, Government Code, including notification requirements.

(d) A board member may not serve as a member of an advisory committee, but may serve as a liaison between an advisory committee and the board. A board member liaison that attends advisory committee meetings may attend only as an observer and not as a participant. A board member liaison is not required to attend advisory committee meetings. The role of a board member liaison is limited to clarifying the board's charge and intent to the advisory committee.

(e) To the extent of any conflict with Chapter 2110, Government Code, this section and board rules adopted under this section control.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 14, eff. September 1, 2007.

Sec. 301.160. PILOT PROGRAMS. (a) In this section:

(1) "Proactive nursing peer review" means peer review that is not initiated to determine culpability with respect to a particular incident.

(2) "Targeted continuing nursing education" means continuing education focusing on a skill that would likely benefit a significant proportion of nurses in a particular practice area.

(b) The board may develop pilot programs to evaluate the effectiveness of mechanisms, including proactive nursing peer review and targeted continuing nursing education, for maintenance of the clinical competency of a nurse in the nurse's area of practice and the understanding by nurses of the laws, including regulations, governing the practice of nursing.

(c) A pilot program under Subsection (b) must be designed to test the effectiveness of a variety of mechanisms in a variety of practice settings.

(d) The board may approve a pilot program under Subsection (b) that is to be conducted by a person other than the board.

(e) The board may spend funds to develop or fund a pilot program and may contract with, make grants to, or make other arrangements with an agency, professional association, institution, individual, or other person to implement this section.

(f) Repealed by Acts 2007, 80th Leg., R.S., Ch. 889, Sec. 74(2), eff. September 1, 2007.

(g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 889, Sec. 74(2), eff. September 1, 2007.

(h) Repealed by Acts 2007, 80th Leg., R.S., Ch. 889, Sec. 74(2), eff. September 1, 2007.

(i) Except as provided by this subsection, in developing or approving a pilot program under this section the board may exempt the program from rules adopted under this chapter. Subchapter I and Chapter 303 apply to pilot programs, except that Sections 303.002(e), 303.003, and 303.008(b) do not apply to a pilot program using proactive peer review. The board may establish alternative criteria for nursing peer review committees conducting proactive peer review.

(j) The board shall issue an annual report regarding any pilot programs developed or approved and a status report on those programs, including preliminary or final findings concerning their effectiveness. The board shall mail the report to statewide associations of nurses and educators and employers of nurses that request a copy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 74(2), eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. [3961](#)), Sec. 3, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. [3961](#)), Sec. 4, eff. June 19, 2009.

Sec. 301.1605. PILOT PROGRAMS FOR INNOVATIVE APPLICATIONS. (a)

The board may approve and adopt rules regarding pilot programs for innovative applications in the practice and regulation of nursing.

(b) The board shall specify the procedures to be followed in applying for approval of a pilot program. The board may condition approval of a program on compliance with this section and rules adopted under this section.

(c) In approving a pilot program, the board may grant the program an exception to the mandatory reporting requirements of Sections 301.401-301.409 or to a rule adopted under this chapter or Chapter 303 that relates to the practice of nursing, including education and reporting requirements for nurses. The board may not grant an exception to:

(1) the education requirements of this chapter unless the program includes alternate but substantially equivalent requirements; or

(2) the mandatory reporting requirements unless the program:

(A) is designed to evaluate the efficiency of alternative reporting methods; and

(B) provides consumers adequate protection from nurses whose continued practice is a threat to public safety.

Added by Acts 2003, 78th Leg., ch. 876, Sec. 1, eff. June 20, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. [3961](#)), Sec. 5, eff. June 19, 2009.

Sec. 301.1606. PILOT PROGRAMS ON NURSE REPORTING SYSTEMS. (a) The board may solicit proposals for pilot programs designed to evaluate the efficacy and effect on protection of the public of reporting systems designed to encourage identification of system errors.

(b) The board may grant a pilot program approved under this section an exception to the mandatory reporting requirements of Sections 301.401-301.409 or to a rule adopted under this chapter or Chapter 303 that relates to the practice of nursing, including education and reporting requirements for nurses. If the board grants an exception, the board may require that the program:

(1) provide for the remediation of the deficiencies of a

nurse who has knowledge or skill deficiencies that unless corrected may result in an unreasonable risk to public safety;

(2) provide for supervision of the nurse during remediation of deficiencies under Subdivision (1);

(3) require reporting to the board of a nurse:

(A) who fails to satisfactorily complete remediation, or who does not make satisfactory progress in remediation, under Subdivision (1);

(B) whose incompetence in the practice of nursing would pose a continued risk of harm to the public; or

(C) whose error contributed to a patient death or serious patient injury; or

(4) provide for a nursing peer review committee to review whether a nurse is appropriate for remediation under Subdivision (1).

(c) The board may require that the entity conducting a pilot program under this section reimburse the board for the cost of monitoring and evaluating the pilot program.

(d) The board may contract with a third party to perform the monitoring and evaluation.

(e) The board may limit the number of pilot programs that it approves under this section.

Added by Acts 2003, 78th Leg., ch. 876, Sec. 1, eff. June 20, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. [3961](#)), Sec. 6, eff. June 19, 2009.

Sec. 301.161. ENFORCEMENT. (a) The board shall aid in the enforcement of this chapter.

(b) The board may:

(1) issue a subpoena;

(2) compel the attendance of a witness;

(3) administer an oath to a person giving testimony at hearings; and

(4) cause the prosecution of each person violating this chapter.

(c) The attorney general shall provide legal assistance necessary to enforce this chapter. This subsection does not relieve a local prosecuting officer of any duty under the law.

(d) The board may establish a criminal investigations unit to investigate suspected criminal acts relating to the practice of nursing as authorized by this chapter.

(e) The board may assist federal, state, or local law enforcement agencies in the investigation and prosecution of crimes related to the practice of nursing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1058 (H.B. 1366), Sec. 1, eff. September 1, 2005.

Sec. 301.1615. OBTAINING CRIMINAL HISTORY RECORD INFORMATION; HEARING. (a) In addition to the information to which the board is entitled under Section 411.125, Government Code, the board may request and receive criminal history record information from the Federal Bureau of Investigation as provided by Section 411.087, Government Code.

(b) Criminal history record information received by the board may be used only by the board and is privileged. The information may not be disclosed to any person other than:

(1) as required under a court order; or

(2) to a nursing board that is a member of the nurse licensure compact under Chapter 304.

(c) If, on the basis of criminal history record information obtained by the board, the board proposes to deny an application for a license, refuse to renew a license, or suspend or revoke a license or temporary permit, the applicant or license holder is entitled to a hearing under Section 301.454.

Added by Acts 2003, 78th Leg., ch. 1102, Sec. 1, eff. Sept. 1, 2003.

Sec. 301.162. LEGAL COUNSEL. The board may retain legal counsel to represent the board if first:

(1) the board requests the attorney general to represent the board; and

(2) the attorney general certifies to the board that the attorney general cannot provide those services.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.163. RECORD OF PROCEEDINGS; REPORT. The board shall keep a record of its proceedings under this chapter and make an annual report to the governor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.164. ASSISTANCE OF PROSECUTOR. A board member may present to a prosecuting officer a complaint relating to a violation of this chapter. The board, through its members, officers, counsel, or agents, shall assist in the trial of a case involving an alleged violation of this chapter, subject to the control of the prosecuting officers.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.166. USE OF TECHNOLOGY. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 15, eff. September 1, 2007.

Sec. 301.167. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

- (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and
- (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for

the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 15, eff. September 1, 2007.

Sec. 301.168. DUTIES REGARDING PRESCRIPTIVE AUTHORITY AGREEMENTS. The board shall in conjunction with the Texas Medical Board and the Texas Physician Assistant Board perform the functions and duties relating to prescriptive authority agreements assigned to the board in Sections 157.0512 and 157.0513.

Added by Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 18, eff. November 1, 2013.

#### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 301.201. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.202. COMPLAINTS. (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

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

contract for services of a person regulated by the board;

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

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

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 999, Sec. 17, eff. June 19, 2009.

(c) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. [3961](#)), Sec. 17, eff. June 19, 2009.

Sec. 301.203. RECORDS AND ANALYSIS OF COMPLAINTS. (a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about:

(1) parties to the complaint;

(2) the subject matter of the complaint;

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

(4) the complaint's disposition.

(b) The board shall make information available describing its procedures for complaint investigation and resolution.

(c) The board shall periodically notify the parties to the complaint of the status of the complaint until final disposition unless notice would jeopardize an undercover investigation.

(d) The board shall develop a method for analyzing the sources and types of complaints and violations and establish categories for the complaints and violations. The board shall use the analysis to focus its information and education efforts on specific problem areas identified through the analysis.

(e) The board shall analyze complaints filed with the board to identify any trends or issues related to certain violations, including:

(1) the reason for each complaint;

- (2) how each complaint was resolved; and
- (3) the subject matter of each complaint that was not within the jurisdiction of the board and how the board responded to the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 16, eff. September 1, 2007.

Sec. 301.204. GENERAL RULES, POLICIES, AND PROCEDURES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules, policies, and procedures concerning the investigation of a complaint filed with the board. The rules, policies, or procedures adopted under this subsection must:

- (1) distinguish between categories of complaints;
- (2) ensure that complaints are not dismissed without appropriate consideration;
- (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
- (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;
- (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator; and
- (6) by rule allow appropriate employees of the board to dismiss a complaint if an investigation demonstrates that:
  - (A) a violation did not occur; or
  - (B) the subject of the complaint is outside the board's jurisdiction.

(b) The board shall:

- (1) dispose of all complaints in a timely manner; and
- (2) establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) The board shall notify the parties of the projected time requirements for pursuing the complaint.

(d) The board shall notify the parties to the complaint of any change in the schedule not later than the seventh day after the date the change is made.

(e) The executive director of the board shall notify the board of a complaint that is unresolved after the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

(f) At each public meeting of the board, the executive director shall report to the board each complaint dismissed under Subsection (a)(6) since the board's last public meeting.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 17, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 18, eff. September 1, 2007.

Sec. 301.205. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.206. CONFIDENTIALITY OF INFORMATION COLLECTED FOR EMERGENCY RELIEF PROGRAMS. (a) In this section, "emergency relief program" means a program operated or sponsored by the federal government, the state, or a nonprofit organization to provide nurses to assist in providing health care to victims or potential victims of a disaster or state or local emergency.

(b) A nurse's personal contact information, including e-mail addresses, telephone numbers, and fax numbers, collected by the board for use by an emergency relief program is:

(1) confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than for the purpose of contacting the nurse to assist in an emergency relief program.

Added by Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 7, eff. June 19, 2009.

Sec. 301.207. CONFIDENTIALITY OF INFORMATION PROVIDED FOR LICENSURE. The following information that a person submits to the board for a petition for a declaratory order of eligibility for a license or for an application for an initial license or a license renewal under this chapter is confidential to the same extent information collected on a nurse as part of an investigation of a complaint is confidential under Section 301.466:

- (1) information, including diagnosis and treatment, regarding a person's physical or mental condition, intemperate use of drugs or alcohol, or chemical dependency;
- (2) information regarding a person's criminal history; and
- (3) any other information in the petition for declaratory order of eligibility.

Added by Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 7, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 878 (S.B. 193), Sec. 1, eff. September 1, 2011.

#### **SUBCHAPTER F. LICENSE REQUIREMENTS**

Sec. 301.251. LICENSE REQUIRED. (a) A person may not practice or offer to practice professional nursing or vocational nursing in this state unless the person is licensed as provided by this chapter.

(b) Unless the person holds a license under this chapter, a person may not use, in connection with the person's name:

- (1) the title "Registered Nurse," "Professional Nurse," "Licensed Vocational Nurse," "Vocational Nurse," "Licensed Practical Nurse," "Practical Nurse," or "Graduate Nurse";
- (2) the abbreviation "R.N.," "L.V.N.," "V.N.," "L.P.N.," or "P.N.;" or

(3) any other designation tending to imply that the person is a licensed registered nurse or vocational nurse.

(c) This section does not apply to a person entitled to practice nursing in this state under Chapter 304.

(d) Unless the person holds a license under this chapter, a person may not use, in connection with the person's name:

(1) the title "nurse"; or

(2) any other designation tending to imply that the person is licensed to provide nursing care.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.122(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 1.014, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 876, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 5, eff. May 20, 2005.

Sec. 301.2511. CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE APPLICANTS. (a) An applicant for a registered nurse license must submit to the board, in addition to satisfying the other requirements of this subchapter, a complete and legible set of fingerprints, on a form prescribed by the board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The board may deny a license to an applicant who does not comply with the requirement of Subsection (a). Issuance of a license by the board is conditioned on the board obtaining the applicant's criminal history record information under this section.

(c) The board by rule shall develop a system for obtaining criminal history record information for a person accepted for enrollment in a nursing educational program that prepares the person for initial licensure as a registered or vocational nurse by requiring the person to submit to the board a set of fingerprints that meets the requirements of Subsection (a). The board may develop a similar system for an applicant for enrollment in a nursing educational program. The board may require payment of a fee by a person who is required to submit a set of fingerprints under this subsection.

Added by Acts 2003, 78th Leg., ch. 1102, Sec. 2, eff. Sept. 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 2, eff.  
September 1, 2013.

Sec. 301.252. LICENSE APPLICATION. (a) Each applicant for a registered nurse license or a vocational nurse license must submit to the board a sworn application that demonstrates the applicant's qualifications under this chapter, accompanied by evidence that the applicant:

- (1) has good professional character;
- (2) has successfully completed a program of professional or vocational nursing education approved under Section 301.157(d); and
- (3) has passed the jurisprudence examination approved by the board as provided by Subsection (a-1).

(a-1) The jurisprudence examination shall be conducted on the licensing requirements under this chapter and board rules and other laws, rules, or regulations applicable to the nursing profession in this state. The board shall adopt rules for the jurisprudence examination under Subsection (a)(3) regarding:

- (1) the development of the examination;
- (2) applicable fees;
- (3) administration of the examination;
- (4) reexamination procedures;
- (5) grading procedures; and
- (6) notice of results.

(b) The board may waive the requirement of Subsection (a)(2) for a vocational nurse applicant if the applicant provides satisfactory sworn evidence that the applicant has completed an acceptable level of education in:

- (1) a professional nursing school approved under Section 301.157(d); or
- (2) a school of professional nurse education located in another state or a foreign country.

(c) The board by rule shall determine acceptable levels of education under Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.015, eff. Sept. 1, 2003.



Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 19, eff. September 1, 2007.

Sec. 301.253. EXAMINATION. (a) Except as provided by Section 301.452, an applicant is entitled to take the examination prescribed by the board if:

(1) the board determines that the applicant meets the qualifications required by Section 301.252; and

(2) the applicant pays the fees required by the board.

(b) Each examination administered under this section must be prepared by a national testing service or the board. The board shall ensure that the examination is administered in various cities throughout the state.

(c) The examination shall be designed to determine the fitness of the applicant to practice professional nursing or vocational nursing.

(c-1) The board shall:

(1) adopt policies and guidelines detailing the procedures for the testing process, including test admission, test administration, and national examination requirements; and

(2) post on the board's Internet website the policies that reference the testing procedures by the national organization selected by the board to administer an examination.

(d) The board shall determine the criteria that determine a passing score on the examination. The criteria may not exceed those required by the majority of the states.

(e) A written examination prepared, approved, or offered by the board, including a standardized national examination, must be validated by an independent testing professional.

(f) The board shall develop a written refund policy regarding examination fees that:

(1) defines the reasonable notification period and the emergencies that would qualify for a refund; and

(2) does not conflict with any examination fee or refund policy of the testing service involved in administering the examination.

(g) The board may recommend to a national testing service selected by the board to offer examinations under this section the

board's written policy for refunding an examination fee for an applicant who:

- (1) provides advance notice of the applicant's inability to take the examination; or
- (2) is unable to take the examination because of an emergency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.016, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 20, eff. September 1, 2007.

Sec. 301.254. EXAMINATION RESULTS. (a) The board shall notify each examinee of the results of the examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of the examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.255. REEXAMINATION. The board by rule shall establish conditions under which an applicant who fails an examination may retake the examination. For an applicant who fails the examination two or more times, the board may:

- (1) require the applicant to fulfill additional educational requirements; or
- (2) deny the applicant the opportunity to retake the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.256. ISSUANCE OF LICENSE. If the results of an examination taken under Section 301.253 or 301.255 satisfy the criteria established by the board under that section, the board shall issue to the applicant a license to practice professional nursing or vocational nursing in this state. The license must be signed by the board's presiding officer and the executive director and attested by the board's seal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.017, eff. Sept. 1, 2003.

Sec. 301.257. DECLARATORY ORDER OF LICENSE ELIGIBILITY. (a) A person may petition the board for a declaratory order as to the person's eligibility for a license under this chapter if the person has reason to believe that the person is ineligible for the license and:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license as a registered nurse or vocational nurse; or

(2) is an applicant for a license.

(b) The petition must state the basis for the person's potential ineligibility.

(c) The board has the same powers to investigate the petition and the person's eligibility that it has to investigate a person applying for a license.

(d) The petitioner or the board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.

(e) If the board determines that a ground for ineligibility does not exist, instead of issuing an order, the board shall notify the petitioner in writing of the board's determination on each ground of potential ineligibility. If the board proposes to find that the petitioner is ineligible for a license, the petitioner is entitled to a hearing before the State Office of Administrative Hearings.

(f) The board's order must set out each basis for potential ineligibility and the board's determination as to eligibility. In

the absence of new evidence known to but not disclosed by the petitioner or not reasonably available to the board at the time the order is issued, the board's ruling on the petition determines the person's eligibility with respect to the grounds for potential ineligibility set out in the written notice or order.

(g) The board may require an individual accepted for enrollment or enrolled in an educational program preparing a student for initial licensure as a registered nurse or vocational nurse to submit information to the board to permit the board to determine whether the person is aware of the conditions that may disqualify the person from licensure as a registered nurse or vocational nurse on graduation and of the person's right to petition the board for a declaratory order under this section. Instead of requiring the person to submit the information, the board may require the educational program to collect and submit the information on each person accepted for enrollment or enrolled in the program.

(h) The information required under Subsection (g) must be submitted in a form approved by the board.

(i) If, as a result of information provided under Subsection (g), the board determines that a person may not be eligible for a license on graduation, the board shall notify the educational program of its determination.

(j) The board may file a petition under this section based on the results of a criminal history record information check conducted under Section 301.2511. The board by rule shall adopt requirements for the petition and determination under this subsection. The rules must:

(1) identify the criminal offenses that constitute grounds for the board to file the petition; and

(2) describe the documents required by the board to make a determination of license eligibility.

(k) The board shall make a determination of license eligibility under Subsection (j) not later than the 120th day after the date the person submits the required documents to the board under that subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.123(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 1.018, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 8, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 3, eff. September 1, 2013.

Sec. 301.258. TEMPORARY PERMIT. (a) Pending the results of a licensing examination, the board may issue to an applicant who is a graduate of an approved educational program a permit to practice professional nursing under the direct supervision of a registered nurse or to practice vocational nursing under the direct supervision of a registered nurse or vocational nurse.

(b) The board may not issue a permit under this section to an applicant who has previously failed an examination administered by the board or another state.

(c) A permit issued under Subsection (a) expires on the date of receipt of:

- (1) a permanent license; or
- (2) a notice from the board that the permit holder has failed the examination.

(d) The board may issue a temporary permit to practice professional nursing or vocational nursing for the limited purpose of allowing a nurse to satisfy a requirement imposed by the board necessary for:

- (1) renewal of an expired license;
- (2) reactivation of an inactive license; or
- (3) reissuance of a suspended, revoked, or surrendered license.

(e) A permit issued under Subsection (d) expires on the earlier of:

- (1) the date of receipt of a permanent license; or
- (2) six months after the date the permit is issued.

(f) A person who holds a temporary permit issued under this section is considered to be a licensed registered nurse or vocational nurse for all purposes except to the extent of any stipulation or limitation on practice imposed by the board as a condition of issuing the permit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.019, eff. Sept. 1, 2003.

Sec. 301.259. RECIPROCAL LICENSE BY ENDORSEMENT FOR CERTAIN FOREIGN APPLICANTS. On payment of a fee established by the board, the board may issue a license to practice as a registered nurse or vocational nurse in this state by endorsement without examination to an applicant who holds a registration certificate as a registered nurse or vocational nurse, as applicable, issued by a territory or possession of the United States or a foreign country if the board determines that the issuing agency of the territory or possession of the United States or foreign country required in its examination the same general degree of fitness required by this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.020, eff. Sept. 1, 2003.

Sec. 301.260. TEMPORARY LICENSE BY ENDORSEMENT. (a) An applicant for a license under this chapter who is licensed as a registered nurse or vocational nurse by another state may qualify for a temporary license by endorsement to practice as a registered nurse or vocational nurse, as applicable, by submitting to the board:

- (1) an endorsement fee as determined by the board and a completed sworn application in the form prescribed by the board;
- (2) evidence that the person possessed, at the time of initial licensing as a nurse, the other qualifications necessary at that time to have been eligible for licensing in this state; and
- (3) proof of initial licensing by examination and proof that the license and any other license issued to the applicant by another state have not been suspended, revoked, canceled, surrendered, or otherwise restricted.

(b) A holder of a temporary license under this section is entitled to receive a permanent license if the applicant:

- (1) verifies the applicant's academic and professional credentials; and
- (2) satisfies any other requirement established by statute.

(c) The board shall grant or deny an application for a permanent license not later than the 180th day after the date the board receives all required forms or information. The board may extend that deadline to allow for the receipt and tabulation of

examination results.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.021, eff. Sept. 1, 2003.

Sec. 301.261. INACTIVE STATUS. (a) The board may place on inactive status the license of a person under this chapter who is not actively engaged in the practice of professional nursing or vocational nursing if the person submits a written request to the board in the form and manner determined by the board. The inactive status begins on the expiration date of the person's license.

(b) The board shall maintain a list of each person whose license is on inactive status.

(c) A person whose license is on inactive status may not perform any professional nursing or vocational nursing service or work.

(d) The board shall remove a person's license from inactive status if the person:

(1) requests that the board remove the person's license from inactive status;

(2) pays each appropriate fee; and

(3) meets the requirements determined by the board.

(e) The board by rule shall permit a person whose license is on inactive status and who was in good standing with the board on the date the license became inactive to use, as applicable, the title "Registered Nurse Retired," "R.N. Retired," "Licensed Vocational Nurse Retired," "Vocational Nurse Retired," "L.V.N. Retired," or "V.N. Retired" or another appropriate title approved by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.022, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 878 (S.B. 193), Sec. 2, eff. September 1, 2011.

#### **SUBCHAPTER G. LICENSE RENEWAL**

Sec. 301.301. LICENSE RENEWAL. (a) The board by rule may adopt a system under which licenses expire on various dates during the year.

(b) A person may renew an unexpired license issued under this chapter on payment to the board of the required renewal fee before the expiration date of the license, payment to the board of any costs assessed under Section 301.461, and compliance with any other renewal requirements adopted by the board. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(c) A person whose license has been expired for 90 days or less may renew the license by paying to the board the required renewal fee and a late fee in the amount considered appropriate by the board to encourage timely renewal.

(c-1) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board all unpaid renewal fees and a late fee that is equal to twice the amount of a late fee under Subsection (c).

(d) The board by rule shall set a length of time beyond which an expired license may not be renewed. The board by rule may establish additional requirements that apply to the renewal of a license that has been expired for more than one year but less than the time limit set by the board beyond which a license may not be renewed. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(e) At least 30 days before the expiration of the person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address according to the records of the board.

(f) A registered nurse who practices professional nursing or a vocational nurse who practices vocational nursing after the expiration of the nurse's license is an illegal practitioner whose license may be revoked or suspended.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.023, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1058 (H.B. [1366](#)), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 21, eff. September 1, 2007.



Sec. 301.3011. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR RENEWAL. (a) The board may require that an applicant for renewal of an unexpired license submit to the board, in addition to satisfying any other requirements for license renewal, a complete and legible set of fingerprints, on a form prescribed by the board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The board may refuse to renew the license of a person who does not comply with the requirement of Subsection (a). Renewal of a license by the board is conditioned on the board obtaining the person's criminal history record information under this section.

Added by Acts 2003, 78th Leg., ch. 1102, Sec. 3, eff. Sept. 1, 2003.

Sec. 301.302. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) A person who was licensed to practice professional nursing or vocational nursing in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application may obtain a new license without examination.

(b) The person must pay to the board a fee that is equal to the amount of the initial fee for the license and the renewal fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.024, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 22, eff. September 1, 2007.

Sec. 301.303. CONTINUING COMPETENCY. (a) The board may recognize, prepare, or implement continuing competency programs for license holders under this chapter and may require participation in continuing competency programs as a condition of renewal of a license. The programs may allow a license holder to demonstrate competency through various methods, including:

(1) completion of targeted continuing education programs;  
and

(2) consideration of a license holder's professional portfolio, including certifications held by the license holder.

(b) The board may not require participation in more than a total of 20 hours of continuing education in a two-year licensing period.

(c) If the board requires participation in continuing education programs as a condition of license renewal, the board by rule shall establish a system for the approval of programs and providers of continuing education.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(1), eff. September 1, 2007.

(e) The board may adopt other rules as necessary to implement this section.

(f) The board may assess each program and provider under this section a fee in an amount that is reasonable and necessary to defray the costs incurred in approving programs and providers.

(g) The board by rule may establish guidelines for targeted continuing education required under this chapter. The rules adopted under this subsection must address:

(1) the nurses who are required to complete the targeted continuing education program;

(2) the type of courses that satisfy the targeted continuing education requirement;

(3) the time in which a nurse is required to complete the targeted continuing education;

(4) the frequency with which a nurse is required to meet the targeted continuing education requirement; and

(5) any other requirement considered necessary by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 876, Sec. 3, 4, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 21(1), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 23, eff. September 1, 2007.

Sec. 301.304. CONTINUING EDUCATION IN TICK-BORNE DISEASES. (a)

As part of the continuing education requirements under Section 301.303, a license holder whose practice includes the treatment of tick-borne diseases shall be encouraged to participate, during each two-year licensing period, in continuing education relating to the treatment of tick-borne diseases.

(b) The board shall adopt rules to identify the license holders who are encouraged to complete continuing education under Subsection (a) and establish the content of that continuing education. In adopting rules, the board shall seek input from affected parties and review relevant courses, including courses that have been approved in other states. Rules adopted under this section must provide that continuing education courses representing an appropriate spectrum of relevant medical clinical treatment relating to tick-borne diseases qualify as approved continuing education courses for license renewal.

(c) If relevant, the board shall consider a license holder's participation in a continuing education course approved under Subsection (b) if:

(1) the license holder is being investigated by the board regarding the license holder's selection of clinical care for the treatment of tick-borne diseases; and

(2) the license holder completed the course not more than two years before the start of the investigation.

(d) The board may adopt other rules to implement this section, including rules under Section 301.303(c) for the approval of education programs and providers.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1092 (S.B. 1360), Sec. 3, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1306 (H.B. 2975), Sec. 3, eff. September 1, 2011.

Sec. 301.305. CONTINUING EDUCATION IN NURSING JURISPRUDENCE AND NURSING ETHICS. (a) As part of a continuing competency program under Section 301.303, a license holder shall complete at least two hours of continuing education relating to nursing jurisprudence and nursing ethics before the end of every third two-year licensing period.

(b) The board shall adopt rules implementing the requirement under Subsection (a) in accordance with the guidelines for targeted

continuing education under Section 301.303(g).

(c) The board may not require a license holder to complete more than four hours of continuing education under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 4, eff. September 1, 2013.

Sec. 301.306. FORENSIC EVIDENCE COLLECTION COMPONENT IN CONTINUING EDUCATION. (a) As part of continuing education requirements under Section 301.303, a license holder who is employed to work in an emergency room setting and who is required under board rules to comply with this section shall complete at least two hours of continuing education relating to forensic evidence collection not later than:

(1) September 1, 2008; or

(2) the second anniversary of the initial issuance of a license under this chapter to the license holder.

(b) The continuing education required under Subsection (a) must be part of a program approved under Section 301.303(c).

(c) The board shall adopt rules to identify the license holders who are required to complete continuing education under Subsection (a) and to establish the content of that continuing education. The board may adopt other rules to implement this section, including rules under Section 301.303(c) for the approval of education programs and providers.

Added by Acts 2005, 79th Leg., Ch. 782 (S.B. 39), Sec. 2, eff. September 1, 2005.

Sec. 301.307. CONTINUING EDUCATION IN OLDER ADULT OR GERIATRIC CARE. (a) As part of a continuing competency program under Section 301.303, a license holder whose practice includes older adult or geriatric populations shall complete at least two hours of continuing education relating to older adult or geriatric populations or maintain certification in an area of practice relating to older adult or geriatric populations.

(b) The board shall adopt rules implementing the requirement under Subsection (a) in accordance with the guidelines for targeted continuing education under Section 301.303(g).

(c) The board may not require a license holder to complete more than six hours of continuing education under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 4, eff. September 1, 2013.

#### **SUBCHAPTER H. PRACTICE BY LICENSE HOLDER**

Sec. 301.351. DESIGNATIONS. (a) A person who holds a license as a registered nurse under this chapter:

- (1) is referred to as a registered nurse; and
- (2) may use the abbreviation "R.N."

(b) A person who holds a license as a vocational nurse under this chapter:

- (1) is referred to as a licensed vocational nurse or vocational nurse; and
- (2) may use the abbreviation "L.V.N." or "V.N."

(c) While interacting with the public in a nursing role, each nurse shall wear a clearly legible insignia identifying the nurse as a registered or vocational nurse. The insignia may not contain information other than:

- (1) the registered or vocational nurse designation;
- (2) the nurse's name, certifications, academic degrees, or practice position;
- (3) the name of the employing facility or agency, or other employer;
- (4) a picture of the nurse; or
- (5) any other information authorized by the board.

(d) The board may adopt rules establishing specifications for the insignia.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.027, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 876, Sec. 5, eff. June 20, 2003. Reenacted and amended by Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 6, eff. May 20, 2005.

Sec. 301.352. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT. (a) A person may not suspend, terminate, or otherwise discipline, discriminate against, or retaliate against:

(1) a nurse who refuses to engage in an act or omission as provided by Subsection (a-1); or

(2) a person who advises a nurse of the nurse's rights under this section.

(a-1) A nurse may refuse to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the board under Subchapter I, that constitutes a minor incident, or that violates this chapter or a board rule if the nurse notifies the person at the time of the refusal that the reason for refusing is that the act or omission:

(1) constitutes grounds for reporting the nurse to the board; or

(2) is a violation of this chapter or a rule of the board.

(b) An act by a person under Subsection (a) does not constitute a violation of this section if a nursing peer review committee under Chapter 303 determines:

(1) that the act or omission the nurse refused to engage in was not:

(A) conduct reportable to the board under Section 301.403;

(B) a minor incident; or

(C) a violation of this chapter or a board rule; or

(2) that:

(A) the act or omission in which the nurse refused to engage was conduct reportable to the board, a minor incident, or a violation of this chapter or a board rule; and

(B) the person:

(i) rescinds any disciplinary or discriminatory action taken against the nurse;

(ii) compensates the nurse for lost wages; and

(iii) restores to the nurse any lost benefits.

(c) A nurse's rights under this section may not be nullified by a contract.

(d) An appropriate licensing agency may take action against a person who violates this section.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(2), eff. September 1, 2007.

(f) A violation of this section is subject to Section 301.413.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2003, 78th Leg., ch. 553, Sec. 1.028, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 7, eff. May 20, 2005.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 21(2), eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 877 (S.B. 192), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 878 (S.B. 193), Sec. 3, eff. September 1, 2011.

Sec. 301.353. SUPERVISION OF VOCATIONAL NURSE. The practice of vocational nursing must be performed under the supervision of a registered nurse, physician, physician assistant, podiatrist, or dentist.

Added by Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 8, eff. May 20, 2005.

Sec. 301.354. NURSE FIRST ASSISTANTS; ASSISTING AT SURGERY BY OTHER NURSES. (a) In this section, "nurse first assistant" means a registered nurse who:

(1) has completed a nurse first assistant educational program approved or recognized by an organization recognized by the board; and

(2) is either:

(A) certified in perioperative nursing by an organization recognized by the board; or

(B) recognized by the board as an advanced practice nurse and qualified by education, training, or experience to perform the tasks involved in perioperative nursing.

(b) Unless the person is a nurse first assistant, the person may not use:

(1) the title "nurse first assistant" or "registered nurse first assistant";

(2) the abbreviation "R.N.F.A."; or

(3) any other title or abbreviation that implies to the public that the person is qualified as a nurse first assistant under this section.

(c) A health maintenance organization or an insurer, including an insurer offering a preferred provider benefit plan, may not, by contract or any other method, require a physician to use the services of a nurse first assistant.

(d) A nurse who is not a nurse first assistant may assist a physician, podiatrist, or dentist in the performance of surgery if the nurse:

(1) assists under the direct personal supervision and in the physical presence of the physician, podiatrist, or dentist;

(2) is in the same sterile field as the physician, podiatrist, or dentist;

(3) is employed by:

(A) the physician, podiatrist, or dentist;

(B) a group to which the physician, podiatrist, or dentist belongs; or

(C) a hospital licensed or owned by the state; and

(4) is qualified by education, training, or experience to perform the tasks assigned to the nurse.

(e) A patient or third-party insurer may not be billed separately for the services performed by a nurse described by Subsection (d).

Added by Acts 2005, 79th Leg., Ch. 966 (H.B. 1718), Sec. 1, eff. September 1, 2005.

Renumbered from Occupations Code, Section 301.353 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(57), eff. September 1, 2007.

Sec. 301.356. REFUSAL OF MANDATORY OVERTIME. The refusal by a nurse to work mandatory overtime as authorized by Chapter 258, Health and Safety Code, does not constitute patient abandonment or neglect.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 2, eff. September 1, 2009.

#### **SUBCHAPTER I. REPORTING VIOLATIONS AND PATIENT CARE CONCERNS**



Sec. 301.401. DEFINITIONS. In this subchapter:

(1) "Conduct subject to reporting" means conduct by a nurse that:

(A) violates this chapter or a board rule and contributed to the death or serious injury of a patient;

(B) causes a person to suspect that the nurse's practice is impaired by chemical dependency or drug or alcohol abuse;

(C) constitutes abuse, exploitation, fraud, or a violation of professional boundaries; or

(D) indicates that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice of nursing could reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior.

(2) "Minor incident" means conduct by a nurse that does not indicate that the nurse's continued practice poses a risk of harm to a patient or another person. This term is synonymous with "minor error" or "minor violation of this chapter or board rule."

(3) "Nursing educational program" means an educational program that is considered approved by the board that may lead to an initial license as a registered nurse or vocational nurse.

(4) "Nursing student" means an individual who is enrolled in a nursing educational program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.029, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 876, Sec. 6, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 9, eff. May 20, 2005.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 6, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 9, eff. June 19, 2009.

Sec. 301.4011. GOOD FAITH REPORT BY NURSE. In this subchapter, a report is considered to be made in good faith if:

(1) the person reporting believed that the report was required or authorized; and

(2) there was a reasonable factual or legal basis for that belief.

Added by Acts 2011, 82nd Leg., R.S., Ch. 877 (S.B. 192), Sec. 2, eff. September 1, 2011.

Sec. 301.402. MANDATORY REPORT BY NURSE. (a) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(3), eff. September 1, 2007.

(b) A nurse shall report to the board in the manner prescribed under Subsection (d) if the nurse has reasonable cause to suspect that:

(1) another nurse has engaged in conduct subject to reporting; or

(2) the ability of a nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(3), eff. September 1, 2007.

(d) A report by a nurse under Subsection (b) must:

(1) be written and signed; and

(2) include the identity of the nurse or student and any additional information required by the board.

(e) Instead of reporting to the board under Subsection (b), a nurse may make a report required under:

(1) Subsection (b)(1) to a nursing peer review committee under Chapter 303; or

(2) Subsection (b)(2) to the nursing educational program in which the student is enrolled.

(f) A person may not suspend or terminate the employment of, or otherwise discipline, discriminate against, or retaliate against, a person who:

(1) reports in good faith under this section; or

(2) advises a nurse of the nurse's rights and obligations under this section.

(g) A violation of Subsection (f) is subject to Section 301.413.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.030, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 876, Sec. 7, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 10, eff. May 20, 2005.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 7, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 8, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 21(3), eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 877 (S.B. 192), Sec. 3, eff. September 1, 2011.

Sec. 301.4025. OPTIONAL REPORT BY NURSE. (a) In a written, signed report to the appropriate licensing board or accrediting body, a nurse may report a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to:

- (1) minimum standards of acceptable and prevailing professional practice, for a report made regarding a practitioner; or
- (2) statutory, regulatory, or accreditation standards, for a report made regarding an agency or facility.

(b) A nurse may report to the nurse's employer or another entity at which the nurse is authorized to practice any situation that the nurse has reasonable cause to believe exposes a patient to substantial risk of harm as a result of a failure to provide patient care that conforms to minimum standards of acceptable and prevailing professional practice or to statutory, regulatory, or accreditation standards. For purposes of this subsection, an employer or entity includes an employee or agent of the employer or entity.

(c) A person may not suspend or terminate the employment of, or otherwise discipline, discriminate against, or retaliate against, a person who:

- (1) reports in good faith under this section; or
- (2) advises a nurse of the nurse's right to report under this section.

(d) A violation of Subsection (c) is subject to Section 301.413.

Added by Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 9, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 877 (S.B. 192), Sec. 4, eff. September 1, 2011.

Sec. 301.403. DUTY OF PEER REVIEW COMMITTEE TO REPORT. (a) Except as provided by Subsection (b), a nursing peer review committee operating under Chapter 303 that determines that a nurse has engaged in conduct subject to reporting shall file with the board a written, signed report that includes:

- (1) the identity of the nurse;
- (2) a description of any corrective action taken against the nurse;
- (3) a recommendation whether the board should take formal disciplinary action against the nurse and the basis for the recommendation;
- (4) a description of the conduct subject to reporting;
- (5) the extent to which any deficiency in care provided by the reported nurse was the result of a factor beyond the nurse's control; and
- (6) any additional information the board requires.

(b) A report under Subsection (a) is not required if:

- (1) the nursing peer review committee determines that the reported conduct was a minor incident that is not required to be reported under board rule; or
- (2) the nurse has been reported to the board for the conduct under Section 301.405.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.031, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 11, eff. May 20, 2005.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 10, eff. September 1, 2007.

Sec. 301.404. DUTY OF NURSING EDUCATIONAL PROGRAM TO REPORT. A

nursing educational program that has reasonable cause to suspect that the ability of a nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency shall file with the board a written, signed report that includes the identity of the student and any additional information the board requires.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.032, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 11, eff. September 1, 2007.

Sec. 301.405. DUTY OF PERSON EMPLOYING NURSE TO REPORT. (a) This section applies only to a person who employs, hires, or contracts for the services of a nurse, including:

- (1) a health care facility, including a hospital, health science center, nursing home, or home health agency;
- (2) a state agency;
- (3) a political subdivision;
- (4) a school of nursing; and
- (5) a temporary nursing service.

(b) A person that terminates, suspends for more than seven days, or takes other substantive disciplinary action, as defined by the board, against a nurse, or a substantially equivalent action against a nurse who is a staffing agency nurse, because the nurse engaged in conduct subject to reporting shall report in writing to the board:

- (1) the identity of the nurse;
- (2) the conduct subject to reporting that resulted in the termination, suspension, or other substantive disciplinary action or substantially equivalent action; and
- (3) any additional information the board requires.

(c) If a person who makes a report required under Subsection (b) is required under Section 303.0015 to establish a nursing peer review committee, the person shall submit a copy of the report to the nursing peer review committee. The nursing peer review committee shall review the conduct to determine if any deficiency in care by the reported nurse was the result of a factor beyond the nurse's

control. A nursing peer review committee that determines that there is reason to believe that the nurse's deficiency in care was the result of a factor beyond the nurse's control shall report the conduct to the patient safety committee at the facility where the reported conduct occurred, or if the facility does not have a patient safety committee, to the chief nursing officer.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(4), eff. September 1, 2007.

(e) The requirement under Subsection (c) that a nursing peer review committee review the nurse and the incident does not subject a person's administrative decision to discipline a nurse to the peer review process.

(f) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(4), eff. September 1, 2007.

(g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(4), eff. September 1, 2007.

(h) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(4), eff. September 1, 2007.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.033, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 12, eff. May 20, 2005.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 12, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 21(4), eff. September 1, 2007.

Sec. 301.406. DUTY OF CERTAIN PROFESSIONAL ASSOCIATIONS AND ORGANIZATIONS TO REPORT. A professional association of nurses or an organization that conducts a certification or accreditation program for nurses and that expels, decertifies, or takes any other substantive disciplinary action, as defined by the board, against a nurse as a result of the nurse's failure to conform to the minimum standards of acceptable nursing practice shall report in writing to the board the identity of the nurse and any additional information the board requires.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2003, 78th Leg., ch. 553, Sec. 1.034, eff. Sept. 1, 2003.

Sec. 301.407. DUTY OF STATE AGENCY TO REPORT. (a) This section applies only to a state agency that:

(1) licenses, registers, or certifies:

(A) a hospital;

(B) a nursing home;

(C) a health science center;

(D) a home health agency; or

(E) another health care facility or agency; or

(2) surveys a facility or agency listed in Subdivision (1) regarding the quality of nursing care provided by the facility or agency.

(b) Unless expressly prohibited by state or federal law, a state agency that has reason to believe that a nurse has engaged in conduct subject to reporting shall report the nurse in writing to the board or to a nursing peer review committee under Chapter 303.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.035, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 13, eff. September 1, 2007.

Sec. 301.408. DUTY OF LIABILITY INSURER TO REPORT. (a) Each insurer that provides to a nurse liability insurance that covers claims arising from providing or failing to provide nursing care shall submit to the board the report or data required by this section at the time prescribed.

(b) The report or data must be provided for:

(1) a complaint filed in court against a nurse that seeks damages related to the nurse's conduct in providing or failing to provide nursing care; and

(2) a settlement of a claim or lawsuit made on behalf of a nurse.

(c) Not later than the 30th day after the date the insurer receives a complaint subject to Subsection (b), the insurer shall provide to the board:

(1) the name of the nurse against whom the claim is filed;  
 (2) the policy number;  
 (3) the policy limits;  
 (4) a copy of the petition;  
 (5) a copy of the answer; and  
 (6) other relevant information known by the insurer, as required by the board.

(d) Not later than the 30th day after the date of a judgment, dismissal, or settlement of a suit involving an insured nurse or settlement of a claim on behalf of the nurse without the filing of a lawsuit, the insurer shall provide to the board information regarding the date of the judgment, dismissal, or settlement and, if appropriate:

(1) whether an appeal has been taken from the judgment and by which party;  
 (2) the amount of the settlement or judgment against the nurse; and  
 (3) other relevant information known by the insurer, as required by the board.

(e) A nurse shall report the information required to be reported under this section if the nurse is named as a defendant in a claim arising from providing or failing to provide nursing care and the nurse:

(1) does not carry or is not covered by liability insurance; or  
 (2) is insured by a nonadmitted carrier.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.036, eff. Sept. 1, 2003.

Sec. 301.409. DUTY OF PROSECUTING ATTORNEY TO REPORT. (a) The attorney representing the state shall cause the clerk of the court of record in which the conviction, adjudication, or finding is entered to prepare and forward to the board a certified true and correct abstract of the court record of the case not later than the 30th day after the date:

(1) a person known to be a nurse who is licensed, otherwise lawfully practicing in this state, or applying to be licensed to practice is convicted of:



- (A) a felony;
  - (B) a misdemeanor involving moral turpitude;
  - (C) a violation of a state or federal narcotics or controlled substance law; or
  - (D) an offense involving fraud or abuse under the Medicare or Medicaid program; or
- (2) a court finds that a nurse is mentally ill or mentally incompetent.

(b) A prosecuting attorney shall comply with Subsection (a) even if the conviction, adjudication, or finding is entered, withheld, or appealed under the laws of this state.

- (c) The abstract required under Subsection (a) must include:
- (1) the name and address of the nurse or applicant;
  - (2) a description of the nature of the offense committed, if any;
  - (3) the sentence, if any; and
  - (4) the judgment of the court.

(d) The board shall prepare the form of the abstract and distribute a copy to each district attorney and county attorney in this state with appropriate instructions for preparation and filing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.037, eff. Sept. 1, 2003.

Sec. 301.410. REPORT REGARDING IMPAIRMENT BY CHEMICAL DEPENDENCY, MENTAL ILLNESS, OR DIMINISHED MENTAL CAPACITY. (a) A person who is required to report a nurse under this subchapter because the nurse is impaired or suspected of being impaired by chemical dependency or mental illness may report to a peer assistance program approved by the board under Chapter 467, Health and Safety Code, instead of reporting to the board or requesting review by a nursing peer review committee.

(b) A person who is required to report a nurse under this subchapter because the nurse is impaired or suspected of being impaired by chemical dependency or diminished mental capacity must report to the board if the person believes that an impaired nurse committed a practice violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.038, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 24, eff. September 1, 2007.

Sec. 301.4105. BOARD RESPONSIBILITY FOLLOWING REPORT. The board shall determine whether a nurse violated this chapter or a rule adopted under this chapter for any case reported to the board in which the nurse's ability to perform the practice of nursing was impaired or suspected of being impaired by chemical dependency or diminished mental capacity and in which the nurse is suspected of committing a practice violation. The board, in deciding whether to take disciplinary action against the nurse for a violation of this chapter or board rules, shall balance the need to protect the public and the need to ensure the impaired nurse seeks treatment.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 25, eff. September 1, 2007.

Sec. 301.4106. PEER ASSISTANCE PROGRAMS. The board by rule shall develop guidelines to:

(1) outline the roles and responsibilities of the board and a peer assistance program established or approved by the board under Chapter 467, Health and Safety Code;

(2) outline the process for a peer assistance program to refer to the board complaints alleging a violation of the practice of nursing;

(3) establish requirements for successfully completing a peer assistance program and for notification of the board of the successful completion by a nurse the board has ordered to attend or referred to the program; and

(4) establish a procedure for evaluating the success of a peer assistance program established or approved by the board under Chapter 467, Health and Safety Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 25, eff. September 1, 2007.

Sec. 301.411. EFFECT OF FAILURE TO REPORT. (a) A person is

not liable in a civil action for failure to file a report required by this subchapter.

(b) The appropriate state licensing agency may take action against a person regulated by the agency for a failure to report as required by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.412. REPORTING IMMUNITY. A person who in good faith makes a report required or authorized under this subchapter, or a person who advises a nurse of the nurse's right or obligation to report under this subchapter:

(1) is immune from civil and criminal liability that, in the absence of the immunity, might result from making the report or giving the advice; and

(2) may not be subjected to other retaliatory action as a result of making the report or giving the advice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 877 (S.B. 192), Sec. 5, eff. September 1, 2011.

Sec. 301.413. RETALIATORY ACTION. (a) A person may file a counterclaim in a pending action or prove a cause of action in a subsequent suit to recover defense costs, including reasonable attorney's fees and actual and punitive damages, if:

(1) the person is named as a defendant in a civil action or subjected to other retaliatory action as a result of:

(A) filing a report required or authorized, or reasonably believed to be required or authorized, under this subchapter as a result of refusing to engage in conduct as authorized by Section 301.352;

(B) requesting in good faith a nursing peer review committee determination under Section 303.005; or

(C) providing advice to a person regarding:

(i) filing a report required or authorized, or reasonably believed to be required or authorized, under this subchapter as a result of refusing to engage in conduct as authorized

by Section 301.352; or

(ii) requesting in good faith a nursing peer review committee determination under Section 303.005; and

(2) the suit or retaliatory action is determined to be frivolous, unreasonable, or taken in bad faith.

(b) A person may not suspend, terminate, or otherwise discipline, discriminate against, or retaliate against a person who:

(1) reports in good faith under this subchapter;

(2) requests, in good faith, a nursing peer review committee determination under Section 303.005;

(3) refuses to engage in conduct as authorized by Section 301.352; or

(4) advises a nurse of the nurse's right to:

(A) report under this subchapter;

(B) request a nursing peer review committee determination under Section 303.005; or

(C) refuse to engage in conduct as authorized by Section 301.352.

(b-1) A person suspected of violating Subsection (b) may be reported to the appropriate licensing agency and, notwithstanding any other provision, that agency may impose an administrative penalty not to exceed \$25,000 against the person if the agency finds a violation of Subsection (b). An administrative penalty imposed under this subsection is in addition to other penalties the agency is authorized to impose and is subject to the procedural requirements applicable to the appropriate licensing agency.

(c) A person who reports under this subchapter, refuses to engage in conduct as authorized by Section 301.352, or requests a nursing peer review committee determination under Section 303.005, or a person who advises a nurse of the nurse's right to report under this subchapter, refuse to engage in conduct as authorized by Section 301.352, or request a nursing peer review committee determination under Section 303.005, has a cause of action against a person who violates Subsection (b), and may recover:

(1) the greater of:

(A) actual damages, including damages for mental anguish even if no other injury is shown; or

(B) \$5,000;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(d) In addition to the amount recovered under Subsection (c), a person whose employment is suspended or terminated in violation of this section is entitled to:

(1) reinstatement in the employee's former position or severance pay in an amount equal to three months of the employee's most recent salary; and

(2) compensation for wages lost during the period of suspension or termination.

(e) A person who brings an action under this section has the burden of proof. It is a rebuttable presumption that the person was suspended, terminated, or otherwise disciplined, discriminated against, or retaliated against for reporting under this subchapter, for refusing to engage in conduct as authorized by Section 301.352, for requesting a peer review committee determination under Section 303.005, or for providing advice to a person regarding reporting under this subchapter, refusing to engage in conduct as authorized by Section 301.352, or requesting a peer review committee determination under Section 303.005 if:

(1) the person was suspended, terminated, or otherwise disciplined, discriminated against, or retaliated against within 60 days after the date the report, refusal, or request was made or the advice was given; and

(2) the board or a court determines that:

(A) the report that is the subject of the cause of action was:

(i) authorized or required under Section 301.402, 301.4025, 301.403, 301.405, 301.406, 301.407, 301.408, 301.409, or 301.410; and

(ii) made in good faith;

(B) the request for a peer review committee determination that is the subject of the cause of action was:

(i) authorized under Section 303.005; and

(ii) made in good faith;

(C) the refusal to engage in conduct was authorized by Section 301.352; or

(D) the advice that is the subject of the cause of action was given in good faith.

(f) An action under this section may be brought in a district court of the county in which:

- (1) the plaintiff resides;
- (2) the plaintiff was employed by the defendant; or
- (3) the defendant conducts business.

(g) Subject to Subsection (h), a nurse employed by a hospital operated by or on behalf of a state or local governmental entity who alleges a violation of Subsection (b) may sue the state or local governmental entity for relief under this section, and the sovereign immunity of the state or local governmental entity from suit and from liability is waived for the limited purpose of allowing the nurse to maintain a lawsuit in state court to obtain that relief. Relief under this section is in addition to any other remedies a nurse may have under state or federal law as a public employee. In this subsection:

(1) "Local governmental entity," "public employee," and "state governmental entity" have the meanings assigned by Section 554.001, Government Code.

(2) "Hospital" has the meaning assigned by Section 241.003, Health and Safety Code, and includes a mental hospital licensed under Chapter 577, Health and Safety Code.

(h) Relief may be granted in a lawsuit brought under Subsection (g) for an alleged violation of Subsection (b)(1) based on a report made by a nurse under Section 301.4025(b) only if the nurse:

(1) made the report:

(A) in writing, which may be provided electronically;

or

(B) verbally, if authorized by the nurse's employer or another entity at which the nurse is authorized to practice;

(2) made the report to:

(A) the nurse's supervisor;

(B) a committee authorized under state or federal law to receive reports under Section 301.4025(b); or

(C) an individual or committee authorized by the nurse's employer or another entity at which the nurse is authorized to practice; and

(3) made the report not later than:

(A) the fifth day after the date the nurse became aware of the situation if the situation involves a single incident; or

(B) the fifth day after the date the nurse became aware of the most recent occurrence of the situation if the situation involves multiple incidents or a pattern of behavior.

(i) For purposes of Subsection (h), "supervisor" means an individual who has authority over the responsibilities of the nurse making the report or an individual who is in the nurse's chain of command.

(j) The following provisions of Chapter 554, Government Code, apply to a lawsuit under Subsection (g):

(1) the type of relief and the amount of damages available to a public employee under Section 554.003;

(2) the time during which a public employee must seek relief under Section 554.005; and

(3) the requirement that a public employee use the grievance or appeal procedures of the state or local governmental entity before suing for relief under Section 554.006.

(k) A lawsuit under Subsection (g) against a state governmental entity shall be brought in a district court in Travis County or a county in which all or part of the acts or omissions giving rise to the cause of action occurred.

(l) A lawsuit under Subsection (g) against a local governmental entity shall be brought in a district court in a county in which all or part of the entity is located.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 14, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 877 (S.B. 192), Sec. 6, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1258 (H.B. 581), Sec. 1, eff. September 1, 2013.

Sec. 301.414. NOTICE AND REVIEW OF REPORT. (a) The board shall notify each nurse who is reported to the board under Section 301.402, 301.403, 301.405, 301.406, 301.407, 301.408, or 301.409 of the filing of the report unless the notification would jeopardize an active investigation.

(b) The nurse or the nurse's authorized representative is entitled on request to review any report submitted to the board under

a section specified under Subsection (a) unless doing so would jeopardize an active investigation. The board may not reveal the identity of the person making or signing the report.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.039, eff. Sept. 1, 2003.

Sec. 301.415. REBUTTAL STATEMENT. (a) A nurse who is entitled to receive notice under Section 301.414 or the authorized representative of the nurse may file with the board a statement of reasonable length containing the nurse's rebuttal of any information in the report to the board.

(b) The statement made under Subsection (a) must accompany the part of the report being rebutted.

(c) In investigating the report, the board shall:

- (1) review the statement made under Subsection (a); and
- (2) evaluate each reason asserted by the nurse to justify the nurse's conduct.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.040, eff. Sept. 1, 2003.

Sec. 301.416. INVESTIGATION. (a) Except as provided by Subsections (b) and (c), a report under this subchapter shall be treated as a complaint under Section 301.457.

(b) If the board determines that the reported conduct does not indicate that the continued practice of nursing by the nurse poses a risk of harm to a client or other person, the board, with the written consent of the nurse and the person making the report, may elect not to proceed with an investigation or to file formal charges. The board shall:

- (1) maintain a record of the report; and
- (2) investigate the report if it receives two or more reports involving separate incidents regarding the nurse in any five-year period.

(c) The board is not required to investigate a report filed by an insurer under Section 301.408, but shall:

- (1) maintain a record of the report; and
- (2) investigate the report if it receives two or more



reports involving separate incidents regarding the nurse in any five-year period.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.041, eff. Sept. 1, 2003.

Sec. 301.417. CONFIDENTIALITY REQUIREMENTS; DISCLOSURE OF INFORMATION. (a) A report required or authorized under this subchapter and the identity of the person making the report are confidential and may not be disclosed except as provided by this section and Section 301.414.

(b) The board may disclose the information to the same extent that the board may disclose information relating to a complaint under Section 301.466.

(c) Repealed by Acts 2005, 79th Leg., Ch. 113, Sec. 18, eff. May 20, 2005.

(d) In addition to the other authorizations of this section, the information may be disclosed in:

(1) a civil action in which a reporting person is named as a defendant as a result of making the report; or

(2) the prosecution of a cause of action based on a claim that the reporting person was subject to retaliatory action as a result of making the report.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 13, eff. May 20, 2005.

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 18, eff. May 20, 2005.

Sec. 301.418. DISCLOSURE OF CHARGES OR DISCIPLINARY ACTION.

(a) This subchapter does not prevent disclosure under Section 301.466 of formal charges filed by the board or a final disciplinary action taken by the board as a result, in whole or in part, of submission of a report under this subchapter.

(b) A report or information submitted as required or authorized by this subchapter arising out of the provision or failure to provide nursing services may not be made available in a liability action for:

- (1) discovery;
- (2) court subpoena; or
- (3) introduction into evidence.

(c) A person is not prevented from taking disciplinary action against a nurse by:

- (1) the filing of a report under this subchapter with the board;
- (2) an investigation by the board; or
- (3) the disposition of a matter by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.042, eff. Sept. 1, 2003.

Sec. 301.419. GENERAL PROVISIONS REGARDING DUTY TO REPORT; MINOR INCIDENTS. (a) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(5), eff. September 1, 2007.

(b) The board shall adopt rules governing reporting required under this subchapter to minimize:

- (1) unnecessary duplicative reporting; and
- (2) the reporting of a minor incident.

(c) If the board determines that a report submitted under this subchapter is without merit, the board shall expunge the report from the nurse's file.

(d) The board shall inform, in the manner the board determines appropriate, nurses, facilities, agencies, and other persons of their duty to report under this subchapter.

(e) The reporting required under this subchapter does not constitute state action on behalf of the person reporting.

(f) The duty to report or any other requirement of this subchapter may not be nullified by a contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.043, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 21(5), eff. September 1, 2007.

#### **SUBCHAPTER J. PROHIBITED PRACTICES AND DISCIPLINARY ACTIONS**

Sec. 301.451. CERTAIN PROHIBITED PRACTICES. A person may not:

(1) sell, fraudulently obtain, or fraudulently furnish a nursing diploma, license, renewal license, or record;

(2) assist another person in selling, fraudulently obtaining, or fraudulently furnishing a nursing diploma, license, renewal license, or record;

(3) practice nursing under a diploma, license, or record that was:

(A) obtained unlawfully or fraudulently; or

(B) signed or issued unlawfully or under false representation; or

(4) practice nursing in a period in which the person's license is suspended or revoked.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.044, eff. Sept. 1, 2003.

Sec. 301.4515. USE OF CERTAIN NURSING TITLES. Unless the person is practicing under the delegated authority of a registered nurse or is otherwise authorized by state or federal law, a person may not use, in connection with the person's name:

(1) the title "nurse aide," "nurse assistant," or "nurse technician"; or

(2) any other similar title.

Added by Acts 2003, 78th Leg., ch. 876, Sec. 8, eff. June 20, 2003.

Sec. 301.452. GROUNDS FOR DISCIPLINARY ACTION. (a) In this section, "intemperate use" includes practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

(b) A person is subject to denial of a license or to disciplinary action under this subchapter for:

(1) a violation of this chapter, a rule or regulation not inconsistent with this chapter, or an order issued under this chapter;

(2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;

(3) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;

(4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;

(5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;

(6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;

(7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing;

(8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction or under federal law;

(9) intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient;

(10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;

(11) adjudication of mental incompetency;

(12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or

(13) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the board's opinion, exposes a patient or other person unnecessarily to risk of harm.

(c) The board may refuse to admit a person to a licensing examination for a ground described under Subsection (b).

(d) The board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the board under this section is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.124(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 1.045, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1058 (H.B. 1366), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 26, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 5, eff. September 1, 2013.

Sec. 301.4521. PHYSICAL AND PSYCHOLOGICAL EVALUATION. (a) In this section:

(1) "Applicant" means:

(A) a petitioner for a declaratory order of eligibility for a license; or

(B) an applicant for an initial license or renewal of a license.

(2) "Evaluation" means a physical or psychological evaluation conducted to determine a person's fitness to practice nursing.

(b) The board may require a nurse or applicant to submit to an evaluation only if the board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of:

(1) physical impairment;

(2) mental impairment; or

(3) chemical dependency or abuse of drugs or alcohol.

(c) A demand for an evaluation under Subsection (b) must be in writing and state:

(1) the reasons probable cause exists to require the evaluation; and

(2) that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.

(d) If the nurse or applicant refuses to submit to the evaluation, the board shall schedule a hearing on the issue of probable cause to be conducted by the State Office of Administrative Hearings. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the board had probable cause to require an evaluation. The nurse or applicant may present testimony and other

evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the board's demand for an evaluation. The order may not be vacated or modified under Section 2001.058, Government Code.

(e) If a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under Subsection (d), the board may:

- (1) refuse to issue or renew a license;
- (2) suspend a license; or
- (3) issue an order limiting the license.

(f) The board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the board for a reason other than a reason listed in Subsection (b). A request for an evaluation under this subsection must be in writing and state:

- (1) the reasons for the request;
- (2) the type of evaluation requested;
- (3) how the board may use the evaluation;
- (4) that the nurse or applicant may refuse to submit to an

evaluation; and

(5) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.

(g) If a nurse or applicant refuses to consent to an evaluation under Subsection (f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant:

- (1) not later than the 30th day before the date of the hearing, notifies the board that an evaluation will be introduced into evidence at the hearing;
- (2) provides the board the results of that evaluation;
- (3) informs the board of any other evaluations by any other practitioners; and

(4) consents to an evaluation by a practitioner that meets board standards established under Subsection (h).

(h) The board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under this section.

The board shall maintain a list of qualified practitioners. The board may solicit qualified practitioners located throughout the state to be on the list.

(i) A nurse or applicant shall pay the costs of an evaluation conducted under this section.

(j) The results of an evaluation under this section are:

(1) confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be:

(A) introduced as evidence in a proceeding before the board or a hearing conducted by the State Office of Administrative Hearings under this chapter;

(B) included in the findings of fact and conclusions of law in a final board order; and

(C) disclosed to a peer assistance program approved by the board under Chapter 467, Health and Safety Code, and to which the board has referred the nurse.

(k) If the board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under this section, the evaluation must be expunged from the board's records.

(l) The board shall adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under this section.

(m) The authority granted to the board under this section is in addition to the board's authority to make licensing decisions under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. [3961](#)), Sec. 10, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 878 (S.B. [193](#)), Sec. 4, eff. September 1, 2011.

Sec. 301.453. DISCIPLINARY AUTHORITY OF BOARD; METHODS OF DISCIPLINE. (a) If the board determines that a person has committed an act listed in Section 301.452(b), the board shall enter an order

imposing one or more of the following:

- (1) denial of the person's application for a license, license renewal, or temporary permit;
  - (2) issuance of a written warning;
  - (3) administration of a public reprimand;
  - (4) limitation or restriction of the person's license,
- including:

(A) limiting to or excluding from the person's practice one or more specified activities of nursing; or

- (B) stipulating periodic board review;
- (5) suspension of the person's license;
- (6) revocation of the person's license; or
- (7) assessment of a fine.

(b) In addition to or instead of an action under Subsection (a), the board, by order, may require the person to:

- (1) submit to care, counseling, or treatment by a health provider designated by the board as a condition for the issuance or renewal of a license;
  - (2) participate in a program of education or counseling prescribed by the board, including a program of remedial education;
  - (3) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the board;
  - (4) perform public service the board considers appropriate;
- or
- (5) abstain from the consumption of alcohol or the use of drugs and submit to random periodic screening for alcohol or drug use.

(c) The board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

(d) If the board suspends, revokes, or accepts surrender of a license, the board may impose conditions for reinstatement that the person must satisfy before the board may issue an unrestricted license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.046, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. [3961](#)), Sec. 11, eff.



June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 6, eff. September 1, 2013.

Sec. 301.4531. SCHEDULE OF SANCTIONS. (a) The board by rule shall adopt a schedule of the disciplinary sanctions that the board may impose under this chapter. In adopting the schedule of sanctions, the board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

(b) In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the board shall consider:

(1) whether the person:

(A) is being disciplined for multiple violations of either this chapter or a rule or order adopted under this chapter; or

(B) has previously been the subject of disciplinary action by the board and has previously complied with board rules and this chapter;

(2) the seriousness of the violation;

(3) the threat to public safety; and

(4) any mitigating factors.

(c) In the case of a person described by:

(1) Subsection (b)(1)(A), the board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and

(2) Subsection (b)(1)(B), the board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 27, eff. September 1, 2007.

Sec. 301.4535. REQUIRED SUSPENSION, REVOCATION, OR REFUSAL OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a nurse's

license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of:

(1) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code;

(2) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony;

(3) sexual assault under Section 22.011, Penal Code;

(4) aggravated sexual assault under Section 22.021, Penal Code;

(5) continuous sexual abuse of young child or children under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code;

(6) aggravated assault under Section 22.02, Penal Code;

(7) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code;

(8) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code;

(9) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony;

(10) an offense involving a violation of certain court orders or conditions of bond under Section 25.07, 25.071, or 25.072, Penal Code, punished as a felony;

(11) an agreement to abduct a child from custody under Section 25.031, Penal Code;

(12) the sale or purchase of a child under Section 25.08, Penal Code;

(13) robbery under Section 29.02, Penal Code;

(14) aggravated robbery under Section 29.03, Penal Code;

(15) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or

(16) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

(a-1) An applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under

Subsection (a) is not eligible for a probationary, stipulated, or otherwise encumbered license unless the board establishes by rule criteria that would permit the issuance or renewal of the license.

(b) On final conviction or a plea of guilty or nolo contendere for an offense listed in Subsection (a), the board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.

(c) A person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 1058 (H.B. 1366), Sec. 4, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.46, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 12, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 96 (S.B. 743), Sec. 8, eff. September 1, 2013.

Sec. 301.454. NOTICE AND HEARING. (a) Except in the case of a temporary suspension authorized under Section 301.455 or 301.4551 or an action taken in accordance with an agreement between the board and a license holder, the board may not take any disciplinary action relating to a license unless:

(1) the board has served notice to the license holder of the facts or conduct alleged to warrant the intended action; and

(2) the license holder has been given an opportunity, in writing or through an informal meeting, to show compliance with all requirements of law for the retention of the license.

(b) If an informal meeting is held, a board member, staff member, or board representative who attends the meeting is considered to have participated in the hearing of the case for the purposes of ex parte communications under Section 2001.061, Government Code.

(c) A person is entitled to a hearing conducted by the State Office of Administrative Hearings if the board proposes to:

- (1) refuse to admit the person to examination;
- (2) refuse to issue a license or temporary permit;
- (3) refuse to renew a license; or
- (4) suspend or revoke the person's license or permit.

(d) The State Office of Administrative Hearings shall use the schedule of sanctions adopted by the board for any sanction imposed as the result of a hearing conducted by that office.

(e) Notwithstanding Subsection (a), a person is not entitled to a hearing on a refusal to renew a license if the person:

- (1) fails to submit a renewal application; or
- (2) submits an application that:

(A) is incomplete;

(B) shows on its face that the person does not meet the renewal requirements; or

(C) is not accompanied by the correct fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 7, eff. September 1, 2013.

Sec. 301.455. TEMPORARY LICENSE SUSPENSION OR RESTRICTION. (a) The license of a nurse shall be temporarily suspended or restricted on a determination by a majority of the board or a three-member committee of board members designated by the board that, from the evidence or information presented, the continued practice of the nurse would constitute a continuing and imminent threat to the public welfare.

(b) A license may be temporarily suspended or restricted under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the State Office of Administrative Hearings is initiated simultaneously with the temporary suspension or determination to restrict; and

(2) a hearing is held as soon as possible under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 17th day after the date of the temporary suspension or restriction to determine whether probable cause exists that a continuing and imminent threat to the public

welfare exists. The probable cause hearing shall be conducted as a de novo hearing.

(d) A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension or restriction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.047, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1058 (H.B. 1366), Sec. 5, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 878 (S.B. 193), Sec. 5, eff. September 1, 2011.

Sec. 301.4551. TEMPORARY LICENSE SUSPENSION FOR DRUG OR ALCOHOL USE. (a) The board shall temporarily suspend the license of a nurse as provided by Section 301.455 if the nurse is under a board order prohibiting the use of alcohol or a drug or requiring the nurse to participate in a peer assistance program, and the nurse:

(1) tests positive for alcohol or a prohibited drug;

(2) refuses to comply with a board order to submit to a drug or alcohol test; or

(3) fails to participate in the peer assistance program and the program issues a letter of dismissal and referral to the board for noncompliance.

(b) For the purposes of Section 301.455(c), proof of the elements required for the board to suspend a license under this section is proof that probable cause of a continuing and imminent threat to the public welfare exists.

Added by Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 13, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 878 (S.B. 193), Sec. 6, eff. September 1, 2011.

Sec. 301.456. EVIDENCE. A certified copy of the order of the denial, suspension, or revocation or other action under Section 301.452(b)(8) is conclusive evidence of that action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.124(b), eff. Sept. 1, 2001.

Sec. 301.457. COMPLAINT AND INVESTIGATION. (a) The board or any person may initiate a proceeding under this subchapter by filing with the board a complaint against a nurse. The complaint must be in writing and signed by the complainant.

(b) Except as otherwise provided by this section, the board or a person authorized by the board shall conduct each investigation. Each complaint against a nurse that requires a determination of nursing competency shall be reviewed by a board member, consultant, or employee with a nursing background the board considers sufficient.

(c) On the filing of a complaint, the board:

(1) may conduct a preliminary investigation into the identity of the nurse named or described in the complaint;

(2) shall make a timely and appropriate preliminary investigation of the complaint; and

(3) may issue a warning or reprimand to the nurse.

(d) After any preliminary investigation to determine the identity of the subject of the complaint, unless it would jeopardize an investigation, the board shall notify the nurse that a complaint has been filed and the nature of the complaint. If the investigation reveals probable cause to take further disciplinary action, the board shall either attempt an informal disposition of the complaint or file a formal charge against the nurse stating the provision of this chapter or board rule that is alleged to have been violated and a brief description of each act or omission that constitutes the violation.

(e) The board shall conduct an investigation of the complaint to determine:

(1) whether the nurse's continued practice of nursing poses a risk of harm to clients or other persons; and

(2) whether probable cause exists that a nurse committed an act listed in Section 301.452(b) or that violates other law.

(f) In making a determination under Subsection (e), the board shall review the evidence to determine the extent to which a deficiency in care by the registered nurse was the result of deficiencies in the registered nurse's judgment, knowledge, training,

or skill rather than other factors beyond the nurse's control. A determination that a deficiency in care is attributable to a registered nurse must be based on the extent to which the registered nurse's conduct was the result of a deficiency in the registered nurse's judgment, knowledge, training, or skill.

(g) If the board determines after investigating a complaint under Subsection (e) that there is reason to believe that a nurse's deficiency in care was the result of a factor beyond the nurse's control, the board shall report that determination to the patient safety committee at the facility where the nurse's deficiency in care occurred, or if the facility does not have a patient safety committee, to the chief nursing officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.048, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 876, Sec. 9, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 15, eff. September 1, 2007.

Sec. 301.458. INITIATION OF FORMAL CHARGES; DISCOVERY. (a) Unless there is an agreed disposition of the complaint under Section 301.463, if probable cause is found under Section 301.457(e)(2), the board or the board's authorized representative shall file formal charges against the nurse.

(b) A formal charge must:

- (1) be written;
- (2) be specific enough to enable a person of common understanding to know what is meant by the formal charge; and
- (3) contain a degree of certainty that gives the person who is the subject of the formal charge notice of each particular act alleged to violate a specific statute, board rule, or board order.

(c) A copy of the formal charge shall be served on the nurse or the nurse's counsel of record.

(d) The board shall adopt reasonable rules to promote discovery by each party to a contested case.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.049, eff. Sept. 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 8, eff. September 1, 2013.

Sec. 301.459. FORMAL HEARING. (a) The board by rule shall adopt procedures under Chapter 2001, Government Code, governing formal disposition of a contested case. The State Office of Administrative Hearings shall conduct a formal hearing.

(b) In any hearing under this section, a nurse is entitled to appear in person or by counsel.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.050, eff. Sept. 1, 2003.

Sec. 301.460. ACCESS TO INFORMATION. (a) Except for good cause shown for delay and subject to any other privilege or restriction set forth by statute, rule, or legal precedent, the board shall, not later than the 30th day after the date the board receives a written request from a license holder who is the subject of a formal charge filed under Section 301.458 or from the license holder's counsel of record, provide the license holder with access to:

(1) all known exculpatory information in the board's possession; and

(2) information in the board's possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint.

(b) The board is not required to provide:

(1) board investigative reports or investigative memoranda;

(2) the identity of nontestifying complainants;

(3) attorney-client communications;

(4) attorney work product; or

(5) other materials covered by a privilege as recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) The provision of information under Subsection (a) does not constitute a waiver of privilege or confidentiality under this chapter or other applicable law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



Sec. 301.461. ASSESSMENT OF COSTS. The board may assess a person who is found to have violated this chapter the administrative costs of conducting a hearing to determine the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.462. VOLUNTARY SURRENDER OF LICENSE. The board may revoke a nurse's license without formal charges, notice, or opportunity of hearing if the nurse voluntarily surrenders the nurse's license to the board and executes a sworn statement that the nurse does not desire to be licensed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.051, eff. Sept. 1, 2003.

Sec. 301.463. AGREED DISPOSITION. (a) Unless precluded by this chapter or other law, the board may dispose of a complaint by:

- (1) stipulation;
- (2) agreed settlement;
- (3) agreed order; or
- (4) dismissal.

(b) An agreed disposition of a complaint is considered to be a disciplinary order for purposes of reporting under this chapter and an administrative hearing and proceeding by a state or federal regulatory agency regarding the practice of nursing.

(c) An agreed order is a public record.

(d) In civil or criminal litigation an agreed disposition is a settlement agreement under Rule 408, Texas Rules of Evidence.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.052, eff. Sept. 1, 2003.

Sec. 301.464. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

- (1) informal disposition of a contested case under Section 2001.056, Government Code; and
- (2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must:

- (1) provide the complainant and the license holder an opportunity to be heard; and
- (2) require the presence of a representative of the board's legal staff or of the attorney general to advise the board or the board's employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.465. SUBPOENAS; REQUEST FOR INFORMATION. (a) Notwithstanding Section 2001.089, Government Code, the board may request issuance of a subpoena to be served in any manner authorized by law, including personal service by a board investigator or by certified mail.

(b) Each person shall respond promptly and fully to a request for information by the board or to a subpoena issued by the board. A request or subpoena may not be refused, denied, or resisted unless the request or subpoena calls for information within the attorney-client privilege. No other privilege applies to a board proceeding.

(c) The board may pay a reasonable fee for photocopies subpoenaed at the board's request. The amount paid may not exceed the amount the board charges for copies of its records.

(d) The board shall protect, to the extent possible, the identity of each patient named in information received by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 9, eff. September 1, 2013.

Sec. 301.466. CONFIDENTIALITY. (a) A complaint and investigation concerning a nurse under this subchapter, all information and material compiled by the board in connection with the complaint and investigation, and the information described by Subsection (d) are:

- (1) confidential and not subject to disclosure under Chapter 552, Government Code; and
- (2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the

board or a board employee or agent involved in license holder discipline.

(b) Notwithstanding Subsection (a), information regarding a complaint and an investigation may be disclosed to:

- (1) a person involved with the board in a disciplinary action against the nurse;
- (2) a nursing licensing or disciplinary board in another jurisdiction;
- (3) a peer assistance program approved by the board under Chapter 467, Health and Safety Code;
- (4) a law enforcement agency; or
- (5) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.

(c) The filing of formal charges against a nurse by the board, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

(d) Notwithstanding Subsection (c), if the board orders a nurse to participate in a peer assistance program approved by the board under Section 467.003, Health and Safety Code, the complaint, filing of formal charges, nature of those charges, final board order, and disciplinary proceedings are subject to disclosure:

- (1) only to the same extent as information regarding a complaint is subject to disclosure under Subsection (b); or
- (2) in a subsequent matter relating to the board order or a subsequent violation of this chapter or a board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.053, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. [1058](#)), Sec. 10, eff. September 1, 2013.

Sec. 301.467. REINSTATEMENT. (a) On application, the board may reinstate a license to practice professional nursing or vocational nursing to a person whose license has been revoked, suspended, or surrendered.

(b) An application to reinstate a revoked license:

(1) may not be made before the first anniversary of the date of the revocation; and

(2) must be made in the manner and form the board requires.

(c) If the board denies an application for reinstatement, it may set a reasonable waiting period before the applicant may reapply for reinstatement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.054, eff. Sept. 1, 2003.

Sec. 301.468. PROBATION. (a) The board may determine that an order denying a license application or suspending a license be probated. A person subject to a probation order shall conform to each condition the board sets as the terms of probation, including a condition:

(1) limiting the practice of the person to, or excluding, one or more specified activities of professional nursing or vocational nursing;

(2) requiring the person to submit to supervision, care, counseling, or treatment by a practitioner designated by the board; or

(3) requiring the person to submit to random drug or alcohol tests in the manner prescribed by the board.

(b) At the time the probation is granted, the board shall establish the term of the probationary period.

(c) At any time while the person remains subject to the probation order, the board may hold a hearing and rescind the probation and enforce the board's original action in denying or suspending the license. The hearing shall be called by the presiding officer of the board, who shall issue a notice to be served on the person or the person's counsel not later than the 20th day before the date scheduled for the hearing that:

(1) sets the time and place for the hearing; and

(2) contains the charges or complaints against the probationer.

(d) Notice under Subsection (c) is sufficient if sent by registered or certified mail to the affected person at the person's most recent address as shown in the board's records.

(e) A hearing under this section is limited to a determination

of whether the person violated the terms of the probation order under Subsection (a) and whether the board should:

(1) continue, rescind, or modify the terms of probation, including imposing an administrative penalty; or

(2) enter an order denying, suspending, or revoking the person's license.

(f) If one of the conditions of probation is the prohibition of using alcohol or a drug or participation in a peer assistance program, violation of that condition is established by:

(1) a positive drug or alcohol test result;

(2) refusal to submit to a drug or alcohol test as required by the board; or

(3) a letter of noncompliance from the peer assistance program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.055, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. [3961](#)), Sec. 14, eff. June 19, 2009.

Sec. 301.469. NOTICE OF FINAL ACTION. If the board takes a final disciplinary action, including a warning or reprimand, against a nurse under this subchapter, the board shall immediately send a copy of the board's final order to the nurse and to the last known employer of the nurse.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.056, eff. Sept. 1, 2003.

Sec. 301.470. REFUND. (a) Subject to Subsection (b), the board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to a nurse for a service regulated by this chapter or the actual amount stolen or defrauded from a patient by

the nurse. The board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 28, eff. September 1, 2007.

Sec. 301.471. EMERGENCY CEASE AND DESIST ORDER. (a) If it appears to the board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of professional nursing or vocational nursing and the board determines that the unauthorized activity constitutes a clear, imminent, or continuing threat to the public health and safety, the board may:

(1) issue an emergency cease and desist order prohibiting the person from engaging in the activity; and

(2) report the activity to a local law enforcement agency or the attorney general for prosecution.

(b) An order issued under Subsection (a) must:

(1) be delivered on issuance to the person affected by the order by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;

(2) state the acts or practices alleged to be an unauthorized activity and require the person immediately to cease and desist from the unauthorized activity; and

(3) contain a notice that a request for hearing may be filed under this section.

(c) Unless the person against whom the emergency cease and desist order is directed requests a board hearing in writing before the 11th day after the date it is served on the person, the order is final and nonappealable as to that person. A request for a board hearing must:

(1) be in writing and directed to the board; and

(2) state the grounds for the request to set aside or modify the order.

(d) On receiving a request for a hearing, the board shall serve notice of the time and place of the hearing by personal delivery or registered or certified mail, return receipt requested. The hearing must be held not later than the 10th day after the date the board receives the request for a hearing unless the parties agree to a

later hearing date. A hearing under this subsection is subject to Chapter 2001, Government Code.

(e) After the hearing, the board shall affirm, modify, or set aside wholly or partly the emergency cease and desist order. An order affirming or modifying the emergency cease and desist order is immediately final for purposes of enforcement and appeal.

(f) An order under this section continues in effect unless the order is stayed by the board. The board may impose any condition before granting a stay of the order.

(g) The board may release to the public a final cease and desist order issued under this section or information regarding the existence of the order if the board determines that the release would enhance the effective enforcement of the order or will serve the public interest.

(h) A violation of an order issued under this section constitutes grounds for imposing an administrative penalty under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 28, eff. September 1, 2007.

#### **SUBCHAPTER K. ADMINISTRATIVE PENALTY**

Sec. 301.501. IMPOSITION OF PENALTY. The board may impose an administrative penalty on a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.502. AMOUNT OF PENALTY. (a) The amount of the administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited acts; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

- (2) the economic harm to property or the environment caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts made to correct the violation; and
- (6) any other matter that justice may require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 29, eff. September 1, 2007.

Sec. 301.503. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the executive director determines that a violation has occurred, the executive director may issue to the board a report stating:

- (1) the facts on which the determination is based; and
- (2) the director's recommendation on the imposition of the administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the report to the person on whom the penalty may be imposed. The notice may be given by certified mail. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.1245, eff. Sept. 1, 2001.

Sec. 301.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person may:

- (1) accept the executive director's determination and recommended administrative penalty in writing; or
- (2) make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the executive director's



determination and recommended penalty, the board by order shall approve the determination and impose the recommended penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.505. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the executive director shall set a hearing and give notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.506. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the board by order may:

(1) find that a violation occurred and impose an administrative penalty; or

(2) find that a violation did not occur.

(b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for

judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court and that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.508. COLLECTION OF PENALTY. If the person does not pay the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.509. DETERMINATION BY COURT. (a) If a court sustains

the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.510. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.511. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER L. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 301.551. INJUNCTION. (a) In addition to any other action authorized by law, the board may institute an action in its name to enjoin a violation of this chapter or a board rule.

(b) To obtain an injunction under this section, it is not necessary to allege or prove that:

(1) an adequate remedy at law does not exist; or

(2) substantial or irreparable damage would result from the continued violation.

(c) Notwithstanding Subsection (b), in a proceeding for an injunction under Subsection (a), the defendant may assert and prove as a complete defense to the action that the board's actions or proceedings were:

- (1) arbitrary or capricious;
- (2) contrary to legal requirements; or
- (3) conducted without due process of law.

(d) Either party to an action under Subsection (a) may appeal. The board is not required to give an appeal bond in a cause arising under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.552. MONITORING OF LICENSE HOLDER. The board by rule shall develop a system for monitoring the compliance of license holders with the requirements of this chapter. Rules adopted under this section must include procedures to:

- (1) monitor for compliance a license holder who is ordered by the board to perform certain acts; and
- (2) identify and monitor each license holder who represents a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.553. CIVIL PENALTY. (a) A person who violates Section 301.451 or Section 301.251 is liable to the state for a civil penalty not to exceed \$1,000 a day.

(b) The civil penalty may be collected in a suit initiated by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.554. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 301.451 or Section 301.251.

(b) An offense under Subsection (a) is a Class A misdemeanor, except that if it is shown on the trial of the offense that the

defendant has been previously convicted under Subsection (a), the offense is a felony of the third degree.

(c) Each day of violation constitutes a separate offense.

(d) On final conviction of an offense under Subsection (a), the defendant forfeits all rights and privileges conferred by a license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.555. APPEAL. (a) A person against whom the board has taken adverse action under this chapter may appeal to a district court in the county of the person's residence or in Travis County.

(b) The board's decision may not be enjoined or stayed except on application to the district court after notice to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER M. ANESTHESIA IN OUTPATIENT SETTING**

Sec. 301.601. DEFINITION. In this subchapter, "outpatient setting" means a facility, clinic, center, office, or other setting that is not part of a licensed hospital or a licensed ambulatory surgical center.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.125(a), eff. Sept. 1, 2001.

Sec. 301.602. RULES. (a) The board by rule shall establish minimum standards for anesthesia services provided in an outpatient setting by a person licensed by the board.

(b) The rules adopted under this section must be designed to protect the health, safety, and welfare of the public and include requirements relating to:

- (1) general anesthesia, regional anesthesia, and monitored anesthesia care;
- (2) patient assessment, counseling, and preparation;
- (3) patient monitoring to be performed and equipment to be used during a procedure and during post-procedure monitoring;
- (4) emergency procedures, drugs, and equipment, including

education, training, and certification of personnel, as appropriate, and including protocols for transfers to a hospital;

(5) the documentation necessary to demonstrate compliance with this subchapter; and

(6) the period in which protocols or procedures covered by rules of the board shall be reviewed, updated, or amended.

(c) The board shall cooperate with the Texas State Board of Medical Examiners in adopting rules under this subchapter to eliminate, to the extent possible, conflicts between the rules adopted by each board.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.125(a), eff. Sept. 1, 2001.

Sec. 301.603. APPLICABILITY. Rules adopted by the board under Section 301.602 do not apply to:

(1) an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used;

(2) a licensed hospital, including an outpatient facility of the hospital that is located separate from the hospital;

(3) a licensed ambulatory surgical center;

(4) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. Section 479a-1 or as listed under a successor federal statute or regulation;

(5) a facility maintained or operated by a state or local governmental entity;

(6) a clinic directly maintained or operated by the United States; or

(7) an outpatient setting accredited by:

(A) the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers;

(B) the American Association for the Accreditation of Ambulatory Surgery Facilities; or

(C) the Accreditation Association for Ambulatory Health Care.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.125(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 14, eff. May 20, 2005.

Sec. 301.604. REGISTRATION REQUIRED. (a) The board shall require each certified registered nurse anesthetist who provides anesthesia services in an outpatient setting to register biennially by applying to the board on a form prescribed by the board and paying to the board a fee in an amount established by the board.

(b) The board shall coordinate the registration required under this section with the license renewal requirements of Subchapter G so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimal administrative burden for the board and certified registered nurse anesthetists.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.125(a), eff. Sept. 1, 2001.

Sec. 301.605. COMPLIANCE WITH RULES. (a) A certified registered nurse anesthetist providing anesthesia services in an outpatient setting shall comply with the rules adopted by the board under Section 301.602.

(b) The board may require a certified registered nurse anesthetist to submit and comply with a corrective action plan to remedy or address any current or potential deficiencies with the nurse anesthetist's provision of anesthesia in an outpatient setting in accordance with this chapter or board rule.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.125(a), eff. Sept. 1, 2001.

Sec. 301.606. INSPECTIONS. (a) The board may conduct inspections to enforce this subchapter, including inspections of the equipment owned or leased by a certified registered nurse anesthetist and of documents of a certified registered nurse anesthetist's practice that relate to providing anesthesia in an outpatient setting. The board may contract with another state agency or

qualified person to conduct these inspections.

(b) Unless it would jeopardize an ongoing investigation, the board must provide notice at least five business days before the date of conducting an on-site inspection under this section.

(c) This section does not require the board to make an on-site inspection of an outpatient setting in which a certified registered nurse anesthetist provides anesthesia.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.125(a), eff. Sept. 1, 2001.

Sec. 301.607. REQUESTS FOR INSPECTION AND ADVISORY OPINIONS.

(a) The board may consider a request by a certified registered nurse anesthetist for an inspection of equipment owned or leased by the nurse anesthetist and of documents of the nurse anesthetist's practice that relate to the provision of anesthesia in an outpatient setting. The board, on payment of a fee set by the board, may conduct the requested inspection and issue an advisory opinion.

(b) An advisory opinion issued by the board under this section is not binding on the board. Except as provided by Subsection (c), the board may take any action under this chapter relating to the situation addressed by the advisory opinion as the board considers appropriate.

(c) A certified registered nurse anesthetist who requests and relies on a board advisory opinion may use the opinion as mitigating evidence in an action or proceeding by the board to impose an administrative penalty or to assess a fine under this chapter. On receipt of proof of reliance on an advisory opinion, the board shall consider the reliance and mitigate imposition of an administrative penalty or assessment of a fine accordingly.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.125(a), eff. Sept. 1, 2001.

**SUBCHAPTER N. CORRECTIVE ACTION PROCEEDING AND DEFERRED ACTION**

Sec. 301.651. DEFINITIONS. In this subchapter:

(1) "Corrective action" means a fine or remedial education imposed under Section 301.652.

(2) "Deferred action" means an action against a person



licensed or regulated under this chapter that is deferred by the board as provided by this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 144 (S.B. 1415), Sec. 2, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 12, eff. September 1, 2013.

Sec. 301.652. IMPOSITION OF CORRECTIVE ACTION. (a) The board may impose a corrective action on a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter. The corrective action:

- (1) may be a fine, remedial education, or any combination of a fine or remedial education;
- (2) is not a disciplinary action under Subchapter J; and
- (3) is subject to disclosure only to the extent a complaint is subject to disclosure under Section 301.466.

(b) The board by rule shall adopt guidelines for the types of violations for which a corrective action may be imposed.

Added by Acts 2009, 81st Leg., R.S., Ch. 144 (S.B. 1415), Sec. 2, eff. September 1, 2009.

Sec. 301.653. REPORT AND NOTICE OF VIOLATION AND CORRECTIVE ACTION. If the executive director determines that a person has committed a violation for which a corrective action may be imposed under the guidelines adopted under Section 301.652(b), the executive director may give written notice of the determination and recommendation for corrective action to the person subject to the corrective action. The notice may be given by certified mail. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the recommended corrective action; and
- (3) inform the person of the person's options in responding to the notice.

Added by Acts 2009, 81st Leg., R.S., Ch. 144 (S.B. 1415), Sec. 2, eff. September 1, 2009.

Sec. 301.654. RESPONSE. Not later than the 20th day after the date the person receives the notice under Section 301.653, the person may:

- (1) accept in writing the executive director's determination and recommended corrective action; or
- (2) reject the executive director's determination and recommended corrective action.

Added by Acts 2009, 81st Leg., R.S., Ch. 144 (S.B. 1415), Sec. 2, eff. September 1, 2009.

Sec. 301.655. ACTION FOLLOWING RESPONSE. (a) If the person accepts the executive director's determination and satisfies the recommended corrective action, the case is closed.

(b) If the person does not accept the executive director's determination and recommended corrective action as originally proposed or as modified by the board or fails to respond in a timely manner to the executive director's notice as provided by Section 301.654, the executive director shall:

- (1) terminate corrective action proceedings; and
- (2) dispose of the matter as a complaint under Subchapter

J.

Added by Acts 2009, 81st Leg., R.S., Ch. 144 (S.B. 1415), Sec. 2, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 13, eff. September 1, 2013.

Sec. 301.6555. DEFERRED ACTION. (a) For any action or complaint for which the board proposes to impose on a person a sanction other than a reprimand or a denial, suspension, or revocation of a license, the board may:

- (1) defer the final action the board has proposed if the person conforms to conditions imposed by the board, including any condition the board could impose as a condition of probation under Section 301.468; and

(2) if the person successfully meets the imposed conditions, dismiss the complaint.

(b) Except as provided by this subsection, a deferred action by the board is not confidential and is subject to disclosure in accordance with Chapter 552, Government Code. If the person successfully meets the conditions imposed by the board in deferring final action and the board dismisses the action or complaint, the deferred action of the board is confidential to the same extent as a complaint is confidential under Section 301.466.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 14, eff. September 1, 2013.

Sec. 301.656. REPORT TO BOARD. The executive director shall report periodically to the board on the corrective or deferred actions imposed under this subchapter, including:

- (1) the number of actions imposed; and
- (2) the types of violations for which actions were imposed.

Added by Acts 2009, 81st Leg., R.S., Ch. 144 (S.B. 1415), Sec. 2, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 15, eff. September 1, 2013.

Sec. 301.657. EFFECT ON ACCEPTANCE OF CORRECTIVE OR DEFERRED ACTION. (a) Except to the extent provided by this section, a person's acceptance of a corrective or deferred action under this subchapter does not constitute an admission of a violation but does constitute a plea of nolo contendere.

(b) The board may treat a person's acceptance of corrective or deferred action as an admission of a violation if the board imposes a sanction on the person for a subsequent violation of this chapter or a rule or order adopted under this chapter.

(c) The board may consider a corrective or deferred action taken against a person to be a prior disciplinary action under this chapter when imposing a sanction on the person for a subsequent violation of this chapter or a rule or order adopted under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 144 (S.B. 1415), Sec. 2, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 16, eff. September 1, 2013.

### CHAPTER 303. NURSING PEER REVIEW

Sec. 303.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Nursing.

(2) "Nurse" means a registered nurse or a vocational nurse licensed under Chapter 301.

(3) "Nursing" has the meaning assigned by Section 301.002.

(4) "Nursing peer review committee" means a committee established under the authority of the governing body of a national, state, or local nursing association, a school of nursing, the nursing staff of a hospital, health science center, nursing home, home health agency, temporary nursing service, or other health care facility, or state agency or political subdivision for the purpose of conducting peer review. The committee includes an employee or agent of the committee, including an assistant, an investigator, an intervenor, an attorney, and any other person who serves the committee in any capacity.

(4-a) "Patient safety committee" means a committee established by an association, school, agency, health care facility, or other organization to address issues relating to patient safety, including:

(A) the entity's medical staff composed of individuals licensed under Subtitle B; or

(B) a medical committee under Subchapter D, Chapter 161, Health and Safety Code.

(5) "Peer review" means the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by a nurse, the merits of a complaint concerning a nurse or nursing care, and a determination or recommendation regarding a complaint. The term includes:

(A) the evaluation of the accuracy of a nursing assessment and observation and the appropriateness and quality of the care rendered by a nurse;

(B) a report made to a nursing peer review committee

concerning an activity under the committee's review authority;

(C) a report made by a nursing peer review committee to another committee or to the board as permitted or required by law;

(D) implementation of a duty of a nursing peer review committee by a member, an agent, or an employee of the committee; and

(E) the provision of information, advice, and assistance to nurses and other persons relating to:

(i) the rights and obligations of and protections for nurses who raise care concerns or report under Chapter 301 or other state or federal law;

(ii) the rights and obligations of and protections for nurses who request nursing peer review under this chapter;

(iii) nursing practice and patient care concerns; and

(iv) the resolution of workplace and practice questions relating to nursing and patient care.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.018, eff. Feb. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 16, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 38, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 877 (S.B. 192), Sec. 7, eff. September 1, 2011.

Sec. 303.0015. REQUIRED ESTABLISHMENT OF NURSING PEER REVIEW COMMITTEE. (a) A person shall establish a nursing peer review committee to conduct nursing peer review under this chapter and Chapter 301:

(1) for vocational nurses, if the person regularly employs, hires, or contracts for the services of 10 or more nurses; and

(2) for professional nurses, if the person regularly employs, hires, or contracts for the services of 10 or more nurses, at least five of whom are registered nurses.

(b) A person required to establish a nursing peer review committee under this section may contract with another entity to conduct the peer review for the person.

Added by Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 17, eff. September 1, 2007.

Sec. 303.002. GENERAL PROVISIONS REGARDING PEER REVIEW. (a) Repealed by Acts 2003, 78th Leg., ch. 553, Sec. 3.001.

(b) The board shall enter into a memorandum of understanding with each state agency that licenses, registers, or certifies a facility required by law to have a nursing peer review committee. The memorandum of understanding must:

(1) state the actions the board and agency are to take to encourage compliance with the requirement to have a nursing peer review committee; and

(2) be adopted as a rule of the board and the agency.

(c) A court may not enjoin the activities of a nursing peer review committee under this chapter.

(d) This chapter may not be nullified by a contract.

(e) The committee shall give the nurse being reviewed at least minimum due process, including notice and opportunity for a hearing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.019, 3.001(2), eff. Feb. 1, 2004.

Sec. 303.003. COMMITTEE MEMBERSHIP. (a) A nursing peer review committee must have nurses as three-fourths of its members.

(b) A nursing peer review committee that conducts a peer review that involves the practice of vocational nursing, to the extent feasible, must include vocational nurses as members and may have only registered nurses and vocational nurses as voting members.

(c) A nursing peer review committee that conducts a peer review that involves the practice of professional nursing must have registered nurses as two-thirds of its members and may have only registered nurses as voting members.

(d) The committee shall include to the extent feasible at least one nurse who has a working familiarity with the area of nursing practice in which the nurse being reviewed practices.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.020, eff. Feb. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 15, eff. May 20, 2005.

Sec. 303.004. PEER REVIEW BY TWO ENTITIES. (a) A nurse who, as a temporary agency nurse, faculty member, or similar staff member, practices nursing for an educational institution, health care facility, agency, or entity, or a person other than the person who employs or directly compensates the nurse is subject to peer review by both the employer and the other person.

(b) For the purposes of exchanging information, the peer review committee reviewing the nurse's conduct is considered to be established under the authority of both entities.

(c) The two entities may contract as to which entity will conduct peer review of the nurse.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 303.005. REQUEST FOR PEER REVIEW COMMITTEE DETERMINATION.

(a) In this section, "duty to a patient" means conduct required by standards of practice or professional conduct adopted by the board for nurses. The term includes administrative decisions directly affecting a nurse's ability to comply with that duty.

(a-1) For purposes of this section, a nurse or nurse administrator acts in good faith in connection with a request made or an action taken by the nurse or nurse administrator if there is a reasonable factual or legal basis for the request or action.

(b) If a person who is required to establish a nursing peer review committee under Section 303.0015 requests a nurse to engage in conduct that the nurse believes violates a nurse's duty to a patient, the nurse may request, on a form developed or approved by the board, a determination by a nursing peer review committee under this chapter of whether the conduct violates a nurse's duty to a patient.

(c) A nurse who in good faith requests a peer review determination under Subsection (b):

(1) may not be disciplined or discriminated against for making the request;

(2) may engage in the requested conduct pending the peer

review;

(3) is not subject to the reporting requirement under Subchapter I, Chapter 301; and

(4) may not be disciplined by the board for engaging in that conduct while the peer review is pending.

(d) If a nurse requests a peer review determination under Subsection (b) and refuses to engage in the requested conduct pending the peer review, the determination of the peer review committee shall be considered in any decision by the nurse's employer to discipline the nurse for the refusal to engage in the requested conduct, but the determination is not binding if a nurse administrator believes in good faith that the peer review committee has incorrectly determined a nurse's duty. This subsection does not affect the protections provided by Subsection (c)(1) or Section 301.352.

(e) If the conduct for which the peer review is requested under Subsection (b) involves the medical reasonableness of a physician's order, the medical staff or medical director shall be requested to make a determination as to the medical reasonableness of the physician's order, and that determination is determinative of that issue.

(f) A nurse's rights under this section may not be nullified by a contract.

(g) An appropriate licensing agency may take action against a person who violates this section.

(h) A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a nurse who in good faith requests a peer review determination under this section or a person who advises a nurse of the nurse's right to request a determination or of the procedures for requesting a determination. A violation of this subsection is subject to Section 301.413.

(i) A person who is required to provide, on request, a nursing peer review committee determination under Subsection (b) shall adopt and implement a policy to inform nurses of the right to request a nursing peer review committee determination and the procedure for making a request.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.021, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 876, Sec. 10, eff. Feb. 1, 2004.

Amended by:



Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 16, eff. May 20, 2005.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 18, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 21(6), eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 18.001, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 877 (S.B. 192), Sec. 8, eff. September 1, 2011.

Sec. 303.006. CONFIDENTIALITY OF PEER REVIEW PROCEEDINGS. (a) Except as otherwise provided by this chapter, a nursing peer review committee proceeding is confidential and any communication made to a nursing peer review committee is privileged.

(b) A member, agent, or employee of a nursing peer review committee or a participant in a proceeding before the committee may not disclose or be required to disclose a communication made to the committee or a record or proceeding of the committee.

(c) A person who attends a nursing peer review committee proceeding may not disclose or be required to disclose:

(1) information acquired in connection with the proceeding;  
or

(2) an opinion, recommendation, or evaluation of the committee or a committee member.

(d) A nursing peer review committee member and a person who provides information to the committee may not be questioned about:

(1) the person's testimony before the committee; or  
(2) an opinion formed as a result of the committee proceedings.

(e) Except as permitted by this chapter, information that is confidential under this section:

(1) is not subject to subpoena or discovery in any civil matter;

(2) is not admissible as evidence in a judicial or administrative proceeding; and

(3) may not be introduced into evidence in a nursing liability suit arising out of the provision of or a failure to provide nursing services.

(f) If a peer review committee determines that a nurse has not engaged in conduct required to be reported to the nurse's licensing board, a member of the peer review committee whose knowledge of the nurse's conduct was acquired only through the peer review may not report that nurse to the licensing board for that conduct. A committee member is not prohibited from reporting:

(1) the nurse, if the member has knowledge of the nurse's conduct independently of peer review; or

(2) the peer review committee to the licensing board, if the member believes the committee made its determination in bad faith.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 876, Sec. 11, eff. June 20, 2003.

Sec. 303.007. DISCLOSURE OF INFORMATION. (a) A nursing peer review committee on request shall disclose written or oral communications made to the committee and the records and proceedings of the committee to:

(1) a licensing authority of any state; or

(2) a law enforcement agency investigating a criminal matter.

(b) A nursing peer review committee may disclose written or oral communications made to the committee and the records and proceedings of the committee to:

(1) a licensing agency of any state;

(2) a law enforcement agency investigating a criminal matter;

(3) the association, school, agency, facility, or other organization under whose authority the committee is established;

(4) another nursing peer review committee;

(5) a peer assistance program approved by the board under Chapter 467, Health and Safety Code;

(6) an appropriate state or federal agency or accrediting organization that accredits a health care facility or school of nursing or surveys a facility for quality of care; or

(7) a person engaged in bona fide research, if all information that identifies a specific individual is deleted.

(c) If a committee discloses information under this section,

the committee does not by that action waive the privilege of nondisclosure of committee information and proceedings.

(d) A peer review committee that discloses information under this section and each person who receives the information shall protect, to the extent possible, the identity of each patient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 303.0075. SHARING OF INFORMATION. (a) A nursing peer review committee and a patient safety committee established by the same entity may share information.

(b) A record or determination of a patient safety committee, or a communication made to a patient safety committee, is not subject to subpoena or discovery and is not admissible in any civil or administrative proceeding, regardless of whether the information has been provided to a nursing peer review committee. The privileges under this subsection may be waived only through a written waiver signed by the chair, vice chair, or secretary of the patient safety committee. This subsection does not affect the application of Section 303.007 to a nursing peer review committee.

(c) A committee that receives information from another committee shall forward any request to disclose the information to the committee that provided the information.

Added by Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 19, eff. September 1, 2007.

Sec. 303.008. REBUTTAL STATEMENT. (a) If a nursing peer review committee makes an adverse finding against a nurse, the committee shall provide the nurse with a detailed description of the basis of its finding.

(b) The peer review committee shall give the nurse the opportunity to offer rebuttal information and to submit a rebuttal statement of reasonable length. Any rebuttal statement must be included with any information disclosed by the committee under Section 303.007.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 17, eff. May 20, 2005.

Sec. 303.009. RETALIATORY ACTIONS. (a) A nursing peer review committee, a person participating in peer review, or an organization named as a defendant in a civil action or subjected to other retaliatory action as a result of participation in peer review may file a counterclaim in a pending action or prove a cause of action in a subsequent suit to recover defense costs, including court costs, reasonable attorney's fees, and actual and punitive damages if the suit or retaliatory action is determined to be frivolous, unreasonable, without foundation, or taken in bad faith.

(b) A nursing peer review committee member or a person participating in peer review under this chapter named as a defendant in a civil action or subjected to other retaliatory action as a result of participation in peer review may use information that is otherwise confidential under this chapter to defend the civil action or a civil action that alleges retaliation for the person's participation in peer review.

(c) A person who discloses information under Subsection (b) does not by that action waive the privilege of nondisclosure of all other information privileged under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 303.010. CIVIL LIABILITY. (a) A cause of action does not accrue for an act, statement, determination, or recommendation made, or act reported, without malice, in the course of peer review against:

(1) a member, agent, or employee of a nursing peer review committee; or

(2) a school of nursing, hospital, nursing home, home health agency, health science center, or other health care facility, the nursing staff of such a facility, or a nursing association or other organization.

(b) A person who, without malice, provides records, information, or assistance to a nursing peer review committee:

(1) is not liable in a civil action based on the person's

participation or assistance in peer review; and

(2) may not be subjected to retaliatory action as a result of that act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 303.011. EVALUATION BY COMMITTEE. (a) In evaluating a nurse's conduct, the nursing peer review committee shall review the evidence to determine the extent to which a deficiency in care by the nurse was the result of deficiencies in the nurse's judgment, knowledge, training, or skill rather than other factors beyond the nurse's control. A determination that a deficiency in care is attributable to a nurse must be based on the extent to which the nurse's conduct was the result of a deficiency in the nurse's judgment, knowledge, training, or skill.

(b) The nursing peer review committee shall report a deficiency in care that the committee determines was the result of a factor beyond the nurse's control to a patient safety committee for evaluation. The patient safety committee shall evaluate the influence of the factors on the conduct of the nurse being evaluated and on the practice of other nurses within the entity that established the committee. The committee shall report its findings to the nursing peer review committee.

Added by Acts 2003, 78th Leg., ch. 876, Sec. 12, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 20, eff. September 1, 2007.

Sec. 303.012. ERROR CLASSIFICATION SYSTEM. (a) The board may develop a standardized error classification system for use by a nursing peer review committee in evaluating the conduct of a nurse. The board shall make the system available to the committee at no cost.

(b) Information collected as part of an error classification system is a record of the nursing peer review committee and is confidential under Section 303.006.

(c) A nursing peer review committee may report the information collected using the error classification system to the board. The

committee may not report to the board under this section information that includes the identity of an individual nurse or patient.

(d) Information the board receives under this section that contains information identifying a specific patient, nurse, or health care facility, the committee, or the sponsoring organization of the committee is confidential and is not subject to disclosure under Chapter 552, Government Code. The board must remove the identifying information from the information before making the remaining information available to the public.

(e) This section does not affect the obligation or authority of a nursing peer review committee to disclose information under Section 303.007.

Added by Acts 2011, 82nd Leg., R.S., Ch. 878 (S.B. 193), Sec. 7, eff. September 1, 2011.

#### **CHAPTER 304. NURSE LICENSURE COMPACT**

Sec. 304.001. NURSE LICENSURE COMPACT. The Nurse Licensure Compact is enacted and entered into with all other jurisdictions that legally join in the compact, which is as follows:

##### **NURSE LICENSURE COMPACT**

##### **ARTICLE 1. FINDINGS AND DECLARATION OF PURPOSE**

(a) The party states find that:

(1) the health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensing laws;

(2) violations of nurse licensing and other laws regulating the practice of nursing may result in injury or harm to the public;

(3) the expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensing and regulation;

(4) new practice modalities and technology make compliance with each state nurse licensing laws difficult and complex; and

(5) the current system of the duplicative licensing of nurses practicing in multiple states is cumbersome and redundant to both nurses and the states.

(b) The general purposes of this compact are to:

(1) facilitate the states' responsibilities to protect the

public's health and safety;

(2) ensure and encourage the cooperation of party states in the areas of nurse licensing and regulation;

(3) facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse action;

(4) promote compliance with the laws governing the practice of nursing in each jurisdiction; and

(5) invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is provided through the mutual recognition of party state licenses.

#### ARTICLE 2. DEFINITIONS

In this compact:

(a) "Adverse action" means a home or remote state action.

(b) "Alternative program" means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

(c) "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensing and enforcement activities related to nurse licensing laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.

(d) "Current significant investigative information" means:

(1) investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(2) investigative information that indicates that a nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(e) "Home state" means the party state that is the nurse's primary state of residence.

(f) "Home state action" means any administrative, civil, equitable, or criminal action permitted by the home state's laws that are imposed on a nurse by the home state's licensing board or other authority, including actions against an individual's license such as revocation, suspension, probation, or any other action that affects a

nurse's authorization to practice.

(g) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

(h) "Multistate licensing privilege" means current, official authority from a remote state permitting the practice of nursing as a registered nurse, licensed practical nurse, or licensed vocational nurse in the party state. All party states have the authority, in accordance with existing state due process laws, to take actions against the nurse's privilege, including revocation, suspension, probation, or any other action that affects a nurse's authorization to practice.

(i) "Nurse" means a registered nurse, licensed practical nurse, or licensed vocational nurse as those terms are defined by each party state's practice laws.

(j) "Party state" means any state that has enacted this compact.

(k) "Remote state" means a party state, other than the home state, in which:

(1) a patient is located at the time nursing care is provided; or

(2) in the case of the practice of nursing not involving a patient, the recipient of nursing practice is located.

(l) "Remote state action" means:

(1) an administrative, civil, equitable, or criminal action permitted by a remote state's laws that are imposed on a nurse by the remote state's licensing board or other authority, including an action against an individual's multistate licensing privilege to practice in the remote state; and

(2) a cease and desist order and other injunctive or equitable orders issued by remote states or the licensing boards of remote states.

(m) "State" means a state, territory, possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(n) "State practice laws" means a party state's laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. The term does not include the initial qualifications for licensing or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.



## ARTICLE 3. GENERAL PROVISIONS AND JURISDICTION

(a) A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensing privilege to practice as a registered nurse in the party state. A license to practice licensed practical nursing or licensed vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensing privilege to practice as a licensed practical nurse or vocational nurse in the party state. To obtain or retain a license, an applicant must meet the home state's qualifications for a license and license renewal as well as all other applicable state laws.

(b) A party state may, in accordance with state due process laws, limit or revoke the multistate licensing privilege of any nurse to practice in the party state and may take any other necessary actions under the party state's applicable laws to protect the health and safety of the party state's citizens. If a party state takes this action, the party state shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(c) A nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is provided. The practice of nursing includes patient care and all nursing practice defined by the party state's practice laws. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board, the courts, and the laws of the party state.

(d) This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensing privilege to practice registered nursing granted by a party state shall be recognized by another party state as a license to practice registered nursing if the state's law requires the license as a precondition for qualifying for advanced practice registered nurse authorization.

(e) Individuals not residing in a party state may apply for a nurse license under the laws of a party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

## ARTICLE 4. APPLICATION FOR LICENSE IN A PARTY STATE

(a) Once an application for a license is submitted, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether:

(1) the applicant has held or is the holder of a license issued by another state;

(2) a restriction exists on the multistate licensing privilege; and

(3) any other adverse action by any state has been taken against the license.

(b) A nurse in a party state shall hold a license that is issued by the home state in only one party state at a time.

(c) A nurse who intends to change the nurse's primary state of residence may apply for a license in the new home state in advance of the change. However, a new license will not be issued by a party state until a nurse provides satisfactory evidence to the new home state's licensing board of a change in the nurse's primary state of residence.

(d) When a nurse changes the nurse's primary state of residence by moving from:

(1) a party state to another party state and obtains a license from the new home state, the license from the former home state is no longer valid;

(2) a non-party state to a party state and obtains a license from the new home state, the individual state license issued by the non-party state is not affected and remains in full force if provided by the laws of the non-party state; and

(3) a party state to a non-party state, the license issued by the prior home state converts to a state license valid only in the former home state and does not entitle the nurse to the multistate licensing privilege to practice in other party states.

## ARTICLE 5. ADVERSE ACTIONS

(a) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system a remote state action and the factual and legal basis for the action, if known. The licensing board of a remote state shall promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of these reports.

(b) The licensing board of a party state shall have the authority to complete a pending investigation of a nurse who changes the nurse's primary state of residence during the course of the investigation and to take appropriate action. The licensing board shall promptly report the conclusions of the investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any action.

(c) A remote state may take adverse action affecting the multistate licensing privilege to practice in that party state. However, only the home state has the power to impose adverse action against the license issued by the home state.

(d) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would to conduct occurring in the home state. In so doing, the licensing board shall apply its state laws to determine appropriate action.

(e) The home state may take adverse action based on the factual findings of the remote state only if each state follows its own procedures for imposing the adverse action.

(f) This compact does not affect a party state's decision that participation in an alternative program may be used instead of licensing action and that the participation shall remain non-public if required by the party state's laws. Party states must require a nurse who enters an alternative program to agree not to practice in any other party state during the term of the alternative program without prior authorization from the other party state.

#### ARTICLE 6. ADDITIONAL AUTHORITIES OF PARTY STATE NURSE LICENSING BOARDS

(a) Notwithstanding any other powers, party state nurse licensing boards have the authority to:

(1) if otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against the nurse;

(2) issue subpoenas for hearings and investigations that require the attendance and testimony of witnesses and the production of evidence;

(3) issue a cease and desist order to limit or revoke a nurse's authority to practice in the state; and

(4) adopt uniform rules as provided under Article 8(c) of

this compact.

(b) A subpoena issued by a nurse licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the non-issuing party state by a court of competent jurisdiction in accordance with the practice and procedure applicable to subpoenas issued in proceedings pending before the court. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which a witness or evidence is located.

#### ARTICLE 7. COORDINATED LICENSURE INFORMATION SYSTEM

(a) All party states shall participate in a cooperative effort to create a coordinated database of all licensed registered nurses, licensed practical nurses, and licensed vocational nurses. This system will include information on the licensing and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensing and enforcement efforts.

(b) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report to the coordinated licensure information system adverse actions, actions against multistate licensing privileges, any current significant investigative information yet to result in adverse action, and denials of applications and the reasons for the denials.

(c) Current significant investigative information shall be transmitted only to party state licensing boards through the coordinated licensure information system.

(d) Notwithstanding any other provision of law, all party states' licensing boards that contribute information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state.

(e) Any personally identifiable information obtained by a party state's licensing board from the coordinated licensure information system may not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(f) Information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall be

expunged from the coordinated licensure information system.

(g) Each compact administrator shall act jointly and in consultation with the administrator of the coordinated licensure information system to formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

#### ARTICLE 8. COMPACT ADMINISTRATION AND EXCHANGE OF INFORMATION

(a) The presiding officer of the nurse licensing board of a party state or the presiding officer's designee shall be the administrator of this compact for the state.

(b) The compact administrator of each party state shall furnish to the compact administrator of each other party state information and documents including a uniform data set of investigations, identifying information, licensing data, and disclosable alternative program participation information to facilitate the administration of this compact.

(c) Compact administrators have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. The uniform rules shall be adopted by party states under Article 6(a)(4) of this compact.

#### ARTICLE 9. IMMUNITY

A party state or an officer, employee, or agent of a party state's nurse licensing board who acts in accordance with the provisions of this compact is not liable for any good faith act or omission that occurs while the person is performing the person's duties under this compact. Good faith in this article does not include wilful misconduct, gross negligence, or recklessness.

#### ARTICLE 10. EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

(a) This compact enters into force and takes effect for a state when the state enacts this compact as law. A party state may withdraw from the compact by enacting a statute repealing the compact, but a withdrawal takes effect six months after the date the withdrawing state gives notice of the withdrawal to the executive heads of all other party states.

(b) No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

(c) This compact does not invalidate or prevent any nurse licensing agreement or other cooperative arrangement between a party state and a non-party state that is made in accordance with the other

provisions of this compact.

(d) This compact may be amended by the party states. An amendment to this compact is not effective or binding on the party states unless and until all party states enact the amendment into the law of each state.

#### ARTICLE 11. CONSTRUCTION AND SEVERABILITY

(a) This compact shall be liberally construed to effectuate the compact's purposes.

(b) This compact is severable. If a phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of a party state or the United States or the applicability of this compact to a government, agency, person, or circumstance is held invalid, the validity and applicability of the remainder of the compact to a government, agency, person, or circumstance is not affected. If this compact is held to be contrary to the constitution of a party state, the compact remains in full force and effect for the other party states and in full force and effect for the party state affected for all severable matters.

(c) If the party states need to settle a dispute under the compact the party states may submit the issues in dispute to an arbitration panel comprised of:

(A) an individual appointed by the compact administrator in the home state;

(B) an individual appointed by the compact administrator in each remote state involved; and

(C) an individual mutually agreed upon by the compact administrators of each party state involved in the dispute.

(d) The decision of a majority of the arbitrators shall be final and binding.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.130(a), eff. Sept. 1, 2001.

Sec. 304.002. ADMINISTRATION OF COMPACT. The executive director of the Texas Board of Nursing is the Nurse Licensure Compact administrator for this state.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.130(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.022, eff. Feb. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 39, eff. September 1, 2007.

Sec. 304.003. RULES. The Texas Board of Nursing may adopt rules necessary to implement this chapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.130(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.023, eff. Feb. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 39, eff. September 1, 2007.

Sec. 304.004. GENERAL PROVISIONS. (a) The terms "nurse," "registered nurse," and "vocational nurse" include nurses licensed as registered nurses or vocational nurses by a state that is a party to the Nurse Licensure Compact.

(b) Unless the context indicates otherwise or doing so would be inconsistent with the Nurse Licensure Compact, nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact have the same rights and obligations as imposed by the laws of this state on license holders of the Texas Board of Nursing.

(c) The Texas Board of Nursing has the authority to determine whether a right or obligation imposed on license holders applies to nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact unless that determination is inconsistent with the Nurse Licensure Compact.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.130(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.024, eff. Feb. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 40, eff. September 1, 2007.

Sec. 304.005. ENFORCEMENT. The Texas Board of Nursing is the

state agency responsible for taking action against registered and vocational nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact as authorized by the Nurse Licensure Compact. The action shall be taken in accordance with the same procedures for taking action against registered and vocational nurses licensed by this state.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.130(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.025, eff. Feb. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 41, eff. September 1, 2007.

Sec. 304.006. INFORMATION MAINTAINED UNDER COMPACT. (a) On request and payment of a reasonable fee, the Texas Board of Nursing shall provide a registered or vocational nurse licensed by this state with a copy of information regarding the nurse maintained by the coordinated licensure information system under Article 7 of the Nurse Licensure Compact.

(b) A board is not obligated to provide information not available to the board or information that is not available to the nurse under the laws of the state contributing the information to the coordinated licensure information system.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.130(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.026, eff. Feb. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 42, eff. September 1, 2007.

Sec. 304.007. ACCESS TO PRACTICE-RELATED INFORMATION. Practice-related information provided by the Texas Board of Nursing to registered or vocational nurses licensed by this state shall be made available by the board on request and at a reasonable cost to nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact.



Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.130(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.027, eff. Feb. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 43, eff. September 1, 2007.

Sec. 304.008. DISCLOSURE OF PERSONAL INFORMATION. (a) In reporting information to the coordinated licensure information system under Article 7 of the Nurse Licensure Compact, the Texas Board of Nursing may disclose personally identifiable information about the nurse, including social security number.

(b) The coordinated licensure information system may not share personally identifiable information with a state not a party to the compact unless the state agrees not to disclose that information to other persons.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.130(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.028, eff. Feb. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 44, eff. September 1, 2007.

Sec. 304.009. WITHDRAWAL FROM COMPACT. (a) The governor may withdraw this state from the Nurse Licensure Compact if the Texas Board of Nursing notifies the governor that a state that is party to the compact changed, after January 1, 1999, the state's requirements for licensing a nurse and that the state's requirements, as changed, are substantially lower than the requirements for licensing a nurse in this state.

(b) The governor may completely withdraw this state from the Nurse Licensure Compact or may limit withdrawal to the application of the compact to registered nurses or vocational nurses.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.130(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.029, eff. Feb. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 45, eff. September 1, 2007.

**For contingent expiration of this chapter, see Section 305.003.**

**CHAPTER 305. NCSBN ADVANCED PRACTICE REGISTERED NURSE COMPACT**

Sec. 305.001. NCSBN ADVANCED PRACTICE REGISTERED NURSE COMPACT.

The NCSBN Advanced Practice Registered Nurse Compact is enacted and entered into with all other jurisdictions that legally join in the compact, which is as follows:

NCSBN ADVANCED PRACTICE REGISTERED NURSE COMPACT

ARTICLE 1. FINDINGS AND DECLARATION OF PURPOSE

(a) The party states find that:

(1) the health and safety of the public are affected by the degree of compliance with APRN licensure/authority to practice requirements and the effectiveness of enforcement activities related to state APRN licensure/authority to practice laws;

(2) violations of APRN licensure/authority to practice and other laws regulating the practice of nursing may result in injury or harm to the public;

(3) the expanded mobility of APRNs and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of APRN licensure/authority to practice and regulation;

(4) new practice modalities and technology make compliance with individual state APRN licensure/authority to practice laws difficult and complex;

(5) the current system of duplicative APRN licensure/authority to practice for APRNs practicing in multiple states is cumbersome and redundant to both APRNs and states;

(6) uniformity of APRN requirements throughout the states promotes public safety and public health benefits; and

(7) access to APRN services increases the public's access to health care, particularly in rural and underserved areas.

(b) The general purposes of this compact are to:

(1) facilitate the states' responsibilities to protect the public's health and safety;

(2) ensure and encourage the cooperation of party states in the areas of APRN licensure/authority to practice and regulation,

including promotion of uniform licensure requirements;

(3) facilitate the exchange of information between party states in the areas of APRN regulation, investigation, and adverse actions;

(4) promote compliance with the laws governing APRN practice in each jurisdiction; and

(5) invest all party states with the authority to hold an APRN accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

#### ARTICLE 2. DEFINITIONS

(a) "Advanced practice registered nurse" or "APRN" means a nurse anesthetist, nurse practitioner, nurse midwife, or clinical nurse specialist to the extent a party state licenses or grants authority to practice in that APRN role and title.

(b) "Adverse action" means a home or remote state disciplinary action.

(c) "Alternative program" means a voluntary, non-disciplinary monitoring program approved by a licensing board.

(d) "APRN licensure/authority to practice" means the regulatory mechanism used by a party state to grant legal authority to practice as an APRN.

(e) "APRN uniform licensure/authority to practice requirements" means those minimum uniform licensure, education, and examination requirements as agreed to by the compact administrators and adopted by licensing boards for the recognized APRN role and title.

(f) "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on APRN licensure/authority to practice and enforcement activities related to APRN licensure/authority to practice laws, which is administered by a nonprofit organization composed of and controlled by state licensing boards.

(g) "Current significant investigative information" means:

(1) investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the APRN to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(2) investigative information that indicates that the APRN represents an immediate threat to public health and safety regardless

of whether the APRN has been notified and had an opportunity to respond.

(h) "Home state" means the party state that is the APRN's primary state of residence.

(i) "Home state action" means any administrative, civil, equitable, or criminal action permitted by the home state's laws which are imposed on an APRN by the home state's licensing board or other authority, including actions against an individual's license/authority to practice such as: revocation, suspension, probation, or any other action which affects an APRN's authorization to practice.

(j) "Licensing board" means a party state's regulatory body responsible for issuing APRN licensure/authority to practice.

(k) "Multistate advanced practice privilege" means current authority from a remote state permitting an APRN to practice in that state in the same role and title as the APRN is licensed/authorized to practice in the home state to the extent that the remote state laws recognize such APRN role and title. A remote state has the authority, in accordance with existing state due process laws, to take actions against the APRN's privilege, including revocation, suspension, probation, or any other action that affects an APRN's multistate privilege to practice.

(l) "Party state" means any state that has adopted this compact.

(m) "Prescriptive authority" means the legal authority to prescribe medications and devices as defined by party state laws.

(n) "Remote state" means a party state, other than the home state:

(1) where the patient is located at the time APRN care is provided; or

(2) in the case of APRN practice not involving a patient, in such party state where the recipient of APRN practice is located.

(o) "Remote state action" means:

(1) any administrative, civil, equitable, or criminal action permitted by a remote state's laws which are imposed on an APRN by the remote state's licensing board or other authority, including actions against an individual's multistate advanced practice privilege in the remote state; and

(2) cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

(p) "State" means a state, territory, or possession of the United States.

(q) "State practice laws" means a party state's laws and regulations that govern APRN practice, define the scope of advanced nursing practice, including prescriptive authority, and create the methods and grounds for imposing discipline. State practice laws do not include the requirements necessary to obtain and retain APRN licensure/authority to practice as an APRN, except for qualifications or requirements of the home state.

(r) "Unencumbered" means that a state has no current disciplinary action against an APRN's license/authority to practice.

### ARTICLE 3. GENERAL PROVISIONS AND JURISDICTION

(a) All party states shall participate in the nurse licensure compact for registered nurses and licensed practical/vocational nurses in order to enter into the APRN compact.

(b) No state shall enter the APRN compact until the state adopts, at a minimum, the APRN uniform licensure/authority to practice requirements for each APRN role and title recognized by the state seeking to enter the APRN compact.

(c) APRN licensure/authority to practice issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate advanced practice privilege to the extent that the role and title are recognized by each party state. To obtain or retain APRN licensure/authority to practice as an APRN, an applicant must meet the home state's qualifications for authority or renewal of authority as well as all other applicable state laws.

(d) The APRN multistate advanced practice privilege does not include prescriptive authority, and does not affect any requirements imposed by states to grant to an APRN initial and continuing prescriptive authority according to state practice laws. However, a party state may grant prescriptive authority to an individual on the basis of a multistate advanced practice privilege to the extent permitted by state practice laws.

(e) A party state may, in accordance with state due process laws, limit or revoke the multistate advanced practice privilege in the party state and may take any other necessary actions under the party state's applicable laws to protect the health and safety of the party state's citizens. If a party state takes action, the party state shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated

licensure information system shall promptly notify the home state of any such actions by remote states.

(f) An APRN practicing in a party state must comply with the state practice laws and licensing board rules of the state in which the patient is located at the time care is provided. The APRN practice includes patient care and all advanced nursing practice defined by the party state's practice laws. The APRN practice will subject an APRN to the jurisdiction of the licensing board, the courts, and the laws of the party state.

(g) Individuals not residing in a party state may apply for APRN licensure/authority to practice as an APRN under the laws of a party state. However, the authority to practice granted to these individuals will not be recognized as granting the privilege to practice as an APRN in any other party state unless explicitly agreed to by that party state.

ARTICLE 4. APPLICATIONS FOR APRN LICENSURE/AUTHORITY TO PRACTICE IN  
A PARTY STATE

(a) Once an application for APRN licensure/authority to practice is submitted, a party state shall ascertain, through the coordinated licensure information system, whether:

(1) the applicant has held or is the holder of a nursing license/authority to practice issued by another state;

(2) the applicant has had a history of previous disciplinary action by any state;

(3) an encumbrance exists on any license/authority to practice; and

(4) any other adverse action by any other state has been taken against a license/authority to practice.

This information may be used in approving or denying an application for APRN licensure/authority to practice.

(b) An APRN in a party state shall hold APRN licensure/authority to practice in only one party state at a time, issued by the home state.

(c) An APRN who intends to change the APRN's primary state of residence may apply for APRN licensure/authority to practice in the new home state in advance of such change. However, new licensure/authority to practice will not be issued by a party state until after an APRN provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

(d) When an APRN changes primary state of residence by:

(1) moving between two party states, and obtains APRN licensure/authority to practice from the new home state, the APRN licensure/authority to practice from the former home state is no longer valid;

(2) moving from a nonparty state to a party state, and obtains APRN licensure/authority to practice from the new home state, the individual state license issued by the nonparty state is not affected and will remain in full force if so provided by the laws of the nonparty state; and

(3) moving from a party state to a nonparty state, the APRN licensure/authority to practice issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

#### ARTICLE 5. ADVERSE ACTIONS

(a) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions, including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

(b) The licensing board of a party state shall have the authority to complete any pending investigations for an APRN who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action, and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(c) A remote state may take adverse action affecting the multistate advanced practice privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the APRN licensure/authority to practice issued by the home state.

(d) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such

conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

(e) The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

(f) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require APRNs who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

(g) All home state licensing board disciplinary orders, agreed or otherwise, which limit the scope of the APRN's practice or require monitoring of the APRN as a condition of the order shall include the requirements that the APRN will limit her or his practice to the home state during the pendency of the order. This requirement may allow the APRN to practice in other party states with prior written authorization from both the home state and party state licensing boards.

#### ARTICLE 6. ADDITIONAL AUTHORITIES INVESTED IN PARTY STATE LICENSING BOARDS

(a) Notwithstanding any other powers, party state licensing boards shall have the authority to:

(1) if otherwise permitted by state law, recover from the affected APRN the costs of investigations and disposition of cases resulting from any adverse action taken against that APRN;

(2) issue subpoenas for both hearings and investigations, which require the attendance and testimony of witnesses, and the production of evidence;

(3) issue cease and desist orders to limit or revoke an APRN's privilege or licensure/authority to practice in their state; and

(4) promulgate uniform rules and regulations as provided for in Article 8(c).

(b) Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued



in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located.

ARTICLE 7. COORDINATED LICENSURE INFORMATION SYSTEM

(a) All party states shall participate in a cooperative effort to create a coordinated database of all APRNs. This system will include information on the APRN licensure/authority to practice and disciplinary history of each APRN, as contributed by party states, to assist in the coordination of APRN licensure/authority to practice and enforcement efforts.

(b) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate advanced practice privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials to the coordinated licensure information system.

(c) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(d) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(e) Any personally identifiable information obtained by a party states' licensing board from the coordinated licensure information system may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(f) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

(g) The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

ARTICLE 8. COMPACT ADMINISTRATION AND INTERCHANGE OF INFORMATION

(a) The head of the licensing board, or his/her designee, of each party state shall be the administrator of this compact for his/her state.

(b) The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

(c) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states, under the authority invested under Article 6(a)(4).

#### ARTICLE 9. IMMUNITY

No party state or the officers or employees or agents of a party state's licensing board who act in accordance with the provisions of this compact shall be liable on account of any act or omission in good faith while engaged in the performance of their duties under this compact. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

#### ARTICLE 10. ENTRY INTO FORCE, WITHDRAWAL, AND AMENDMENT

(a) This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

(b) No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

(c) Nothing contained in this compact shall be construed to invalidate or prevent any APRN licensure/authority to practice agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

(d) This compact may be amended by the party states. No amendment to this compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

#### ARTICLE 11. CONSTRUCTION AND SEVERABILITY

(a) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

(b) In the event party states find a need for settling disputes arising under this compact:

(1) the party states may submit the issues in dispute to an arbitration panel which will be composed of an individual appointed by the compact administrator in the home state, an individual appointed by the compact administrator in the remote state involved, and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute; and

(2) the decision of a majority of the arbitrators shall be final and binding.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 30, eff. September 1, 2007.

Sec. 305.002. BOARD AUTHORITY. Notwithstanding any provision of this chapter, the Texas Board of Nursing may establish criteria for recognizing advanced practice registered nurses under the NCSBN APRN Compact.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 30, eff. September 1, 2007.

Sec. 305.003. RULES; EXPIRATION OF CHAPTER. (a) The Texas Board of Nursing may adopt rules necessary to implement this chapter.

(b) If the board does not adopt rules to implement the compact under this chapter before December 31, 2011, the board may not

implement the NCSBN APRN Compact and this chapter expires December 31, 2011.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 30, eff. September 1, 2007.

Sec. 305.004. APPLICABILITY OF CHAPTER. If a provision of this chapter or another state's law under the NCSBN APRN Compact conflicts with the laws of this state, the laws of this state prevail.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 30, eff. September 1, 2007.

Sec. 305.005. RIGHTS AND OBLIGATIONS. (a) Unless the context indicates otherwise, or doing so would be inconsistent with the NCSBN APRN Compact, nurses practicing in this state under a license issued by a state that is a party to the NCSBN APRN Compact have the same rights and obligations as imposed by the laws of this state on license holders of the Texas Board of Nursing.

(b) The Texas Board of Nursing has the authority to determine whether a right or obligation imposed on license holders applies to nurses practicing in this state under a license issued by a state that is a party to the NCSBN APRN Compact unless that determination is inconsistent with the NCSBN APRN Compact.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 30, eff. September 1, 2007.

Sec. 305.006. ENFORCEMENT. The Texas Board of Nursing is the state agency responsible for taking action against nurses practicing in this state under a license issued by a state that is a party to the NCSBN APRN Compact as authorized by the NCSBN APRN Compact. The action shall be taken in accordance with the same procedures for taking action against nurses licensed by this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 30, eff. September 1, 2007.

**SUBTITLE F. PROFESSIONS RELATED TO EYES AND VISION**  
**CHAPTER 351. OPTOMETRISTS AND THERAPEUTIC OPTOMETRISTS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 351.001. SHORT TITLE. This chapter may be cited as the Texas Optometry Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.002. DEFINITIONS. In this chapter:

- (1) "Adnexa" means the lids and drainage system of the eye.
- (2) "Board" means the Texas Optometry Board.
- (3) "Dispensing optician" or "ophthalmic dispenser" means a person who:
  - (A) is not an optometrist, therapeutic optometrist, or licensed physician; and
  - (B) sells or delivers to the consumer ophthalmic devices, including fabricated and finished spectacle lenses, frames, and contact lenses, prescribed by an optometrist, therapeutic optometrist, or licensed physician.
- (4) "Optometrist" means a person licensed under this chapter and authorized to practice optometry.
- (5) "Person" means an individual, association of individuals, trustee, receiver, partnership, corporation, or organization or the manager, agent, servant, or employee of any of those entities.
- (6) "Practice of optometry" means using objective or subjective means, with or without the use of topical ocular pharmaceutical agents, to:
  - (A) determine or measure the powers of vision of the human eye as provided by Section 351.355;
  - (B) examine or diagnose visual defects, abnormal conditions, or diseases of the human eye or adnexa; or
  - (C) prescribe or fit lenses or prisms to correct or remedy a defect or abnormal condition of vision as provided by Section 351.356.
- (7) "Practice of therapeutic optometry" means using objective or subjective means, not including surgery or laser surgery, to:
  - (A) determine or measure the powers of vision of the

human eye as provided by Section 351.355;

(B) examine or diagnose visual defects, abnormal conditions, or diseases of the human eye or adnexa;

(C) prescribe or fit lenses or prisms to correct or remedy a defect or abnormal condition of vision as provided by Section 351.356;

(D) administer or prescribe a drug or physical treatment in the manner authorized by this chapter; or

(E) treat the visual system, including the eye or adnexa as authorized by this chapter.

(8) "Surgery" means a procedure using instruments, including lasers, scalpels, or needles, in which human tissue is cut, burned, vaporized, or otherwise altered by any mechanical means, laser, or ionizing radiation. The term includes procedures using instruments that require closing by suturing, clamping, or another device. The term does not include a noninvasive procedure to remove a superficial foreign body in the conjunctiva, eyelid, or corneal epithelium that has not perforated the Bowman's membrane.

(9) "Therapeutic optometrist" means a person licensed under this chapter and authorized to practice therapeutic optometry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.151(a), eff. Sept. 1, 2001.

Sec. 351.003. REFERENCE IN OTHER LAW. A reference in another law of this state or in a law of a subdivision of this state to "optometrist" means an optometrist or therapeutic optometrist, unless the context clearly indicates otherwise.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.004. SUNSET PROVISION. The Texas Optometry Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.001, eff. September 1, 2005.

Sec. 351.005. APPLICATION OF CHAPTER; EXEMPTIONS. (a) This chapter does not:

(1) apply to an officer or agent of the United States or this state in performing official duties;

(2) prevent or interfere with the right of a physician licensed by the Texas State Board of Medical Examiners to:

(A) treat or prescribe for a patient; or

(B) direct or instruct a person under the physician's control, supervision, or direction to aid or attend to the needs of a patient according to the physician's specific direction, instruction, or prescription;

(3) prevent a person from selling ready-to-wear eyeglasses as merchandise at retail;

(4) prevent an unlicensed person from making simple repairs to eyeglasses;

(5) prevent or interfere with the right of a dispensing optician registered under Chapter 352 to engage in spectacle or contact lens dispensing under that chapter;

(6) prevent an ophthalmic dispenser who does not practice optometry or therapeutic optometry from measuring interpupillary distances or making facial measurements to dispense or adapt an ophthalmic prescription, lens, product, or accessory in accordance with the specific directions of a written prescription signed by an optometrist, therapeutic optometrist, or licensed physician;

(7) prevent the administrator or executor of the estate of a deceased optometrist or therapeutic optometrist from employing an optometrist or therapeutic optometrist to continue the practice of the deceased during estate administration; or

(8) prevent an optometrist or therapeutic optometrist from working for the administrator or executor of the estate of a deceased optometrist or therapeutic optometrist to continue the practice of the deceased during estate administration.

(b) A direction, instruction, or prescription described by Subsection (a)(2)(B) must be in writing if it is to be followed, performed, or filled outside the physician's office.

(c) Subsection (a)(5) does not prohibit the board from acting

under this chapter to restrict the unauthorized practice of optometry.

(d) Continuation of the practice of a deceased optometrist or therapeutic optometrist by an estate under Subsections (a)(7) and (8) must:

- (1) be authorized by the county judge; and
- (2) terminate before the first anniversary of the date of death of the optometrist or therapeutic optometrist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. TEXAS OPTOMETRY BOARD**

Sec. 351.051. TEXAS OPTOMETRY BOARD; MEMBERSHIP. (a) The Texas Optometry Board consists of nine members appointed by the governor with the advice and consent of the senate as follows:

- (1) six optometrists or therapeutic optometrists; and
- (2) three members who represent the public.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1092, Sec. 2, eff. Sept. 1, 2001.

Sec. 351.052. MEMBERSHIP ELIGIBILITY. (a) An optometrist or therapeutic optometrist member of the board must have been a resident of this state engaged in the practice of optometry or therapeutic optometry in this state for the five years preceding the date of the member's appointment.

(b) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

- (1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;
- (2) is employed by or participates in the management of or is an officer or paid consultant of a business entity or other organization that provides health care services or that sells, manufactures, or distributes health care supplies or equipment;
- (3) owns, controls, or has, directly or indirectly, a financial interest in a business entity or other organization that



provides health care services or that sells, manufactures, or distributes health care supplies or equipment; or

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1092, Sec. 3, eff. Sept. 1, 2001.

Sec. 351.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS; CONFLICTS OF INTEREST. (a) A member or employee of the board may not:

(1) be a member of the faculty of a college of optometry or an agent, paid consultant, officer, or employee of a wholesale optical company;

(2) have a financial interest in a college of optometry or wholesale optical company;

(3) be an officer, employee, or paid consultant of a trade association in the field of health care; or

(4) be related within the second degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to a person who is an officer, employee, or paid consultant of a trade association in the field of health care.

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

(c) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(d) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business

or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.002, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.003, eff. September 1, 2005.

Sec. 351.054. TERMS. (a) Members of the board serve staggered six-year terms. The terms of two optometrist or therapeutic optometrist members and one public member expire on January 31 of each odd-numbered year.

(b) A member may not serve more than two complete terms. Service on the board before September 1, 1981, does not count toward that limitation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1092, Sec. 4, eff. Sept. 1, 2001.

Sec. 351.055. OFFICERS. (a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(b) The board shall elect an assistant presiding officer and a secretary-treasurer every two years.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1092, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.004, eff. September 1, 2005.

Sec. 351.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the

qualifications required by Sections 351.051 and 351.052;

(2) does not maintain during service on the board the qualifications required by Sections 351.051 and 351.052;

(3) is ineligible for membership under Section 351.051 or 351.053;

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

(5) without an excuse approved by a majority vote of the board, is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year.

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

(c) A board member who no longer has the qualifications required by Sections 351.051, 351.052, and 351.053 shall immediately inform the governor and the attorney general of that fact and shall resign from the board.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.005, eff. September 1, 2005.

Sec. 351.057. PER DIEM; REIMBURSEMENT. (a) A board member is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board.

(b) A board member may be reimbursed for actual travel expenses, including expenses for meals, lodging, and transportation. A board member is entitled to reimbursement for transportation

expenses as provided by the General Appropriations Act.

(c) At the time a board member applies for reimbursement under this section, the member shall make a sworn statement of the number of days the member engaged in the business of the board and the amount of the member's expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.058. MEETINGS. (a) At least twice a year the board shall hold regular meetings.

(b) The board shall hold special meetings on the request of five members of the board or on the call of the presiding officer.

(c) If a quorum is not present on the day set for a meeting, the members present may adjourn from day to day until a quorum is present, but that period may not exceed three successive days.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.0585. CERTAIN REPORTS REQUIRED AT REGULAR MEETINGS. The board shall receive a report regarding complaints at each board meeting.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. [1025](#)), Sec. 1.006, eff. September 1, 2005.

Sec. 351.059. TRAINING. (a) The board shall establish a training program for the members of the board in consultation with the governor, the attorney general, and the Texas Ethics Commission.

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

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

- (1) the legislation that created the board and the legislation that created the Contact Lens Prescription Act;
- (2) the board's programs, functions, rules, and budget;
- (3) the results of the most recent formal audit of the

board;

(4) the requirements of laws relating to open meetings, public information, administrative procedures, and conflicts-of-interest; and

(5) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.007, eff. September 1, 2005.

**SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER AGENCY PERSONNEL**

Sec. 351.101. EXECUTIVE DIRECTOR. The board may employ an executive director as the executive head of the agency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.103. STAFF ATTORNEY. The board is authorized to employ a staff attorney.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.104. OTHER PERSONNEL. The board may employ personnel necessary to administer this chapter, including stenographers, secretaries, inspectors, and legal assistants.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.105. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management

responsibilities of the executive director and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.008, eff. September 1, 2005.

Sec. 351.106. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide, as often as necessary, to its members and employees information regarding their:

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable law relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.107. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all nonentry level positions concurrently with any public posting.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.108. EQUAL OPPORTUNITY POLICY; REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

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

promotion of personnel, that are in compliance with the requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the board workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. POWERS AND DUTIES**

Sec. 351.151. RULES. (a) The board by a majority vote of a quorum may adopt procedural and substantive rules.

(b) The board may not adopt a substantive rule before submitting the proposed rule to the attorney general for a ruling on the proposed rule's validity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1092, Sec. 6, eff. Sept. 1, 2001.

Sec. 351.152. FEES. (a) The board shall set fees in amounts reasonable and necessary so that in the aggregate the fees produce sufficient revenue to cover the cost of administering this chapter. The board shall set fee amounts so as not to maintain an unnecessary fund balance.

(b) The board shall set fees under this section only for acts or services performed or provided by the board, including:

- (1) an examination;
- (2) a re-examination;
- (3) an issuance of a license;
- (4) a renewal of a license; and
- (5) an issuance of a duplicate license.

(c) The board may not set a fee that existed on September 1, 1993, for an amount less than the amount of the fee on that date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1092, Sec. 7, eff. Sept. 1, 2001.

Sec. 351.153. ADDITIONAL FEE. (a) The fee for the issuance of a license under this chapter and the fee for the renewal of a license under this chapter are the amounts of those fees set by the board under Section 351.152 and an additional fee of \$200.

(b) Of each additional fee collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

(c) The additional fee imposed by this section does not apply to a person who is not practicing optometry or therapeutic optometry in this state at the time the charge is imposed.

(d) The additional fee imposed by this section may not be used to compute the amount to be deposited in the University of Houston development fund under Section 351.154.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.154. APPLICATION OF FEES. (a) Except as otherwise provided by this section, the board shall apply the funds realized from all fees payable under this chapter first to pay all necessary expenses of the board and then, by order of the board, to compensate members of the board.

(b) The board shall deposit in the University of Houston development fund 15 percent of each annual renewal fee collected by the board under Section 351.152. The money paid to that fund under this subsection may be used solely for scholarships or improvements in the physical facilities, including library facilities, of the College of Optometry.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.155. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt a rule restricting advertising or competitive bidding by a person regulated by the board except to prohibit a false, misleading, or deceptive practice.

(b) The board may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person;
- (4) restricts the person's advertisement under a trade name;
- (5) restricts a truthful statement regarding:
  - (A) the address or telephone number of an office maintained by the person;
  - (B) office hours regularly maintained by the person;
  - (C) languages, other than English, fluently spoken in the person's office;
  - (D) whether the person provides services under a specified private or public insurance plan or health care plan;
  - (E) publications authored by the person;
  - (F) a teaching position held or formerly held by the person and the dates the position was held;
  - (G) an affiliation with a hospital or clinic;
  - (H) the fact that the person regularly accepts installment payment of fees;
  - (I) the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised; or
  - (J) other factual information that is not false, fraudulent, misleading, or likely to deceive; or
- (6) restricts a truthful statement that relates to public health or that encourages preventive or corrective care.

(c) Subsection (b) does not prevent the board from restricting advertising that is false, fraudulent, misleading, or likely to deceive.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.156. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

(1) adopt a form to standardize information concerning complaints made to the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.157. ENFORCEMENT. (a) The board, a committee of the board, or a member of the board or a committee may:

(1) issue a subpoena or subpoena duces tecum to compel the attendance of a witness or the production of books, records, or documents;

(2) administer an oath; or

(3) take testimony on all matters in the jurisdiction of the board, committee, or member.

(b) The board is not bound by strict rules of procedure or by the laws of evidence in conducting board proceedings but shall base a determination on sufficient legal evidence to sustain the determination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.1575. INSPECTION OF PREMISES AND REVIEW OF RECORDS AUTHORIZED. (a) The board, at any time and without notice during regular business hours, may:

(1) enter and inspect a facility operated by a person engaged in any activity regulated under this chapter; and

(2) to the extent allowed by federal law, inspect and review any record, including a patient record, maintained by a person engaged in any activity regulated under this chapter.

(b) The board may enter and inspect a facility or inspect and review any record under Subsection (a) as necessary to:

- (1) ensure compliance with this chapter; or
- (2) investigate a complaint made to the board.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.009, eff. September 1, 2005.

Sec. 351.158. LEGAL REPRESENTATION. (a) In a hearing before the board or in a suit in which the board is a party, the board may appoint the board's staff attorney as an attorney of record for the board, except that the staff attorney is subordinate to a county attorney, district attorney, or attorney general if one of those attorneys is also an attorney of record in the proceeding.

(b) In a suit in which the board is a party, the board may appoint the staff attorney as special assistant to the county attorney, district attorney, or attorney general. The board must pay the staff attorney.

(c) This section does not limit or exclude the right of the county attorney, district attorney, or attorney general to appear as the board's attorney in the court to which that attorney is entitled or required under the constitution to represent the state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.159. COMMITTEE APPOINTMENTS AND RECOMMENDATIONS. (a) The board may appoint committees from its own membership.

(b) A committee shall consider any matter referred to the committee relating to the enforcement of this chapter and rules adopted under this chapter. The committee shall make a recommendation on the matter to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.160. PHARMACEUTICAL AGENTS. The board by rule shall designate classifications of pharmaceutical agents that therapeutic optometrists may use in the practice of therapeutic optometry as authorized by this chapter. Additional classifications of medications authorized by Section 351.165(c)(3) may only be approved as provided by that section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.152(a), eff. Sept. 1, 2001.

Sec. 351.161. SEAL; DESIGN OF LICENSE. The board shall adopt an official seal and a license of suitable design.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.162. OFFICE. The board shall maintain an office in which it keeps all permanent records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.163. BOARD RECORDS. (a) The board shall keep a record of its proceedings.

(b) The board may keep a record of any information the board wants to record. The board shall keep a record of:

(1) the name, age, and present legal and mailing address of each applicant for examination;

(2) the name and location of the school of optometry from which the applicant holds credentials;

(3) the time devoted by the applicant to the study and practice of optometry; and

(4) whether the board rejects or licenses the applicant.

(c) A certified copy of the record described by Subsection (b), marked with the hand and seal of the executive director, is:

(1) admissible evidence in all courts; and

(2) prima facie evidence of all matters contained in the record.

(d) The executive director shall number and record each license or annual renewal certificate issued by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.153(a), eff. Sept. 1, 2001.

Sec. 351.166. INFORMATION PROVIDED TO LICENSE HOLDERS. At least once each biennium, the board shall provide to license holders information on:

- (1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;
- (2) abusive and addictive behavior of certain persons who use prescription pain medications;
- (3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and
- (4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 6, eff. Sept. 1, 2003.

Sec. 351.167. POISON CONTROL CENTER INFORMATION. The board shall provide to license holders information regarding the services provided by poison control centers.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 6, eff. Sept. 1, 2003.

Sec. 351.168. TECHNOLOGICAL SOLUTIONS POLICY REQUIRED. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. [1025](#)), Sec. 1.010, eff. September 1, 2005.

Sec. 351.169. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION.

(a) The board shall develop and implement a policy to encourage the use of:

- (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and
- (2) appropriate alternative dispute resolution procedures

under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. [1025](#)), Sec. 1.010, eff. September 1, 2005.

#### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 351.201. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.202. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.203. COMPLAINTS. (a) The board by rule shall establish methods by which a consumer or service recipient is notified of the name, mailing address, and telephone number of the board for the purpose of directing a complaint to the board. The board may provide for that notice:

(1) on each registration form, application, or written contract for service provided by a person regulated under this chapter;

(2) on a sign prominently displayed in the place of business of a person regulated under this chapter; or

(3) in a bill for service provided by a person regulated under this chapter.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

(c) The board shall make information available describing the procedures established by the board relating to complaint investigation and resolution.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.011, eff. September 1, 2005.

Sec. 351.2035. COMPLAINTS RESULTING FROM INSPECTIONS. (a) The board shall handle as a complaint any violation of this chapter or a rule adopted by the board that is discovered during an inspection conducted under Section 351.1575(b)(1).

(b) The board shall investigate and dispose of a complaint described by Subsection (a) in the same manner that the board investigates and disposes of other complaints made under this chapter.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.012, eff. September 1, 2005.

Sec. 351.2036. PROCEDURE FOR PROCESSING COMPLAINTS. (a) The board may delegate to board staff the authority to dismiss or enter into an agreed settlement of a complaint that does not directly

relate to patient care and the investigation or disposition of which does not require expertise in optometry or therapeutic optometry. The disposition determined by board staff must be approved by the board at a public meeting.

(b) A complaint delegated under this section shall be referred to an informal settlement conference under Section 351.507 if:

(1) the board staff determines that the complaint should not be dismissed or settled; or

(2) the board staff is unable to reach an agreed settlement.

(c) A complaint that is directly related to patient care or the investigation or disposition of which requires expertise in optometry or therapeutic optometry shall be reviewed by two board members who are optometrists or therapeutic optometrists who shall:

(1) dismiss the complaint if both board members agree that the complaint should be dismissed; or

(2) refer the complaint to an informal settlement conference under Section 351.507.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.012, eff. September 1, 2005.

Sec. 351.204. RECORDS OF COMPLAINTS. (a) The board shall maintain a system to act promptly and efficiently on each complaint filed with the board. The board shall maintain information concerning:

(1) parties to the complaint;

(2) the subject matter of the complaint;

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

(4) the disposition of the complaint; and

(5) other relevant information.

(b) The board shall periodically notify parties to the complaint of the status of the complaint until the board finally disposes of the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.013, eff. September 1, 2005.



Sec. 351.2045. CONFIDENTIALITY OF INVESTIGATION FILES. (a) The board's investigation files are confidential, privileged, and not subject to discovery, subpoena, or any other means of legal compulsion for release other than to the board or an employee or agent of the board.

(b) The board shall share information in investigation files, on request, with another state or federal regulatory agency or with a local, state, or federal law enforcement agency regardless of whether the investigation has been completed. The board is not required to disclose under this subsection information that is an attorney-client communication, an attorney work product, or other information protected by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) On the completion of the investigation and before a hearing under Section 351.503, the board shall provide to the license holder, subject to any other privilege or restriction set forth by rule, statute, or legal precedent, access to all information in the board's possession that the board intends to offer into evidence in presenting its case in chief at the contested case hearing on the complaint. The board is not required to provide:

- (1) a board investigative report or memorandum;
- (2) the identity of a nontestifying complainant; or
- (3) attorney-client communications, attorney work product, or other materials covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(d) Notwithstanding Subsection (a), the board may:

- (1) disclose a complaint to the affected license holder;

and

- (2) provide to a complainant the license holder's response to the complaint, if providing the response is considered by the board to be necessary to investigate the complaint.

(e) This section does not prohibit the board or another party in a disciplinary action from offering into evidence in a contested case under Chapter 2001, Government Code, a record, document, or other information obtained or created during an investigation.

Added by Acts 2003, 78th Leg., ch. 329, Sec. 4.

Sec. 351.205. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this section must:

- (1) distinguish between categories of complaints;
- (2) ensure that a complaint is not dismissed without appropriate consideration;
- (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the complaint;
- (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and
- (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and prescribe the procedures for the board to obtain the services of a private investigator.

(a-1) The board shall adopt rules that prescribe a method for prioritizing complaints for purposes of complaint investigation and disposition. The rules adopted under this subsection must:

- (1) place the highest priority on complaints that allege conduct that:
  - (A) violates the standard of professional care and judgment of an optometrist or therapeutic optometrist, as applicable;
  - (B) involves professional misconduct; or
  - (C) potentially threatens public health or safety; and
- (2) place a lower priority on complaints that are not described by Subdivision (1).

(b) The board shall:

- (1) dispose of a complaint in a timely manner; and
- (2) establish a schedule for conducting each phase of the disposition of the complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) The board shall notify the parties to the complaint of the projected time requirements for pursuing the complaint.

(d) The board shall notify the parties to the complaint of any change in the schedule not later than the seventh day after the date the change is made.

(e) The executive director shall notify the board of a complaint that is unresolved after the time prescribed by the board

for resolving the complaint so that the board may take necessary action on the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.014, eff. September 1, 2005.

#### **SUBCHAPTER F. LICENSE REQUIREMENTS**

Sec. 351.251. LICENSE REQUIRED. A person may not practice optometry or therapeutic optometry unless the person holds a license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.252. EDUCATION REQUIREMENTS FOR THERAPEUTIC OPTOMETRIST. (a) A person must satisfactorily complete the education requirements established by board rule to be licensed as a therapeutic optometrist.

(b) The education necessary to meet the requirements must:

(1) be provided by an entity approved by the board; and  
(2) include an emphasis on the examination, diagnosis, and treatment of conditions of the human eye and adnexa.

(c) The board by rule shall require successful completion of accredited academic and clinical courses in pharmacology and related pathology that are:

(1) approved by the board; and  
(2) determined by the board to be equivalent in the total number of classroom hours to the requirements for other health care professionals in this state who are licensed to use pharmaceutical agents, including dentists, podiatrists, and physicians.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.253. EXAMINATION REQUIREMENT FOR THERAPEUTIC OPTOMETRIST. A person must pass the examination given by the board to be licensed to practice therapeutic optometry in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.254. EXAMINATION APPLICATION. (a) An applicant is eligible to take the licensing examination if the applicant provides to the executive director, on a form provided by the board, information the board considers necessary to enforce this chapter, including satisfactory sworn evidence that the applicant:

- (1) has attained the age of majority;
- (2) is of good moral character;
- (3) has a preliminary education equivalent to one that would permit the applicant to enroll in The University of Texas; and
- (4) has attended and graduated from a reputable college of optometry that meets board requirements.

(b) For purposes of Subsection (a)(4), a college of optometry is reputable if the college has:

- (1) entrance requirements that are as high as those adopted by the better class of universities and schools of optometry; and
- (2) a course of instruction that is:
  - (A) as demanding as that adopted by the better class of universities and schools of optometry;
  - (B) equivalent to not less than six terms of eight months each; and
  - (C) approved by the board.

(c) An applicant who meets the other requirements of this section may take the examination without having graduated as required by Subsection (a) if the dean of a college of optometry that meets the requirements of the board notifies the board in writing that the applicant is enrolled in good standing in the college and is in the final semester before graduation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.155(a), eff. Sept. 1, 2001.

Sec. 351.255. CONDUCT OF EXAMINATION. (a) The board shall give an applicant notice of the date and place of the examination. The examination shall be given at least twice a year at the board's regular meetings.

(b) The board shall conduct the examination:

(1) in writing and by other means that the board considers adequate to determine applicant qualifications; and

(2) in a manner that is fair and impartial to each applicant and recognized school of optometry.

(c) If a national testing organization does not prepare the written portion of the examination, the board shall have an independent testing professional validate that portion.

(d) The board shall give the same written examination to each applicant examined at the same time.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.256. EXAMINATION SUBJECTS. (a) The examination must consist of written or practical tests in subjects regularly taught in recognized accredited colleges of optometry, including:

(1) practical, theoretical, and physiological optics;

(2) theoretical and practical optometry; and

(3) the anatomy, physiology, and pathology of the eye as applied to optometry.

(b) The examination must also include examination in pharmacology and related pathology.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. [1025](#)), Sec. 1.015, eff. September 1, 2005.

Sec. 351.257. EXAMINATION RESULTS. (a) The board shall notify each examinee of the examination results not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the examination results not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an

examination, the board shall provide to the person an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.258. ISSUANCE OF LICENSE TO THERAPEUTIC OPTOMETRIST; FEE. (a) The board shall:

(1) register as qualified under this chapter an applicant who passes the examination and meets all board requirements; and

(2) issue to the applicant a license to practice therapeutic optometry in this state.

(b) A person who passes the examination and meets board requirements must pay a fee for issuance of a license not later than the 90th day after the date the person receives notice, by registered mail at the address given on the examination papers or given at the time of the examination, that the person is eligible for a license.

(c) A person described by Subsection (a) who fails to pay the fee in a timely manner waives the right to obtain a license. The board may refuse to issue a license to the person until the person passes another examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.259. PROVISIONAL LICENSE. (a) The board shall issue a provisional license to practice optometry or therapeutic optometry to an applicant who:

(1) is licensed in good standing as an optometrist or therapeutic optometrist in another state that has licensing requirements that are substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the board relating to the practice of optometry or therapeutic optometry; and

(3) is sponsored by a person licensed by the board under this chapter with whom the provisional license holder may practice.

(b) The board may waive the requirement of Subsection (a)(3) for an applicant if the board determines that compliance is a hardship to the applicant.

(c) A provisional license is valid until the date the board

approves or denies the provisional license holder's application for a license. The board shall issue a license under this chapter to the holder of a provisional license under this section if:

(1) the provisional license holder passes the examination required by Section 351.253 and satisfies other license requirements under this chapter; and

(2) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this chapter.

(d) The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the board issues the provisional license. The board may extend the 180-day limit if the results of an examination administered or graded by a testing organization have not been received by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.2595. LICENSE WITHOUT EXAMINATION. The board may issue a license to practice therapeutic optometry without requiring the applicant to pass all or part of the examination required by Section 351.253 if:

(1) the applicant is licensed in good standing as a therapeutic optometrist in another state;

(2) the applicant has passed an examination that is equivalent or superior to the examination required by Section 351.253;

(3) during at least five of the seven years preceding the application date, the applicant has been:

(A) actively engaged in the practice of therapeutic optometry; or

(B) engaged in full-time teaching at an accredited college of optometry or medicine;

(4) there are no pending disciplinary actions against the applicant in the state in which the applicant is licensed; and

(5) the applicant's license has never been suspended or revoked.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.156(a), eff. Sept. 1, 2001.

Sec. 351.260. LIMITED LICENSE FOR CLINICAL FACULTY. (a) The board by rule may issue a limited license to a full-time clinical faculty member of an institution of higher education of this state who provides instruction in optometry or therapeutic optometry.

(b) A license issued under this section may authorize the faculty member to practice optometry or therapeutic optometry only on the premises of the institution of higher education and its affiliated teaching clinics and only as part of the institution's teaching program.

(c) The board by rule may adopt criteria and fees for issuance and renewal of a license under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.261. DISPLAY OF LICENSE OR CERTIFICATE. A person practicing optometry or therapeutic optometry in this state shall:

(1) display the person's license or certificate in a conspicuous place in the principal office in which the person practices optometry or therapeutic optometry; and

(2) whenever required, exhibit the license or certificate to the board or the board's authorized representative.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.262. INFORMATION PRESENTED TO PATIENT. (a) An optometrist or therapeutic optometrist shall, within a reasonable time after completing an examination of a patient, present to the patient a prescription, bill, or receipt containing the license number and name of the optometrist or therapeutic optometrist. This subsection does not affect the individual professional liability of the optometrist or therapeutic optometrist.

(b) Notwithstanding Subsection (a), a person practicing optometry or therapeutic optometry outside of the principal office in which the person practices optometry or therapeutic optometry shall deliver to a patient fitted with eyeglasses a specification of and the prices charged for the lenses and material provided to the patient, with a bill containing:



- (1) the person's signature;
- (2) the person's mailing address; and
- (3) the number of the person's license or certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.263. LOST OR DESTROYED LICENSE. The board shall issue a license under this chapter to a license holder whose license has been lost or destroyed on:

- (1) submission of an affidavit stating:
  - (A) that the license has been lost or destroyed;
  - (B) that the person making the affidavit is the person to whom the license was issued; and
  - (C) any other information required by the board; and
- (2) payment of a fee for issuance of a duplicate license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.264. INACTIVE STATUS. The board by rule may provide for a license holder's license to be placed on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.265. RETIRED STATUS. (a) The board by rule may allow a license holder to place the person's license on retired status. A license holder must apply to the board for retired status, on a form prescribed by the board, before the expiration date of the person's license.

(b) In determining whether to grant retired status, the board shall consider the age, years of practice, and status of the license holder at the time of the application.

(c) A license holder on retired status:

- (1) must pay a license renewal fee in an amount equal to the renewal fee for a license on inactive status; and
- (2) except as provided by Subsection (f), may not perform any activity regulated under this chapter.

(d) To reinstate a license placed on retired status, the license holder must submit a written request for reinstatement to the

board. The board may return the license to active status and issue a renewal license if the license holder complies with any education or other requirement established by board rule and pays the renewal fee in effect at the time of the requested reinstatement.

(e) The board may charge a reasonable administrative fee to cover the cost of research and the preparation of documentation for the board's consideration of a request for reinstatement of a license on retired status.

(f) A license holder on retired status may perform an activity regulated under this chapter if the license holder's practice consists only of voluntary charity care, as defined by board rule. The board's rules under this subsection must prescribe the scope of practice permitted for the license holder, the license holder's authority to prescribe and administer drugs, and any continuing education requirements applicable to the license holder. The scope of practice of a license holder on retired status may not be greater than the scope of practice of the same license holder on active status.

Added by Acts 2009, 81st Leg., R.S., Ch. 324 (H.B. 675), Sec. 1, eff. September 1, 2009.

#### **SUBCHAPTER G. LICENSE RENEWAL**

Sec. 351.301. ANNUAL RENEWAL CERTIFICATE. (a) A person required by this subchapter to hold an annual renewal certificate may not practice optometry or therapeutic optometry without the certificate.

(b) A violation of this section has the same effect as, and is subject to the penalties for, practicing optometry or therapeutic optometry without holding a license as required by Subchapter F.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.302. LICENSE RENEWAL. (a) The board by rule may adopt a system under which licenses expire on various dates during the year. The board shall adjust the final dates for payment, the dates for notice of nonpayment, and the dates for license cancellation accordingly.

(b) For the year in which the license expiration date is

changed, license renewal fees payable not later than January 1 shall be prorated on a monthly basis so that each license holder pays only that portion of the license renewal fee allocable to the number of months during which the license is valid.

(c) On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.303. NOTICE OF LICENSE EXPIRATION. Not later than the 30th day before the date a person's license is to expire, the board shall send written notice of the impending license expiration to the person at the person's last known address according to board records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.304. PROCEDURE FOR RENEWAL. (a) Not later than January 1 of each year or as otherwise provided under Section 351.302, an optometrist or therapeutic optometrist shall pay to the board an annual renewal fee for the renewal of a license to practice optometry or therapeutic optometry for the year. A person may renew an unexpired license by paying the required renewal fee to the board before the license expiration date.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to the sum of one and one-half times the annual renewal fee set by the board under Section 351.152 and the additional fee required by Section 351.153. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a renewal fee that is equal to the sum of two times the annual renewal fee set by the board under Section 351.152 and the additional fee required by Section 351.153.

(c) Except as otherwise provided by this subchapter, a person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.016, eff. September 1, 2005.

Sec. 351.305. ISSUANCE OF CERTIFICATE. On receipt of the required fees, the board shall issue an annual renewal certificate containing information from board records that the board considers necessary for the proper enforcement of this chapter, including the license number and the year for which the license is renewed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.306. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The board may renew without examination the expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application.

(b) The person must pay to the board a fee that is equal to the amount of the fee set by the board under Section 351.153(a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.017, eff. September 1, 2005.

Sec. 351.3065. RENEWAL OF EXPIRED LICENSE BY RETIRED OPTOMETRIST OR THERAPEUTIC OPTOMETRIST. The board may renew the license of a person whose license has been expired for one year or more without requiring the person to comply with the requirements and procedures for an original license if the person places the person's renewed license on retired status and confines the person's practice solely to voluntary charity care under Section 351.265(f).

Added by Acts 2009, 81st Leg., R.S., Ch. 324 (H.B. 675), Sec. 2, eff. September 1, 2009.

Sec. 351.307. GOVERNMENTAL SERVICE, TRAINING, OR EDUCATION. An

optometrist or therapeutic optometrist may obtain reinstatement of an expired license without paying a lapsed renewal fee or other fee and without passing an examination if:

(1) the license holder's license expired while the license holder was engaged in:

(A) active duty with a United States military service or with the United States Public Health Service;

(B) full-time federal service; or

(C) training or education under the supervision of the United States, before induction into a United States military service;

(2) termination of the license holder's service, training, or education occurred other than by dishonorable discharge; and

(3) not later than the first anniversary of the date of termination of the service, training, or education, the license holder provides the board with an affidavit stating that:

(A) the license holder was engaged in the service, training, or education; and

(B) termination of the service, training, or education occurred other than by dishonorable discharge.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.308. CONTINUING EDUCATION. (a) An optometrist or therapeutic optometrist must take annual courses in subjects relating to the use and application of scientific, technical, and clinical advances in subjects relating to the practice of optometry or therapeutic optometry regularly taught in recognized optometric universities and schools, including:

(1) vision care;

(2) vision therapy; and

(3) visual training.

(b) An optometrist or therapeutic optometrist must complete 16 hours of study each calendar year, of which at least six hours must be in the diagnosis or treatment of ocular disease.

(c) An optometrist or therapeutic optometrist shall fulfill the continuing education requirements by attending continuing education courses sponsored by an accredited college of optometry or a course approved by the board. Course attendance must be certified to the

board on a form approved by the board. The license holder shall submit the certification with the license renewal application and fee.

(d) The board may take action necessary to qualify for federal funds or grants made available to establish or maintain continuing education programs.

(e) The board may not issue a renewal certificate to a license holder who has not complied with the requirements of this section unless the license holder:

(1) provides the board with evidence acceptable to the board that the license holder has, since the license expiration, completed sufficient hours of approved continuing education courses to satisfy any deficiency for the previous year; and

(2) pays to the board in addition to the license renewal fee a penalty that is equal to the amount of the license renewal fee.

(f) Continuing education hours used by a license holder to satisfy a deficiency for the previous year under Subsection (e)(1) may not be used to satisfy the requirements for the year in which the hours are earned.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.309. CONTINUING EDUCATION EXEMPTIONS. A person is exempt from the continuing education requirements of Section 351.308 if the person:

(1) holds a license but does not practice optometry or therapeutic optometry in this state;

(2) served in the regular armed forces of the United States during part of the 12 months preceding the annual license renewal date;

(3) submits proof to the board that the person suffered a serious or disabling illness or physical disability preventing the person from complying with the requirements during the 12 months preceding the annual license renewal date; or

(4) was first licensed during the 12 months preceding the annual license renewal date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER H. PRACTICE BY LICENSE HOLDER**

Sec. 351.351. LICENSE HOLDER INFORMATION. (a) A license holder shall file with the board:

- (1) the license holder's mailing address;
- (2) the address of the license holder's residence;
- (3) the mailing address of each office of the license holder; and
- (4) the address for the location of each office of the license holder that has an address different from the office's mailing address.

(b) Not later than the 10th day after the date of a change in the information required to be filed with the board under Subsection (a), the license holder shall file with the board a written notice of the change.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.352. OPTOMETRIC FILES AND RECORDS. (a) All prescription files, patient records, and business records of an optometric practice are the sole property of the optometrist or therapeutic optometrist.

(b) A patient may obtain a copy of the patient's optometric records, or may have the records forwarded to another doctor, by making a signed, written request to the optometrist or therapeutic optometrist for the records.

(c) An optometrist or therapeutic optometrist may charge a reasonable processing fee for providing optometric records to a patient. The optometrist or therapeutic optometrist may provide the records in summary form unless the patient specifically requests otherwise.

(d) This section does not affect a patient's right of access to the patient's contact lens prescription under Chapter 353.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.353. INITIAL EXAMINATION OF PATIENT. To ensure adequate examination of a patient for whom an optometrist or therapeutic optometrist signs or causes to be signed an ophthalmic lens prescription, in the initial examination of the patient the

optometrist or therapeutic optometrist shall make and record, if possible, the following findings concerning the patient's condition:

- (1) case history, consisting of ocular, physical, occupational, and other pertinent information;
- (2) visual acuity;
- (3) the results of a biomicroscopy examination, including an examination of lids, cornea, and sclera;
- (4) the results of an internal ophthalmoscopic examination, including an examination of media and fundus;
- (5) the results of a static retinoscopy, O.D., O.S., or autorefractor;
- (6) subjective findings, far point and near point;
- (7) assessment of binocular function;
- (8) amplitude or range of accommodation;
- (9) tonometry; and
- (10) angle of vision, to right and to left.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.354. CERTAIN OPTOMETRIC SERVICES AUTHORIZED. An optometrist or therapeutic optometrist may:

- (1) perform:
  - (A) vision therapy;
  - (B) hand-eye coordination exercises;
  - (C) visual training; and
  - (D) developmental vision therapy; and
- (2) evaluate and remedy a learning or behavioral disability associated with or caused by a defective or abnormal condition of vision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.355. DETERMINING OR MEASURING VISION. In determining or measuring the powers of vision of the human eye, an optometrist or therapeutic optometrist may:

- (1) examine the eye to diagnose the presence of a defect or abnormal condition, the presence or effect of which may be corrected, remedied, or relieved by the use of lenses or prisms;
- (2) determine the accommodative or refractive condition or



the range or powers of vision or muscular equilibrium of the eye; or

(3) examine the human vision system to determine a departure from the normal, measure the system's powers of vision, or adapt lenses or prisms for the system's aid or relief.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.356. FITTING LENSES OR PRISMS. In fitting lenses or prisms, an optometrist or therapeutic optometrist may:

(1) directly or indirectly prescribe or supply lenses or prisms;

(2) make measurements involving the eyes or the optical requirements of the eyes; or

(3) adapt or supply lenses or prisms to:

(A) correct, remedy, or relieve a defect or abnormal condition of the human eye; or

(B) correct, remedy, or relieve or attempt to correct, remedy, or relieve the effect of a defect or abnormal condition of the human eye.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.357. FITTING AND DISPENSING CONTACT LENSES. (a) Contact lenses may be fitted only by an optometrist, therapeutic optometrist, or licensed physician.

(b) An ophthalmic dispenser may dispense contact lenses on a fully written contact lens prescription issued by an optometrist, therapeutic optometrist, or licensed physician. The ophthalmic dispenser may:

(1) fabricate or order the contact lenses and dispense them to the patient with appropriate instructions for the care and handling of the lenses; and

(2) mechanically adjust the lenses.

(c) The ophthalmic dispenser may not measure the eye or cornea or evaluate the physical fit of the contact lenses in any way.

(d) Notwithstanding Subsection (b), an optometrist, therapeutic optometrist, or licensed physician who issues a contact lens prescription remains professionally responsible to the patient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.358. OPTHALMIC DEVICES, ORAL MEDICATIONS, AND PHARMACEUTICAL AGENTS. (a) An optometrist may not treat the eye for a defect or administer or prescribe a drug or physical treatment unless the optometrist is a therapeutic optometrist or licensed physician.

(b) A therapeutic optometrist may:

(1) administer, perform, or prescribe ophthalmic devices, procedures, and appropriate medications administered by topical or oral means, in accordance with this section and Section 351.3581, to diagnose or treat visual defects, abnormal conditions, or diseases of the human vision system, including the eye and adnexa; or

(2) administer medication by parenteral means for a purpose and in a manner prescribed by Subsection (e).

(c) A therapeutic optometrist may prescribe oral medications only in the following classifications of oral pharmaceuticals:

(1) one 10-day supply of oral antibiotics;

(2) one 72-hour supply of oral antihistamines;

(3) one seven-day supply of oral nonsteroidal anti-inflammatories;

(4) one three-day supply of any analgesic identified in Schedules III, IV, and V of 21 U.S.C. Section 812; and

(5) any other oral pharmaceutical recommended by the Optometric Health Care Advisory Committee and approved by the board and the Texas State Board of Medical Examiners.

(d) A therapeutic optometrist may independently administer oral carbonic anhydrase inhibitors for emergency purposes only and shall immediately refer the patient to an ophthalmologist.

(e) A therapeutic optometrist may inject appropriate medication for a patient who has an anaphylactic reaction to counteract the anaphylaxis. The therapeutic optometrist shall immediately refer the patient to a physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.152(b), eff. Sept. 1, 2001.

Sec. 351.3581. DIAGNOSIS AND TREATMENT OF GLAUCOMA. (a) A therapeutic optometrist may not administer or prescribe an oral or parenteral medication or treat glaucoma unless the therapeutic optometrist holds a certificate issued by the board. A therapeutic optometrist certified under this subsection shall be known as an optometric glaucoma specialist. To obtain a certificate, a therapeutic optometrist must as required under Section 351.165(c):

- (1) complete an instructional clinical review course; and
- (2) pass an examination approved by the board.

(b) Not later than the 30th day after the date of the initial diagnosis of glaucoma, a therapeutic optometrist shall engage in consultation with an ophthalmologist to develop an individual treatment plan that is approved by the therapeutic optometrist and ophthalmologist. The parameters of the consultation shall be at the discretion of the ophthalmologist but must at least include confirmation of the diagnosis and a plan for comanagement of the patient, including periodic review of the patient's progress.

(c) A therapeutic optometrist required to engage in comanagement consultation with an ophthalmologist shall inform the patient diagnosed with glaucoma that the therapeutic optometrist is required to have the diagnosis confirmed and comanaged with an ophthalmologist of the patient's choosing or, if the patient does not choose an ophthalmologist, an ophthalmologist practicing in the geographic area in which the therapeutic optometrist practices.

(d) A therapeutic optometrist shall refer a patient to an ophthalmologist if:

(1) the patient is younger than 16 years of age and has been diagnosed as having glaucoma;

(2) the patient has been diagnosed as having acute closed angle glaucoma;

(3) the patient has been diagnosed as having malignant glaucoma or neovascular glaucoma;

(4) the therapeutic optometrist determines that a patient's glaucoma is caused by a diabetic complication and, after joint consultation with the physician treating the diabetes and an ophthalmologist by telephone, fax, or another method, the physician or ophthalmologist determines that the patient should be seen by the physician or ophthalmologist; or

(5) the therapeutic optometrist determines that a patient's glaucoma is not responding appropriately to a treatment specified in

Subsection (f) and, after consulting a physician by telephone, fax, or another method, the physician determines that the patient should be seen by the physician or an appropriate specialist.

(e) A therapeutic optometrist who refers a patient to a physician or specialist shall inform the patient that the patient may go to any physician or specialist the patient chooses. This subsection does not prevent a therapeutic optometrist from recommending a physician or specialist.

(f) On making an initial diagnosis of glaucoma, a therapeutic optometrist shall set a target pressure that is not more than 80 percent of the initial intraocular pressure. The patient's glaucoma is not considered to be appropriately responding to treatment if the patient fails to achieve the target pressure within an appropriate time.

(g) Before a therapeutic optometrist may prescribe a beta blocker, the therapeutic optometrist must take a complete case history of the patient and determine whether the patient has had a physical examination within the 180 days preceding the date of taking the history. If the patient has not had a physical examination or if the patient has a history of congestive heart failure, bradycardia, heart block, asthma, or chronic obstructive pulmonary disease, the therapeutic optometrist must refer the patient to a physician for a physical examination before initiating beta blocker therapy.

(h) A therapeutic optometrist who diagnoses acute closed angle glaucoma may initiate appropriate emergency treatment for a patient but shall refer the patient to a physician in a timely manner.

(i) A physician may charge a reasonable consultation fee for a consultation given as provided by this section.

(j) A physician to whom a patient is referred by a therapeutic optometrist under this section shall forward to the therapeutic optometrist, not later than the 30th day after first seeing the patient, a written report on the results of the referral. The therapeutic optometrist shall maintain the report in the patient's records. A physician who, for a medically appropriate reason, does not return a patient to the therapeutic optometrist who referred the patient shall state in the physician's report to the therapeutic optometrist the specific medical reason for failing to return the patient.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.152(c), eff. Sept.

1, 2001.

Sec. 351.359. PRESCRIPTION. (a) An ophthalmic lens prescription must include:

- (1) the signature of the optometrist or therapeutic optometrist; and
- (2) the information and parameters the optometrist or therapeutic optometrist considers relevant or necessary.

(b) The prescription may not contain a restriction that limits the parameters to a private label not available to the optical industry as a whole.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.360. PROFESSIONAL STANDARD OF THERAPEUTIC OPTOMETRIST. A therapeutic optometrist, including an optometric glaucoma specialist, is subject to the same standard of professional care and judgment as a person practicing as an ophthalmologist under Subtitle B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.152(d), eff. Sept. 1, 2001.

Sec. 351.361. LEASE; PAYMENT BASIS; ACCOUNTS RECEIVABLE. (a) An optometrist or therapeutic optometrist may:

- (1) lease space from an establishment;
- (2) pay for franchise fees or other services on a percentage or gross receipts basis; or
- (3) sell, transfer, or assign accounts receivable.

(b) Subsection (a)(2) does not authorize activity prohibited by Section 351.408.

(c) The purpose of this section is to protect the public in the practice of optometry or therapeutic optometry, better enable the public to assign professional responsibility, and further safeguard the doctor-patient relationship.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.362. PROFESSIONAL RESPONSIBILITY; NAME OF PRACTICE.

(a) An optometrist or therapeutic optometrist may practice under a trade name, an assumed name, or the name of a professional corporation or association.

(b) An optometrist or therapeutic optometrist practicing in this state shall display the actual name under which the optometrist or therapeutic optometrist is licensed by the board, so that the name is visible to the public before entry into the optometrist's or therapeutic optometrist's office reception area.

(c) Section 351.361(c) applies to this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.363. MERCANTILE ESTABLISHMENT. (a) To safeguard the visual welfare of the public and the doctor-patient relationship, assign professional responsibility, establish standards of professional surroundings, more nearly secure to the patient the optometrist's or therapeutic optometrist's undivided loyalty and service, and carry out the prohibitions of this chapter against placing an optometric or therapeutic optometric license in the service or at the disposal of an unlicensed person, this section applies to an optometrist or therapeutic optometrist who leases space from and practices optometry or therapeutic optometry on the premises of a mercantile establishment.

(b) The optometric practice must be owned by an optometrist or therapeutic optometrist. Every phase of the practice and the leased space of the optometric practice must be controlled exclusively by an optometrist or therapeutic optometrist.

(c) The prescription files and business records of the optometric practice are the sole property of the optometrist or therapeutic optometrist and may not be involved with a mercantile establishment or unlicensed person.

(d) The lessor of the optometric practice space may inspect business records that are essential to the successful initiation or continuation of a lease of space based on a percentage of gross receipts.

(e) The leased space of the optometric practice must be

definite and apart from space used by other occupants of the premises. Solid, opaque partitions or walls from floor to ceiling must separate the optometric practice space from space used by other occupants. Railings, curtains, or other similar arrangements do not satisfy the requirements of this subsection.

(f) The leased space must have a patient's entrance opening on a public thoroughfare, such as a public street, hall, lobby, or corridor. An aisle of a mercantile establishment does not satisfy the requirement of this subsection. An entrance is not considered a patient's entrance unless actually used as an entrance by the optometrist's or therapeutic optometrist's patients.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.364. RELATIONSHIPS WITH DISPENSING OPTICIANS. (a) If an optometrist or therapeutic optometrist occupies space for the practice of optometry or therapeutic optometry on premises on which a person engages in the business of a dispensing optician, solid partitions or walls from floor to ceiling must separate the space occupied by the optometrist or therapeutic optometrist from the space occupied by the dispensing optician.

(b) The space occupied by the optometrist or therapeutic optometrist must have a patient's entrance opening on a public thoroughfare, such as a public street, hall, lobby, or corridor. An entrance is not considered a patient's entrance unless actually used as an entrance by the optometrist's or therapeutic optometrist's patients.

(c) An optometrist or therapeutic optometrist may engage in the business of a dispensing optician, own stock in a corporation engaged in the business of a dispensing optician, or be a partner in a firm engaged in the business of a dispensing optician, but the records and accounts of the business of a dispensing optician must be kept separate from those of the optometric practice.

(d) The purpose of this section is to ensure that the practices of optometry and therapeutic optometry are carried out in a manner completely separate from the business of a dispensing optician, with no control of one by the other and no solicitation for one by the other, except as described by this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## Sec. 351.365. PATIENT RIGHTS REGARDING SPECTACLE PRESCRIPTION.

(a) If, after examining a patient, an optometrist or therapeutic optometrist believes that lenses are required to correct or remedy a defect or abnormal condition of vision, the optometrist or therapeutic optometrist shall:

(1) inform the patient; and

(2) provide the patient with a copy of the patient's spectacle prescription.

(b) The optometrist or therapeutic optometrist shall expressly indicate verbally or by other means that the patient has the following alternatives for the preparation of the lenses according to the prescription:

(1) the optometrist or therapeutic optometrist will prepare or have the lenses prepared; or

(2) the patient may have the prescription filled by a dispensing optician but should return for an optometrical examination of the lenses.

(c) This section does not require an optometrist or therapeutic optometrist to provide a prescription to a patient before the patient has paid the examination fee.

(d) Section 351.364(d) applies to this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## Sec. 351.366. AUTHORITY TO FORM CERTAIN JOINTLY OWNED ENTITIES.

(a) Except as provided by Section 351.361 or 351.457, an optometrist or therapeutic optometrist and a physician may, for the purposes described by Subsection (b), organize, jointly own, and manage any legal entity, including:

(1) a partnership under the Texas Revised Partnership Act (Article 6132b-1.01 et seq., Vernon's Texas Civil Statutes);

(2) a limited partnership under the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes); or

(3) a limited liability company under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes).

(b) An entity authorized under Subsection (a) may:

(1) own real property, other physical facilities, or



equipment for the delivery of health care services or management;

(2) lease, rent, or otherwise acquire the use of real property, other physical facilities, or equipment for the delivery of health care services or management; or

(3) employ or otherwise use a person who is not an optometrist, therapeutic optometrist, or physician for the delivery of health care services or management.

(c) Only an optometrist, therapeutic optometrist, or physician may have an ownership interest in an entity authorized under Subsection (a). This subsection does not prohibit an entity from making one or more payments to an owner's estate following the owner's death under an agreement with the owner or as otherwise authorized or required by law.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.157(a), eff. Sept. 1, 2001.

Sec. 351.367. CONTRACT OR EMPLOYMENT WITH COMMUNITY HEALTH CENTERS. (a) In this section, "community health center" means a health organization that:

(1) is a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and Section 501(c)(3), Internal Revenue Code of 1986; and

(2) is organized and operated as:

(A) a migrant, community, or homeless health center under the authority of and in compliance with 42 U.S.C. Section 254b or 254c; or

(B) a federally qualified health center under 42 U.S.C. Section 1396d(1)(2)(B).

(b) The board by rule shall certify a health organization to contract with or employ an optometrist or therapeutic optometrist if the organization:

(1) applies for certification on a form approved by the board; and

(2) presents proof satisfactory to the board that the organization is a community health center.

(c) A community health center that contracts with or employs an optometrist or therapeutic optometrist under this section may not control or attempt to control the professional judgment of the

optometrist or therapeutic optometrist.

Added by Acts 2009, 81st Leg., R.S., Ch. 227 (S.B. 1476), Sec. 1, eff. May 27, 2009.

**SUBCHAPTER I. PROHIBITED PRACTICES IN GENERAL**

Sec. 351.401. PROHIBITED OFFER, REPRESENTATION, OR DESIGNATION. Unless a person is licensed to practice under this chapter, the person may not:

- (1) offer to practice optometry or therapeutic optometry;
- (2) represent to others that the person is authorized to practice optometry or therapeutic optometry; or
- (3) use in connection with the person's name a designation implying that the person practices optometry or therapeutic optometry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.402. IMPERSONATION PROHIBITED. A person may not:

- (1) impersonate an optometrist or therapeutic optometrist or falsely assume another name; or
- (2) buy, sell, or fraudulently obtain an optometry diploma, an optometry or therapeutic optometry license, or a record of registration, or aid or abet in that purchase, sale, or acquisition.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.403. FALSE, DECEPTIVE, OR MISLEADING ADVERTISING. (a) A person may not publish or display, or cause or permit to be published or displayed, by any means, including by newspaper, radio, television, billboard, or window display, a false, deceptive, or misleading statement or advertisement concerning ophthalmic services or materials. In this subsection, "ophthalmic materials" include lenses, frames, eyeglasses, or contact lenses, or parts of lenses, frames, eyeglasses, or contact lenses.

(b) An advertisement of prescription eyeglasses or contact lenses must contain language to the effect that an eye doctor's prescription is required to purchase prescription eyeglasses or

contact lenses.

(c) An advertisement of the price of prescription eyeglasses or contact lenses must contain the following information:

(1) a statement of whether the cost of an examination, prescription services, and follow-up care by an eye doctor is included in the price;

(2) if the advertised goods are to be available to the public at the advertised price for less than 30 days after the date of publication of the advertisement, a statement of the time limitation on the offer;

(3) if the advertised goods are to be available to the public in limited quantities and if no rainchecks are to be given on total depletion of the inventory of the advertised goods, a statement of the total quantity available to all customers;

(4) if the advertised goods are to be available to the public at a limited number for each customer, a statement of the limit for each customer; and

(5) for contact lenses, a statement of the number of lenses included for the price specified.

(d) A person who fails to satisfy the requirements of Subsection (b) or (c) is considered to have published a false, deceptive, or misleading statement within the meaning of this section.

(e) A statement required by Subsection (b) or (c) must be readily audible or readable by a person of average comprehension or reading speed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.404. EYEGLASSES AS PRIZE OR INDUCEMENT. A person in this state may not give or deliver, or cause to be given or delivered, in any manner, eyeglasses as:

(1) a prize or premium; or

(2) an inducement to sell an item of merchandise, including a book, paper, magazine, or work of literature or art.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.405. ALTERATION OF PRESCRIPTION. A person may not

alter the specifications of an ophthalmic lens prescription without the prescribing doctor's consent.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.406. EXPIRED CONTACT LENS PRESCRIPTION. A person may not fill an expired contact lens prescription.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.407. GOVERNMENTAL DISCRIMINATION PROHIBITED. (a) A program supported by the state or by a political subdivision of the state may not discriminate against a health care practitioner because the practitioner is an optometrist or therapeutic optometrist.

(b) A law or policy of the state or of a political subdivision of the state that requires or encourages a person to obtain vision care or medical eye care that is within the scope of practice of an optometrist or therapeutic optometrist may not discriminate against a health care practitioner because the practitioner is an optometrist or therapeutic optometrist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.408. CONTROL OF OPTOMETRY. (a) This section and Sections 351.602(c)(2), 351.603(b), 351.604(3), and 351.605 shall be liberally construed to prevent manufacturers, wholesalers, and retailers of ophthalmic goods from controlling or attempting to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist.

(b) In this section, "control or attempt to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist" includes:

- (1) setting or attempting to influence the professional fees or office hours of an optometrist or therapeutic optometrist;
- (2) restricting or attempting to restrict an optometrist's or therapeutic optometrist's freedom to see a patient by appointment;
- (3) terminating or threatening to terminate an agreement, including a lease, or other relationship in an attempt to control the

professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist;

(4) providing, hiring, or sharing employees, business services, or similar items to or with an optometrist or therapeutic optometrist; and

(5) making or guaranteeing a loan to an optometrist or therapeutic optometrist in excess of the value of the collateral securing the loan.

(c) A manufacturer, wholesaler, or retailer of ophthalmic goods may not directly or indirectly:

(1) control or attempt to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist;

(2) employ or contract for the services of an optometrist or therapeutic optometrist if part of the optometrist's or therapeutic optometrist's duties involves the practice of optometry or therapeutic optometry; or

(3) pay an optometrist or therapeutic optometrist for a service not provided.

(d) This section does not apply to a manufacturer, wholesaler, or retailer of ophthalmic goods who is an optometrist, therapeutic optometrist, or licensed physician or a legal entity wholly owned and controlled by at least one optometrist, therapeutic optometrist, or licensed physician, unless the optometrist, therapeutic optometrist, or legal entity has offices at more than three locations.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.409. PROHIBITED ACTIVITY BY UNLICENSED PERSON. An unlicensed person may not engage in any activity prohibited by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER J. PROHIBITED PRACTICES BY LICENSE HOLDER**

Sec. 351.451. PROHIBITED TREATMENT BY LICENSE HOLDER. (a) An optometrist or therapeutic optometrist may not provide a person with treatment except as authorized by law.

(b) An optometrist or therapeutic optometrist who violates

Subsection (a) is considered to be practicing medicine without a license and, in addition to the penalties prescribed for a violation of this chapter, is subject to the penalty for the practice of medicine without a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.452. PROHIBITED USE OF PHARMACEUTICAL AGENT. A therapeutic optometrist may not use a pharmaceutical agent not authorized by the board or by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.4521. PERFORMANCE OF SURGERY PROHIBITED. A therapeutic optometrist may not perform surgery or laser surgery.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.152(e), eff. Sept. 1, 2001.

Sec. 351.453. EXAMINATION REQUIRED FOR PRESCRIPTION. An optometrist or therapeutic optometrist may not sign, or cause to be signed, an ophthalmic lens prescription without first personally examining the eyes of the person for whom the prescription is made.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.454. CONTAGIOUS OR INFECTIOUS DISEASE. (a) An optometrist or therapeutic optometrist may not practice optometry or therapeutic optometry while knowingly suffering from a contagious or infectious disease, as defined by the Texas Department of Health, if the disease is one that could reasonably be transmitted in the normal performance of optometry or therapeutic optometry.

(b) The board by rule shall adopt guidelines that define, according to guidelines issued by the Texas Department of Health and specific to the practice of optometry or therapeutic optometry, each disease or type of disease that could reasonably be transmitted in the normal performance of optometry or therapeutic optometry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.455. PRACTICE PROHIBITED FROM HOUSE TO HOUSE. (a) A person may not practice optometry or therapeutic optometry from house to house or on the streets or highways, notwithstanding any laws for the licensing of peddlers.

(b) Subsection (a) does not prohibit an optometrist, therapeutic optometrist, or licensed physician from attending, prescribing for, or providing eyeglasses or ophthalmic lenses to a person:

- (1) who, because of illness or physical or mental infirmity, is confined to the place the person resides; or
- (2) in response to an unsolicited request or call for those services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.456. PRACTICE PROHIBITED DURING LICENSE SUSPENSION OR REVOCATION. A person may not practice optometry or therapeutic optometry while the person's license is suspended or revoked.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.457. PROFESSIONAL RESPONSIBILITY; FEES. (a) An optometrist or therapeutic optometrist may not directly or indirectly divide, share, split, or allocate a fee for optometric services or materials with:

- (1) a layperson, firm, or corporation; or
- (2) another optometrist, therapeutic optometrist, or licensed physician, except on the basis of a division of service or responsibility.

(b) Subsection (a) does not:

- (1) prevent an optometrist or therapeutic optometrist from paying an employee in the regular course of employment;
- (2) prevent establishment of a partnership for the practice of optometry or therapeutic optometry; or
- (3) prohibit an optometrist or therapeutic optometrist from being employed on a salary, with or without a bonus arrangement, by

an optometrist, therapeutic optometrist, or licensed physician, regardless of the amount of supervision exerted by the employer over the office in which the employee works.

(c) A bonus arrangement described by Subsection (b)(3) may not be based on the business or income of an optical company.

(d) Section 351.361(c) applies to this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.458. PROFESSIONAL RESPONSIBILITY; USE OF NAME OR PROFESSIONAL IDENTIFICATION. (a) An optometrist or therapeutic optometrist may not use, or cause or allow to be used, the optometrist's or therapeutic optometrist's name or professional identification, as authorized by Chapter 104, on or near the door, window, wall, directory, sign, or listing of an office or place of practice, unless the optometrist or therapeutic optometrist is actually present and practicing optometry or therapeutic optometry in that office or place during the hours it is open to the public for the practice of optometry or therapeutic optometry.

(b) An optometrist or therapeutic optometrist may not practice in an office or place where a name or professional identification on or near the door, window, wall, directory, sign, or listing of the office or place, or where a name or professional identification used in connection with the office or place, indicates that it is owned, operated, supervised, staffed, directed, or attended by a person not actually present and practicing optometry or therapeutic optometry in that office or place during the hours it is open to the public for the practice of optometry or therapeutic optometry.

(c) To be actually present for purposes of Subsections (a) and (b), the optometrist or therapeutic optometrist must be physically present in the office or place of practice:

(1) for more than half of the total number of hours the office or place is open to the public for the practice of optometry or therapeutic optometry in each calendar month for at least nine months in each calendar year; or

(2) for at least half of the time the optometrist or therapeutic optometrist conducts or supervises the practice of optometry or therapeutic optometry.

(d) To be practicing optometry or therapeutic optometry for



purposes of Subsections (a) and (b), the optometrist or therapeutic optometrist must regularly and personally in the office or place of practice:

- (1) examine the eyes of some of the persons for whom prescriptions have been issued in that office or place; or
- (2) supervise those eye examinations.

(e) This section does not require the physical presence of a person who is ill, injured, or otherwise temporarily incapacitated.

(f) Section 351.361(c) applies to this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.459. MERCANTILE ESTABLISHMENT; PROHIBITED ACTS. (a) This section applies to an optometrist or therapeutic optometrist who leases space from and practices optometry or therapeutic optometry on the premises of a mercantile establishment.

(b) An optometrist or therapeutic optometrist may not:

- (1) conduct a phase of practice as a department or concession of a mercantile establishment; or
- (2) display a legend or sign stating "Optical Department," "Optometrical Department," or a similar message on the premises of a mercantile establishment or in advertising.

(c) An optometrist or therapeutic optometrist may not permit the optometrist's or therapeutic optometrist's name or practice to be directly or indirectly used in connection with a mercantile establishment in any manner, including in advertising, displays, or signs.

(d) The credit account of a patient of an optometrist or therapeutic optometrist must be with the optometrist or therapeutic optometrist and not with the credit department of the mercantile establishment. This subsection does not prevent the optometrist or therapeutic optometrist from subsequently selling, transferring, or assigning that account.

(e) Section 351.363(a) applies to this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.460. RELATIONSHIPS WITH DISPENSING OPTICIANS; PROHIBITED ACTS. (a) A person who is engaged in the business of a

dispensing optician, other than an optometrist, therapeutic optometrist, or licensed physician, may not have:

(1) an interest in the practice, books, records, files, equipment, or materials of an optometrist or therapeutic optometrist; or

(2) except as provided by Subsection (c), an interest in the premises or space occupied by an optometrist or therapeutic optometrist for the practice of optometry or therapeutic optometry.

(b) An optometrist, therapeutic optometrist, or licensed physician who is engaged in the business of a dispensing optician and who owns an interest in the practice, books, records, files, equipment, or materials of another optometrist or therapeutic optometrist shall maintain a separate set of books, records, files, and accounts in connection with that interest.

(c) Subsection (a)(2) does not apply if the interest is a lease for a specific term without retention of the present right of occupancy on the part of the dispensing optician.

(d) Section 351.364(d) applies to this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER K. DISCIPLINARY PROCEDURES**

Sec. 351.501. DENIAL OF LICENSE AND DISCIPLINARY ACTION BY BOARD. (a) On the vote of five or more members, the board may refuse to issue a license to an applicant, revoke or suspend a license, place on probation a person whose license has been suspended, impose a fine, impose a stipulation, limitation, or condition relating to continued practice, including conditioning continued practice on counseling or additional education, or reprimand a license holder if the board determines that:

(1) the applicant or license holder is guilty of fraud, deceit, dishonesty, or misrepresentation in the practice of optometry or therapeutic optometry or in seeking admission to that practice;

(2) the applicant or license holder is unfit or incompetent by reason of negligence;

(3) the applicant or license holder has been convicted of a misdemeanor involving moral turpitude or a felony;

(4) the applicant or license holder:

(A) is a habitual drunkard;

(B) is addicted to the use of morphine, cocaine, or other drugs having similar effect;

(C) has become insane; or

(D) has been found by a court to be of unsound mind;

(5) the license holder has directly or indirectly employed, hired, procured, or induced a person to practice optometry or therapeutic optometry in this state without a license;

(6) the license holder has directly or indirectly aided or abetted an unlicensed person in the practice of optometry or therapeutic optometry;

(7) the license holder has placed the holder's license at the disposal or service of, including lending, leasing, or renting to, a person not licensed to practice optometry or therapeutic optometry in this state;

(8) the applicant or license holder has wilfully or repeatedly violated this chapter or a board rule adopted under this chapter;

(9) the license holder has wilfully or repeatedly represented to a member of the public that the license holder is authorized or competent to cure or treat an eye disease beyond the authorization granted by this chapter;

(10) the license holder has had the right to practice optometry or therapeutic optometry suspended or revoked by a federal agency for a cause that the board believes warrants that action;

(11) the applicant or license holder has acted to deceive, defraud, or harm the public;

(12) the applicant or license holder is guilty of gross incompetence in the practice of optometry or therapeutic optometry;

(13) the applicant or license holder has engaged in a pattern of practice or other behavior demonstrating a wilful provision of substandard care;

(14) the applicant or license holder has committed an act of sexual abuse, misconduct, or exploitation with a patient or has otherwise unethically or immorally abused the doctor-patient relationship;

(15) the applicant or license holder has prescribed, sold, administered, distributed, or given a drug legally classified as a controlled substance or as an addictive or dangerous drug for other than an accepted diagnostic or therapeutic purpose;

(16) the applicant or license holder has failed to report

to the board the relocation of the applicant's or license holder's office not later than the 30th day after the date of relocation, whether in or out of this state; or

(17) the license holder has practiced or attempted to practice optometry while the license holder's license was suspended.

(b) A violation of this chapter is not a violation for purposes of disciplinary action under Subsections (a)(8) and (9) if the violation occurs at least four years before the date a complaint is filed that results in a disciplinary hearing before the board on that complaint.

(c) Notwithstanding Subsection (a), the board may not, as part of a disciplinary action, order a license holder to acquire a license or certificate of a different or higher class or type than the license holder holds at the time of the disciplinary action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.018, eff. September 1, 2005.

Sec. 351.5015. TEMPORARY SUSPENSION OR RESTRICTION OF LICENSE.

(a) The board shall appoint a three-member disciplinary panel consisting of board members to determine whether a license issued to a person under this chapter should be temporarily suspended or restricted.

(b) If the disciplinary panel determines from the evidence presented to the panel that a license holder would, by the person's continuation in the practice of optometry or therapeutic optometry, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend or restrict the license holder's license.

(c) The disciplinary panel may temporarily suspend or restrict a license under this section without notice or hearing if:

(1) the board immediately provides notice of the suspension or restriction to the license holder; and

(2) a hearing before the disciplinary panel concerning the temporary suspension or restriction is scheduled for the earliest possible date following the suspension or restriction.

(d) Notwithstanding Chapter 551, Government Code, the

disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

(e) After the hearing described by Subsection (c)(2), if the disciplinary panel affirms the temporary suspension or restriction of the license holder's license, the board shall schedule an informal settlement conference that meets the requirements of Section 2001.054(c), Government Code, to be held as soon as practicable, unless the license holder waives the informal settlement conference or an informal settlement conference has already been held with regard to the issues that are the basis for the temporary suspension or restriction.

(f) If the license holder is unable to show compliance at the informal settlement conference regarding the issues that are the basis for the temporary suspension or restriction, a board representative shall file a charge under Section 351.503 as soon as practicable.

(g) If after the hearing described by Subsection (c)(2) the disciplinary panel does not temporarily suspend or restrict the license holder's license, the facts that were the basis for the temporary suspension or restriction may not be the sole basis for another proceeding to temporarily suspend or restrict the license holder's license. The board may use those same facts in a subsequent investigation to obtain new information that may be the basis for the temporary suspension or restriction of the license holder's license. For purposes of this subsection, facts that are the basis for the temporary suspension or restriction of a license holder's license include facts presented to the disciplinary panel and facts presented by the board or a representative of the board at the time evidence was presented to the disciplinary panel.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. [1025](#)), Sec. 1.019, eff. September 1, 2005.

Sec. 351.502. WILFUL OR REPEATED NONCOMPLIANCE. (a) The board shall consider the wilful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with the requirements of Sections 351.353, 351.359, and 351.405 as prima facie evidence that the optometrist or therapeutic optometrist is unfit or

incompetent by reason of negligence within the meaning of Section 351.501(a)(2) and as sufficient ground for the filing of charges to revoke or suspend a license.

(b) The board shall consider the wilful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with the requirements of Sections 351.361, 351.362, 351.457, and 351.458 as prima facie evidence that the optometrist or therapeutic optometrist has violated this chapter and as sufficient ground for the filing of charges to revoke or suspend a license.

(c) Section 351.361(c) applies to Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.503. DISCIPLINARY PROCEEDINGS. (a) A person may initiate disciplinary proceedings under Section 351.501 by filing a charge with the board in writing and under oath.

(b) A person is entitled to a hearing conducted by the State Office of Administrative Hearings if:

- (1) a charge is filed against the person; or
- (2) the board proposes to:
  - (A) refuse the person's application for a license; or
  - (B) suspend or revoke the person's license.

(c) Disciplinary proceedings are governed by Chapter 2001, Government Code.

(d) A charge filed under Section 351.502(a) must state each specific instance of alleged noncompliance. At a hearing on the charge, the person charged has the burden of establishing, in each instance in which proof of noncompliance is adduced, that compliance was not necessary to a proper examination of the patient in that particular case.

(e) A charge filed under Section 351.502(b) must state each specific instance of alleged noncompliance.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.504. JUDICIAL REVIEW. A petition for judicial review of a board action may be filed in a district court in the county of residence of the person against whom the original charge was filed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.505. REISSUANCE OF LICENSE AFTER REVOCATION. (a) A person whose license has been revoked:

(1) may not apply for reissuance under Subsection (b) before the first anniversary of the date of revocation; and

(2) must apply in any manner required by the board.

(b) On application, the board may reissue a license to practice optometry or therapeutic optometry to a person whose license has been revoked.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.506. PROBATION. If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board;

or

(3) continue or review professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.507. INFORMAL PROCEEDINGS; INFORMAL SETTLEMENT CONFERENCE AND REFUNDS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) The board by rule shall establish procedures by which a panel of board members may conduct an informal settlement conference to resolve a complaint against a person licensed under this chapter.

(c) Procedures established under Subsection (b) must:

(1) require that at least one board member who represents the public be included in the panel conducting the conference;

(2) require that the two board members who reviewed and investigated a complaint under Section 351.2036(c) be included in the panel conducting the conference;

(3) require the panel conducting the conference to use the standardized penalty schedule adopted by the board under Section 351.552(c) to determine the appropriate disciplinary action, if any, to recommend to the board;

(4) require a complaint settlement recommended by the panel to be approved by the board; and

(5) require the panel conducting the conference to:

(A) recommend settlement of the complaint to the board;  
or

(B) refer the complaint to the State Office of Administrative Hearings for a formal hearing and notify the board of the referral.

(d) The board may order a person licensed under this chapter to issue a refund to a patient as provided in an agreement resulting from an informal settlement conference instead of or in addition to assessing an administrative penalty against the person under Subchapter L. The amount of a refund ordered under this subsection may not exceed the amount the patient paid to the license holder for an examination. The board may not require payment of other damages or estimate harm in a restitution order.

(e) Rules adopted under this section must:

(1) provide the complainant and the license holder with an opportunity to be heard; and

(2) require the presence of the attorney general to advise the board or the board's employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. [1025](#)), Sec. 1.020, eff. September 1, 2005.

Sec. 351.508. RECUSAL REQUIRED. A member of the board who reviews and investigates a complaint under Section 351.2036(c) or participates in an informal settlement conference under Section 351.507 may not vote on any disciplinary action following the informal settlement conference concerning the complaint and shall



recuse himself or herself from voting on any disciplinary action following the informal settlement conference concerning the complaint.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.021, eff. September 1, 2005.

Sec. 351.509. REMEDIAL PLAN. (a) The board may issue and establish the terms of a remedial plan to resolve the investigation of a complaint filed under this chapter.

(b) A remedial plan may not contain a provision that:

(1) revokes, suspends, limits, or restricts a person's license or other authorization to practice optometry or therapeutic optometry; or

(2) assesses an administrative penalty against a person.

(c) A remedial plan may not be imposed to resolve a complaint:

(1) concerning:

(A) a death;

(B) a hospitalization; or

(C) the commission of a felony; or

(2) in which the appropriate resolution may involve a restriction on the manner in which a license holder practices optometry or therapeutic optometry.

(d) The board may not issue a remedial plan to resolve a complaint against a license holder if the license holder has entered into a remedial plan with the board in the preceding 24 months for the resolution of a different complaint filed under this chapter.

(e) If a license holder complies with and successfully completes the terms of a remedial plan, the board shall remove all records of the remedial plan from the board's records on the second anniversary of the date the license holder successfully completes the remedial plan.

(f) The board may assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 1022 (H.B. 2627), Sec. 1, eff. September 1, 2013.

**SUBCHAPTER L. ADMINISTRATIVE PENALTY**

Sec. 351.551. IMPOSITION OF PENALTY. The board may impose an administrative penalty on a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.552. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$2,500 for each violation. Each day a violation continues or occurs is a separate violation.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) The board by rule shall develop and publish a standardized penalty schedule based on the criteria listed in Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. [1025](#)), Sec. 1.022, eff. September 1, 2005.

Sec. 351.553. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the executive director or a subcommittee of the board appointed for that purpose determines that a violation has occurred, the executive director or subcommittee may issue a report to the board stating:

(1) the facts on which the determination is based; and

(2) the recommendation of the executive director or

subcommittee on the imposition of the administrative penalty, including a recommendation on the amount of the penalty.

(b) A subcommittee of the board appointed under Subsection (a) must include at least one public member of the board.

(c) Not later than the 14th day after the date the report is issued, the executive director or subcommittee shall give written notice of the report to the person. The notice may be given by certified mail.

(d) The notice issued under this section must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice under Section 351.553, the person in writing may:

(1) accept the determination and recommended administrative penalty of the executive director or subcommittee; or

(2) request a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the executive director or subcommittee, the board by order shall approve the determination and impose the recommended penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.555. HEARING ON RECOMMENDATIONS. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the executive director shall set a hearing and give notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing. The administrative law judge shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the board a proposal for decision as to the occurrence of the violation and the amount of any proposed

administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.556. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the board by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the person's right to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.557. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court and that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the

person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.558. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.559. DETERMINATION BY COURT. (a) If a court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.560. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty;

or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.561. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER M. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 351.601. MONITORING LICENSE HOLDER. The board by rule shall develop a system for monitoring a license holder's compliance with the requirements of this chapter. Rules adopted under this section must include procedures to:

- (1) monitor for compliance a license holder who is ordered by the board to perform certain acts; and
- (2) identify and monitor each license holder who represents a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.602. INJUNCTION; DAMAGES. (a) The board may sue in the board's own name to enjoin a violation of this chapter. This remedy is in addition to any other action authorized by law.

(b) A person injured by another person who violates Section 351.251, 351.409, or 351.607 may institute an action in district court in Travis County or in the county in which the violation is alleged to have occurred for injunctive relief or damages plus court costs and reasonable attorney's fees.

(c) A person may institute an action in a district court in the

county in which the violation is alleged to have occurred for injunctive relief or damages plus court costs and reasonable attorney's fees if the person is injured by another person who violates:

- (1) Section 351.403; or
- (2) Section 351.408.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.603. ENFORCEMENT BY ATTORNEY GENERAL OR BOARD; CIVIL PENALTY. (a) The attorney general or board may institute an action in a district court in the county in which a violation of Section 351.251, 351.403, 351.409, or 351.607 is alleged to have occurred for injunctive relief and a civil penalty not to exceed \$10,000 for each violation plus court costs and reasonable attorney's fees.

(b) The attorney general or board may institute an action against a manufacturer, wholesaler, or retailer of ophthalmic goods in a district court in the county in which a violation of Section 351.408 is alleged to have occurred for injunctive relief and a civil penalty not to exceed \$1,000 for each day of a violation plus court costs and reasonable attorney's fees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.604. DECEPTIVE TRADE PRACTICES. A violation of any of the following sections is actionable under Subchapter E, Chapter 17, Business & Commerce Code:

- (1) Section 351.251;
- (2) Section 351.403;
- (3) Section 351.408;
- (4) Section 351.409; or
- (5) Section 351.607.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.605. LESSEE ENTITLED TO REMEDIES. A person injured as a result of a violation of Section 351.408, including an optometrist who is a lessee of a manufacturer, wholesaler, or retailer, is

entitled to the remedies in Sections 351.602(c)(2), 351.603(b), and 351.604(3).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.606. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under Subsection (a) is a misdemeanor punishable by:

- (1) a fine of not less than \$100 or more than \$1,000;
- (2) confinement in county jail for a term of not less than two months or more than six months; or
- (3) both the fine and confinement.

(c) A separate offense is committed each day a violation of this chapter occurs or continues.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.607. DISPENSING CONTACT LENSES; PENALTY. (a) A person commits an offense if the person dispenses a contact lens by mail or otherwise to a patient in this state without having a valid prescription signed by an optometrist, therapeutic optometrist, or licensed physician.

(b) An offense under Subsection (a) is a misdemeanor punishable by a fine of \$1,000 for each lens dispensed. The fine is in addition to any other penalty imposed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.608. CEASE AND DESIST ORDER. (a) If it appears to the board that a person is engaging in an act or practice that constitutes the practice of optometry or therapeutic optometry without a license or certificate under this chapter, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) Notwithstanding Section 351.551, the board may impose an administrative penalty under Subchapter L against a person who violates an order issued under this section.



Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.023, eff. September 1, 2005.

## CHAPTER 352. OPTICIANS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 352.001. SHORT TITLE. This chapter may be cited as the Opticians' Registry Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Health.

(2) "Contact lens dispensing" means fabricating, ordering, mechanically adjusting, dispensing, selling, and delivering to a consumer contact lenses in accordance with a prescription from a physician, optometrist, or therapeutic optometrist, along with appropriate instructions for the care and handling of the lenses. The term does not include, unless directed or approved by a physician:

(A) taking any measurements of the eye or the cornea;  
or

(B) evaluating the physical fit of contact lenses.

(3) "Contact lens prescription" means a written specification from a physician, optometrist, or therapeutic optometrist for therapeutic, corrective, or cosmetic contact lenses that states the refractive power of the product and other information required to be in the specification by the physician, optometrist, therapeutic optometrist, Texas State Board of Medical Examiners, or Texas Optometry Board.

(4) "Department" means the Texas Department of Health.

(5) "Dispensing optician" or "ophthalmic dispenser" means a person who provides or offers to provide spectacle or contact lens dispensing services or products to the public.

(6) "Spectacle dispensing" means designing, verifying, fitting, adjusting, selling, or delivering to a consumer fabricated and finished ophthalmic devices, including spectacle lenses and frames but excluding contact lenses, in accordance with a prescription from a physician, therapeutic optometrist, or

optometrist. The term includes:

- (A) prescription analysis and interpretation;
- (B) the measurement of the face, including interpupillary distances, to determine the size, shape, and specifications of the spectacle lenses or frames best suited to the wearer's needs;
- (C) the preparation and delivery of a work order to a laboratory technician engaged in grinding lenses and fabricating spectacles;
- (D) the verification of the quality of finished spectacle lenses;
- (E) the adjustment of spectacle lenses or frames to the wearer's face; and
- (F) the adjustment, repair, replacement, or reproduction of a previously prepared, specially fabricated ophthalmic device.

(7) "Spectacle prescription" means a written specification by a physician, therapeutic optometrist, or optometrist for therapeutic or corrective lenses that states the refractive power of the lenses and other information included in the specification by the physician, therapeutic optometrist, or optometrist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.003. EFFECT OF CHAPTER. (a) This chapter does not:

- (1) authorize a dispensing optician to perform an act on the optician's own authority that the optician is not otherwise authorized to perform, including an act that constitutes the practice of medicine, therapeutic optometry, or optometry;
- (2) prevent or restrict a person licensed in this state under another law from engaging in the profession or occupation for which the person is licensed without being registered under this chapter;
- (3) prevent or restrict an employee of a person licensed in this state from performing an employment duty required by the licensed person without being registered under this chapter;
- (4) prevent or restrict an individual, firm, or corporation from employing a person registered under this chapter or from engaging in spectacle or contact lens dispensing through a person

registered under this chapter who is employed at the location at which the dispensing occurs;

(5) prevent or restrict an individual, firm, or corporation from employing a person as an assistant, trainee, or apprentice to:

(A) engage in spectacle or contact lens dispensing; or

(B) provide instruction in the care and handling of contact lenses;

(6) prohibit the Texas State Board of Medical Examiners, the Texas Optometry Board, the attorney general, or another person authorized by law from bringing an appropriate action to enforce a state statute relating to the practice of medicine, therapeutic optometry, or optometry without a license; or

(7) require that a person be registered:

(A) under this chapter to sell or dispense contact lenses; or

(B) as a contact lens dispenser to work in a contact lens manufacturing facility that does not sell its finished product directly to the public.

(b) This chapter or another state law relating to a dispensing optician does not prevent or restrict a physician from:

(1) treating or prescribing for a patient; or

(2) directing or instructing a person under the physician's control or supervision to aid or minister to the needs of a patient according to a specific direction, order, instruction, or prescription.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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

Sec. 352.051. ADMINISTRATION OF CHAPTER. The department shall administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.052. DEPARTMENT STAFF. The department may employ administrative and clerical staff as necessary to carry out this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.053. RULEMAKING. (a) The board shall adopt procedural rules to implement the registration procedures under this chapter.

(b) The board may adopt substantive and procedural rules relating to:

(1) establishing minimum requirements for the registration of a dispensing optician;

(2) suspending, denying, or revoking a certificate of registration or placing a certificate holder on probation;

(3) prescribing fees under this chapter; and

(4) adopting forms required by this chapter.

(c) The board may not adopt substantive rules relating to this chapter other than substantive rules described by Subsection (b) of this section, Section 352.055, and Section 352.153.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.158(a), eff. Sept. 1, 2001.

Sec. 352.054. FEES. The board by rule shall prescribe fees in reasonable amounts sufficient to cover the costs of administering this chapter, including fees for:

(1) an initial application for a certificate of registration;

(2) issuance of a certificate of registration;

(3) issuance of a renewal certificate of registration; and

(4) issuance of a duplicate certificate of registration or duplicate renewal certificate of registration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1196, Sec. 1, eff. Sept. 1, 2001.

Sec. 352.055. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a registrant except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive

practices, the board may not include a rule that:

- (1) restricts the use of any medium for advertising;
- (2) restricts the use of a registrant's personal appearance or voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the registrant; or
- (4) restricts the registrant's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.159(a), eff. Sept. 1, 2001.

### **SUBCHAPTER C. CERTIFICATE OF REGISTRATION**

Sec. 352.101. REPRESENTATION TO PUBLIC. (a) A person may not represent to the public that the person is a "Registered Dispensing Optician" or "Registered Spectacle Dispenser" unless the person is registered as a spectacle dispensing optician and complies with this chapter.

(b) A person may not represent to the public that the person is a "Registered Contact Lens Dispenser" or "Registered Contact Lens Technician" unless the person is registered as a contact lens dispenser and complies with this chapter.

(c) A person may not use abbreviations or other letters to represent that the person is registered.

(d) A person properly registered under this chapter may represent to the public that the person is a "Registered Dispensing Optician," "Registered Spectacle Dispenser," "Registered Contact Lens Technician," or "Registered Contact Lens Dispenser."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.102. ISSUANCE OF CERTIFICATE; QUALIFICATIONS. (a) The department shall issue a certificate of registration to an applicant who:

- (1) applies and pays a registration fee;
- (2) presents evidence satisfactory to the department that the applicant has successfully completed the number of classroom hours of training required by the board; and
- (3) passes the appropriate examination required under

Section 352.103.

(b) The board may not require more than 30 classroom hours of training as a prerequisite to registration.

(c) A person may qualify and be registered as a spectacle dispenser, contact lens dispenser, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.103. EXAMINATIONS. (a) At least once a year, the department shall administer to applicants for certificates of registration a written qualifying spectacle dispensing examination and a written qualifying contact lens dispensing examination.

(b) The examinations shall be professionally constructed and validated and objectively administered and scored.

(c) A person who fails an examination may apply to take a subsequent examination. A person who fails two successive examinations may not apply to take a subsequent examination until the person completes remedial work required by the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.1031. NOTICE OF EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes a qualifying examination under this chapter, the department shall notify the person of the results of the examination.

(b) If the examination is graded or reviewed by a testing service:

(1) the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails a qualifying examination administered under this chapter, the department shall provide to the person an analysis of the person's performance on the

examination.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.160(a), eff. Sept. 1, 2001.

Sec. 352.104. CERTIFICATE DISPLAY; SURRENDER. (a) A person issued a certificate of registration shall publicly display the certificate in an appropriate manner specified by board rule.

(b) The certificate is the property of the department and shall be surrendered on demand.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. RENEWAL OF CERTIFICATE OF REGISTRATION**

Sec. 352.151. TERM OF CERTIFICATE. (a) A certificate of registration is valid for one year after the date of issuance.

(b) The department shall adopt a system under which certificates of registration expire and are renewed on various dates.

(c) Not later than the 30th day before the date a person's certificate of registration is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

(d) A person whose certificate of registration has expired may not make a representation for which a certificate of registration is required under Section 352.101 until the certificate has been renewed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.161(a), eff. Sept. 1, 2001.

Sec. 352.152. RENEWAL OF CERTIFICATE. (a) To renew a certificate of registration, a person must submit an application for renewal in the manner prescribed by the board.

(b) The application must be accompanied by evidence that the applicant has successfully completed the continuing education courses required by board rule.

(c) A person who is otherwise eligible to renew a certificate of registration may renew an unexpired certificate by paying the required renewal fee to the department before the expiration date of the certificate.

(d) A person whose certificate of registration has been expired for 90 days or less may renew the certificate by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(e) A person whose certificate of registration has been expired for more than 90 days but less than one year may renew the certificate by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(f) A person whose certificate of registration has been expired for one year or more may not renew the certificate. The person may obtain a new certificate of registration by complying with the requirements and procedures, including the examination requirements, for an original certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.161(b), eff. Sept. 1, 2001.

Sec. 352.153. CONTINUING EDUCATION. (a) The board shall recognize, prepare, or administer continuing education programs for its registrants. A person registered under this chapter must participate in the programs to the extent required by the board to keep the person's certificate of registration.

(b) The board may not require more than 10 classroom hours of continuing education courses each year.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.161(c), eff. Sept. 1, 2001.

Sec. 352.154. RENEWAL OF EXPIRED CERTIFICATE BY OUT-OF-STATE PRACTITIONER. (a) A person who was registered in this state, moved to another state, and is currently licensed or registered and has been in practice in the other state for the two years preceding the date of application may obtain a new certificate of registration without reexamination.



(b) The person must pay to the department a fee that is equal to two times the normally required renewal fee for the certificate.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.161(c), eff. Sept. 1, 2001.

#### **SUBCHAPTER E. PRACTICE BY CERTIFICATE HOLDER**

Sec. 352.201. DIRECTIONS FOR DISPENSING OPTICIAN. A physician's directions, instructions, or orders may be performed or a physician's prescription may be filled by a registered dispensing optician who is separate from and independent of the physician's office only if the directions, instructions, orders, or prescription is:

- (1) in writing;
- (2) of a scope and content and communicated to the dispensing optician in a form and manner that, in the physician's professional judgment, best serves the health, safety, and welfare of the physician's patient; and
- (3) in a form and detail consistent with the particular dispensing optician's skill and knowledge.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.202. CONTACT LENS DISPENSING. (a) A person registered under this chapter may not dispense contact lenses other than from a contact lens prescription that specifies that the prescription is for contact lenses.

(b) Except as provided by Section 351.005 or 352.203, a registered contact lens dispenser may not:

- (1) dispense contact lenses from the prescription of a physician, optometrist, or therapeutic optometrist in a manner that adjusts or alters the specific, written instructions of the prescribing practitioner; or
- (2) unless directed or approved by a physician:
  - (A) take any measurements of the eye or the cornea; or
  - (B) evaluate the physical fit of contact lenses.

(c) A person who violates this section is considered to be practicing medicine or optometry or therapeutic optometry without a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.203. DELEGATION BY PHYSICIAN. A registered contact lens dispenser may take measurements of the eye or cornea and evaluate the physical fit of lenses for a patient of a physician if the physician has delegated in writing to the dispenser those responsibilities for that specific patient in accordance with Sections 351.005 and 352.201.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. DISCIPLINARY PROCEDURES**

Sec. 352.251. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. The department shall deny an application for a certificate of registration, suspend or revoke a certificate of registration, or reprimand a person who is registered under this chapter if the person:

- (1) obtains a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;
- (2) sells, barter, or offers to sell or barter a certificate of registration;
- (3) violates a rule adopted by the board;
- (4) violates Section 352.101; or
- (5) practices medicine, therapeutic optometry, or optometry without a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.162(a), eff. Sept. 1, 2001.

Sec. 352.252. INVESTIGATION. The department shall investigate:

- (1) a person who engages in a practice that violates this chapter; and
- (2) each complaint filed with the department against a person registered under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.2525. PROBATION. The board may place on probation a person whose certificate of registration is suspended. If the suspension is probated, the board may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board;  
or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.162(b), eff. Sept. 1, 2001.

Sec. 352.253. HEARING. (a) A person whose application for a certificate of registration is denied, whose certificate of registration is suspended or revoked, or who is reprimanded is entitled to a hearing before the department if the person submits to the department a written request for the hearing.

(b) A hearing is governed by department rules for a contested hearing and by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.162(c), eff. Sept. 1, 2001.

Sec. 352.254. EMERGENCY SUSPENSION. (a) The department shall temporarily suspend the certificate of registration of a certificate holder if the department determines from the evidence or information presented to it that continued practice by the certificate holder would constitute a continuing and imminent threat to the public welfare.

(b) A certificate of registration may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 2, eff. Sept. 1, 2003.

#### **SUBCHAPTER G. ADMINISTRATIVE PENALTY**

Sec. 352.301. IMPOSITION OF PENALTY. The department may assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.302. AMOUNT OF PENALTY. (a) The amount of the administrative penalty may not exceed \$1,000 for each violation. Each day of a continuing violation is a separate violation.

(b) The amount shall be based on:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts made to correct the violation; and
- (5) any other matter that justice requires.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.303. NOTICE OF VIOLATION AND PENALTY. If, after investigation of a possible violation and the facts surrounding the possible violation, the department determines that a violation occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the proposed administrative penalty based on the factors set forth in Section 352.302(b); and
- (3) inform the person of the person's right to a hearing on

the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person may:

(1) accept the department's determination and proposed administrative penalty; or

(2) make a written request for a hearing on that determination.

(b) If the person accepts the department's determination, the commissioner of public health or the commissioner's designee by order shall approve the determination and assess the proposed penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.305. HEARING. (a) If the person requests a hearing in a timely manner, the department shall:

(1) set a hearing;

(2) give written notice of the hearing to the person; and

(3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the commissioner of public health or the commissioner's designee a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.306. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the commissioner of public health or the commissioner's designee by order may determine that:

(1) a violation occurred and assess an administrative penalty; or

(2) a violation did not occur.

(b) The department shall give notice of the order to the person. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the amount of any penalty assessed; and
- (3) a statement of the person's right to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the order becomes final, the person shall:

- (1) pay the administrative penalty;
- (2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or
- (3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Not later than the 30th day after the date the order is final, a person who acts under Subsection (a)(3) may:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account; or
  - (B) giving to the court a supersedeas bond approved by the court that:
    - (i) is for the amount of the penalty; and
    - (ii) is effective until judicial review of the order is final; or
- (2) request the court to stay enforcement of the penalty by:
  - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and
  - (B) giving a copy of the affidavit to the department by certified mail.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court, not later

than the fifth day after the date the department receives the copy, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.308. DETERMINATION BY COURT. (a) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the occurrence of the violation, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.309. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the amount of the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.310. COLLECTION OF PENALTY. (a) In this section, "reasonable expenses and costs" includes expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

(b) If the person does not pay the amount of the administrative penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(c) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of the commissioner of public health or the commissioner's designee requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of expenses and costs.

(d) If the attorney general brings an action against a person to enforce an administrative penalty assessed under this chapter and the person is found liable for an administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.311. ADMINISTRATIVE PROCEDURE. A proceeding for the assessment of an administrative penalty under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER H. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 352.351. ENFORCEMENT PROCEEDINGS; INJUNCTION. (a) The board, the attorney general, or the district or county attorney for the county in which an alleged violation of this chapter occurs shall, on receipt of a verified complaint, bring an appropriate administrative or judicial proceeding to enforce this chapter or a



rule adopted under this chapter.

(b) The attorney general or an attorney representing the state may initiate an action for an injunction to prohibit a person from violating this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.352. CIVIL PENALTY. In addition to any other remedy provided by law, including injunctive relief, a court may impose a civil penalty for a violation of this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 352.353. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## **CHAPTER 353. CONTACT LENS PRESCRIPTION ACT**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 353.001. SHORT TITLE. This chapter may be cited as the Contact Lens Prescription Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.002. DEFINITIONS. In this chapter:

(1) "Board" means the executive commissioner of the Health and Human Services Commission or the Department of State Health Services, as consistent with the respective duties of the executive commissioner or department under the laws of this state.

(2) "Department" means the Department of State Health Services or the Health and Human Services Commission, as consistent with the respective duties of those agencies under the laws of this state.

(2-a) "Direct communication" includes communication by

telephone, facsimile, or electronic mail.

(3) "Disposable contact lenses" means soft contact lenses that:

(A) are dispensed in sealed packages;  
 (B) are sterilized and sealed by the manufacturer; and  
 (C) according to the physician's, optometrist's, or therapeutic optometrist's instructions concerning wear, have a recommended lens replacement interval of less than three months.

(4) "Optician" means a person, other than a physician, optometrist, therapeutic optometrist, or pharmacist, who is in the business of dispensing contact lenses.

(5) "Optometrist" means a person licensed to practice optometry or therapeutic optometry by the Texas Optometry Board.

(6) "Pharmacist" means a person licensed to practice pharmacy by the Texas State Board of Pharmacy.

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

(8) "Therapeutic optometrist" means a person licensed to practice therapeutic optometry by the Texas Optometry Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.001, eff. September 1, 2005.

Sec. 353.003. EFFECT OF CHAPTER. This chapter does not prevent or restrict a physician from:

(1) treating or prescribing for a patient; or  
 (2) directing or instructing a person under the physician's control or supervision who assists a patient according to a specific direction, order, instruction, or prescription.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.004. PUBLIC INFORMATION ON PRESCRIPTION RELEASE. (a) The board and the Texas Optometry Board shall prepare and provide to the public and appropriate state agencies information regarding the release and verification of contact lens prescriptions.

(b) The board may adopt rules necessary to implement this

section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.002, eff. September 1, 2005.

Sec. 353.005. RULES. (a) The executive commissioner of the Health and Human Services Commission shall adopt rules, including rules that require a person dispensing contact lenses to maintain certain information when verifying a prescription under Section 353.1015, as necessary to:

(1) govern and implement verification procedures under Section 353.1015; and

(2) enter into interagency and other agreements to implement and enforce this chapter.

(b) The executive commissioner of the Health and Human Services Commission and the Texas Optometry Board shall each adopt rules relating to contact lens prescriptions and the dispensing of contact lenses, including rules that allow for interagency agreements, as necessary to implement and enforce this chapter.

(c) In implementing rules under Subsection (b), the executive commissioner of the Health and Human Services Commission and the Texas Optometry Board:

(1) shall cooperate with one another as necessary to adopt rules that are consistent with the rules adopted by the other agency; and

(2) may consult with the Texas State Board of Medical Examiners and the Texas State Board of Pharmacy.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.003, eff. September 1, 2005.

#### **SUBCHAPTER B. DISPENSING CONTACT LENSES; PERMIT**

Sec. 353.051. CONTACT LENS DISPENSER. Contact lenses may be dispensed only by:

(1) a physician, optometrist, therapeutic optometrist, or pharmacist;

(2) an employee of a physician, optometrist, therapeutic

optometrist, or pharmacist who performs contact lens dispensing services only under the direct supervision and control of the physician, optometrist, therapeutic optometrist, or pharmacist; or

(3) an optician who holds a contact lens dispensing permit issued under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.052. CONTACT LENS DISPENSING BY BUSINESS ENTITY. (a) A business entity that dispenses contact lenses to a person in this state:

(1) must obtain a contact lens dispensing permit in the entity's name; and

(2) may not dispense the lenses to a person in this state through an employee or other person who holds a contact lens dispensing permit.

(b) A business entity that has at least 10 locations may obtain a single permit for the entity and its employees. An employee of an entity with a permit under this subsection is not required to obtain a separate permit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.053. REQUIREMENTS FOR PERMIT ISSUANCE. The board shall issue a contact lens dispensing permit to an applicant who:

(1) agrees in writing to comply with state and federal laws and regulations regarding selling, delivering, or dispensing contact lenses;

(2) has not had a contact lens dispensing permit revoked or canceled for cause during the two-year period preceding the application date;

(3) provides the board with the trade name and address of each location where the applicant intends to conduct business;

(4) provides the board with other information the board reasonably requires; and

(5) pays the required permit fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.054. TERM OF PERMIT. (a) A contact lens dispensing permit issued under this subchapter is valid for one year.

(b) The board may temporarily extend or shorten the term of a permit to provide for the staggered renewal of permits or for the annual renewal of all permits on the same date. The board shall prorate the permit fee to accomplish that purpose.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.055. PERMIT RENEWAL. (a) To renew a contact lens dispensing permit, a permit holder must apply in the manner prescribed by board rule and pay the permit fee.

(b) The board may not require an applicant for renewal of a permit to provide more information than is required for issuance of an original permit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.056. ANNUAL PERMIT FEE. (a) The board may adopt annual permit fees in amounts reflecting the cost of administering the provisions of this chapter relating to regulating permit holders.

(b) Until changed by the board, the annual permit fee for a contact lens dispensing permit is:

(1) \$10 for an optician who has registered with the department;

(2) \$25 for an optician who has not registered with the department; and

(3) \$100 for a business entity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. SALE OR DELIVERY OF CONTACT LENSES**

Sec. 353.101. PROHIBITED SELLING OR DISPENSING. (a) A person, other than the prescribing physician, optometrist, or therapeutic optometrist, may not fill a contact lens prescription or sell or dispense contact lenses to a consumer in this state unless the person:

(1) receives from the prescribing physician, optometrist,

or therapeutic optometrist or the consumer, directly or by facsimile, a contact lens prescription that has not expired and that conforms to the requirements of this chapter; or

(2) verifies by direct communication a contact lens prescription to be filled.

(b) A person receiving a direct communication under Subsection (a)(2) shall maintain a record of the communication.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.004, eff. September 1, 2005.

Sec. 353.1015. VERIFICATION PROCEDURE. (a) When seeking verification of a contact lens prescription, a person dispensing contact lenses shall provide the prescribing physician, optometrist, or therapeutic optometrist with the following information:

- (1) the patient's full name and address;
- (2) contact lens power, manufacturer, base curve or appropriate designation, and diameter, as appropriate;
- (3) quantity of lenses ordered;
- (4) the date on which the patient requests lenses to be dispensed;
- (5) the date and time of the verification request; and
- (6) the name, telephone number, and facsimile number of a person at the contact lens dispenser's company with whom to discuss the verification.

(b) A prescription is considered verified under this section if:

- (1) the prescribing physician, optometrist, or therapeutic optometrist by a direct communication confirms that the prescription is accurate;
- (2) the prescribing physician, optometrist, or therapeutic optometrist informs the person dispensing the contact lenses that the prescription is inaccurate and provides the correct prescription information; or
- (3) the prescribing physician, optometrist, or therapeutic optometrist fails to communicate with the person dispensing the contact lenses not later than the eighth business hour after the

prescribing physician, optometrist, or therapeutic optometrist receives from the person dispensing the contact lenses the request for verification or within another similar period specified by rule.

(c) If a prescribing physician, optometrist, or therapeutic optometrist timely informs the person dispensing the contact lenses that the prescription is inaccurate or invalid, the person may not dispense the contact lenses.

(d) If a prescribing physician, optometrist, or therapeutic optometrist notifies the person dispensing the contact lenses that the prescription is inaccurate or invalid, the prescribing physician, optometrist, or therapeutic optometrist shall:

(1) specify the basis for the inaccuracy or invalidity of the prescription; and

(2) correct the prescription.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.005, eff. September 1, 2005.

Sec. 353.102. ACCURACY REQUIRED. A person who dispenses contact lenses under this chapter from a contact lens prescription shall fill the prescription accurately subject to Section 353.103.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.103. AUTHORIZED MODIFICATION OF PRESCRIPTION. (a) If a patient presents a contact lens prescription to be filled or asks a permit holder to verify a contact lens prescription under Section 353.1015, but requests that fewer than the total number of lenses authorized by the prescription be dispensed, the person dispensing the lenses shall note on the prescription or verification:

(1) the number of lenses dispensed;

(2) the number of lenses that remain eligible to be dispensed under the prescription; and

(3) the name, address, telephone number, and license or permit number of the person dispensing the lenses.

(b) A notation under Subsection (a) is a permanent modification of the prescription. Except as provided by this subsection, a contact lens prescription may not be modified.

(c) The person dispensing the lenses shall:

(1) maintain a photocopy of the prescription or verification, as modified, in the person's records as if the copy were the prescription to be filled; and

(2) return a prescription to the patient so that the patient may have the additional lenses dispensed elsewhere.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.006, eff. September 1, 2005.

Sec. 353.104. EMERGENCY REFILL. (a) If a patient needs an emergency refill of the patient's contact lens prescription, a physician, optometrist, or therapeutic optometrist may telephone or fax the prescription to a person authorized to dispense contact lenses under Section 353.051 or may verify a prescription under Section 353.1015.

(b) A fax or telephone record received under Subsection (a) must include the name, address, telephone number, and license number of the physician, optometrist, or therapeutic optometrist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.006, eff. September 1, 2005.

Sec. 353.105. ALTERATION OF PRESCRIPTION PROHIBITED. (a) Except as provided by Subsection (b) and Section 353.103, a person dispensing contact lenses may not alter a contact lens prescription.

(b) A person dispensing contact lenses may fill a contact lens prescription that requires a contact lens manufactured by a particular company with another lens manufactured by that company if the lens required by the prescription and the lens with which the prescription is filled are the same lens but are sold by the company under multiple labels to different contact lens dispensers.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.007, eff. September 1, 2005.



**SUBCHAPTER D. CONTACT LENS PRESCRIPTIONS**

Sec. 353.151. DIRECTIONS FOR INDEPENDENT OPTICIAN; DELEGATION.

(a) If a physician's directions, instructions, or orders are to be performed or a physician's prescription is to be filled by an optician who is independent of the physician's office, the directions, instructions, orders, or prescription must be:

(1) in writing or verified under Section 353.1015;

(2) of a scope and content and communicated to the optician in a form and manner that, in the professional judgment of the physician, best serves the health, safety, and welfare of the physician's patient; and

(3) in a form and detail consistent with the optician's skill and knowledge.

(b) A person who holds a contact lens dispensing permit issued under Subchapter B may measure the eye or cornea and may evaluate the physical fit of lenses for a particular patient of a physician if the physician has delegated in writing those responsibilities regarding that patient to the person in accordance with Subsection (a) and Section 351.005.

(c) If a physician notes on a spectacle prescription "fit for contacts" or similar language and has, as required by Subsections (a) and (b), specifically delegated to a specific optician the authority to make the additional measurements and evaluations necessary for a fully written contact lens prescription, the optician may dispense contact lenses to the patient even though the prescription is less than a fully written contact lens prescription.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. [1025](#)), Sec. 2.008, eff. September 1, 2005.

Sec. 353.152. REQUIREMENTS FOR CONTACT LENS PRESCRIPTION. (a)

A contact lens prescription must contain, at a minimum:

(1) the patient's name;

(2) the date the prescription was issued;

(3) the manufacturer of the contact lens to be dispensed, if needed;

(4) the expiration date of the prescription;

(5) the signature of the physician, optometrist, or therapeutic optometrist or a verification of the prescription described by Section 353.1015;

(6) if the prescription is issued by an optometrist, specification information required by Texas Optometry Board rule; and

(7) if the prescription is issued by a physician, specification information required by Texas State Board of Medical Examiners rule.

(b) The Texas Optometry Board and the Texas State Board of Medical Examiners may adopt rules regarding the contents of a prescription for contact lenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.009, eff. September 1, 2005.

Sec. 353.153. TERM OF PRESCRIPTION. A physician, optometrist, or therapeutic optometrist may not issue a contact lens prescription that expires before the first anniversary of the date the patient's prescription parameters are determined, unless a shorter prescription period is warranted by the patient's ocular health or by potential harm to the patient's ocular health.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.154. SHORT-TERM PRESCRIPTION. If a physician, optometrist, or therapeutic optometrist writes a contact lens prescription for a period of less than one year, the physician, optometrist, or therapeutic optometrist shall:

(1) give the patient a verbal explanation of the reason for the action at the time of the action; and

(2) maintain in the patient's records a written explanation of the reason.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.155. EXTENSION OF PRESCRIPTION. (a) A physician,

optometrist, or therapeutic optometrist may extend the expiration date for a contact lens prescription without completing another eye examination.

(b) On request by a patient, a prescribing physician, optometrist, or therapeutic optometrist shall authorize at least once a two-month extension of the patient's contact lens prescription. The physician, optometrist, or therapeutic optometrist may extend the prescription in accordance with Section 353.104.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.156. PATIENT ACCESS TO PRESCRIPTION; TIMING. (a) A physician, optometrist, or therapeutic optometrist who performs an eye examination and fits a patient for contact lenses shall:

(1) prepare and give a contact lens prescription to the patient; and

(2) as directed by any person designated to act on behalf of the patient, provide the prescription or verify the prescription as provided by Section 353.1015.

(b) If the contact lens prescription results from an initial or annual eye examination, the physician, optometrist, or therapeutic optometrist shall prepare and give the prescription to the patient at the time the physician, optometrist, or therapeutic optometrist determines the parameters of the prescription.

(c) On receipt of a prescription request from a patient who did not receive an original contact lens prescription during an initial or annual eye examination, the physician, optometrist, or therapeutic optometrist shall provide the patient with the prescription at any time during which the prescription is valid. Except as provided by Section 353.158(1), if the patient requests the physician, optometrist, or therapeutic optometrist to deliver the prescription to the patient or to another person, the physician, optometrist, or therapeutic optometrist may charge to the patient the cost of delivery.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. [1025](#)), Sec. 2.010, eff. September 1, 2005.

## Sec. 353.157. LIMITATIONS ON OR REFUSAL TO GIVE PRESCRIPTION.

(a) A physician, optometrist, or therapeutic optometrist may exclude categories of contact lenses from a contact lens prescription if the exclusion is clinically indicated.

(b) Notwithstanding Section 353.156, a physician, optometrist, or therapeutic optometrist may refuse to give a contact lens prescription to a patient if:

(1) the patient's ocular health presents a contraindication for contact lenses;

(2) refusal is warranted due to potential harm to the patient's ocular health;

(3) the patient has a medical condition indicating that:

(A) the patient's ocular health would be damaged if the prescription were released to the patient; or

(B) further monitoring of the patient is needed;

(4) the patient has not paid for the examination and fitting or has not paid other financial obligations to the physician, optometrist, or therapeutic optometrist if the patient would have been required to make an immediate or similar payment if the examination revealed that ophthalmic goods were not required; or

(5) the request is made after the first anniversary of the date of the patient's last eye examination.

(c) If a physician, optometrist, or therapeutic optometrist refuses to give a patient the patient's contact lens prescription for a reason permitted under Subsection (b), the physician, optometrist, or therapeutic optometrist must:

(1) give the patient a verbal explanation of the reason for the action at the time of the action; and

(2) maintain in the patient's records a written explanation of the reason.

(d) Subsection (b) does not prohibit a physician, optometrist, or therapeutic optometrist from giving a patient the patient's contact lens prescription.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.158. PROHIBITED ACTION BY PHYSICIAN, OPTOMETRIST, OR THERAPEUTIC OPTOMETRIST. A physician, optometrist, or therapeutic optometrist may not:

(1) charge a patient a fee in addition to or as part of the examination fee and fitting fee as a condition for issuing or verifying a contact lens prescription; or

(2) condition the availability to a patient of an eye examination, a fitting for contact lenses, the issuance or verification of a contact lens prescription, or a combination of those services on a requirement that the patient agree to purchase contact lenses or other ophthalmic goods from the physician, optometrist, or therapeutic optometrist or from a specific ophthalmic dispenser.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.011, eff. September 1, 2005.

Sec. 353.159. WAIVER OR DISCLAIMER OF LIABILITY PROHIBITED. A contact lens prescription may not contain, and a physician, optometrist, or therapeutic optometrist may not require a patient to sign, a form or notice that waives or disclaims the liability of the physician, optometrist, or therapeutic optometrist for the accuracy of:

(1) the eye examination on which a contact lens prescription provided to the patient is based; or

(2) a contact lens prescription provided to the patient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER E. LIABILITY AND ENFORCEMENT**

Sec. 353.201. LIABILITY FOR USE OF PRESCRIPTION. A physician, optometrist, or therapeutic optometrist is not liable for a patient's subsequent use of a contact lens prescription if:

(1) the physician, optometrist, or therapeutic optometrist does not reexamine the patient; and

(2) the patient's condition, age, general health, and susceptibility to an adverse reaction caused by or related to the use of contact lenses or other factors result in the patient no longer being a proper candidate for the contact lens prescribed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.202. DISCIPLINARY ACTION. The board may suspend or revoke a person's contact lens dispensing permit or place the permit holder on probation for a violation of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.2025. EMERGENCY SUSPENSION. (a) The department shall temporarily suspend the permit of a permit holder if the department determines from the evidence or information presented to it that continued practice by the permit holder would constitute a continuing and imminent threat to the public welfare.

(b) A permit may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 3, eff. Sept. 1, 2003.

Sec. 353.203. SEPARATE VIOLATIONS. A course of conduct that involves more than one prescription is a separate violation for each prescription dispensed in violation of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.204. ENFORCEMENT PROCEEDINGS. (a) The appropriate regulatory agency, the attorney general, or the district or county

attorney for the county in which an alleged violation of this chapter occurs shall, on receipt of a verified complaint, initiate an appropriate administrative or judicial proceeding to enforce this chapter and the rules adopted under this chapter.

(b) Except as otherwise provided by this section, the board is responsible for enforcing this chapter.

(c) The Texas State Board of Medical Examiners is responsible for enforcing this chapter with regard to a violation of this chapter by a physician. A violation of this chapter by a physician is considered to be a violation of Subtitle B.

(d) The Texas Optometry Board is responsible for enforcing this chapter with regard to a violation of this chapter by an optometrist or a therapeutic optometrist. A violation of this chapter by an optometrist or a therapeutic optometrist is considered to be a violation of Chapter 351.

(e) The Texas State Board of Pharmacy is responsible for enforcing this chapter with regard to a violation of this chapter by a pharmacist. A violation of this chapter by a pharmacist is considered to be a violation of Subtitle J.

(f) The attorney general or an attorney representing the state may bring an action for an injunction to prohibit a person from violating this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 1, eff. June 14, 2013.

Sec. 353.205. ADMINISTRATIVE PENALTY. The board may impose an administrative penalty of not more than \$1,000 for a violation of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.206. CIVIL PENALTY. In addition to granting injunctive or other relief provided by law, a court may impose a civil penalty for a violation of this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.207. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBTITLE G. PROFESSIONS RELATED TO HEARING, SPEECH, AND DYSLEXIA**  
**CHAPTER 401. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 401.001. DEFINITIONS. In this chapter:

(1) "Audiologist" means a person who meets the qualifications of this chapter to practice audiology.

(2) "Audiology" means the application of nonmedical principles, methods, and procedures for measurement, testing, appraisal, prediction, consultation, counseling, habilitation, rehabilitation, or instruction related to disorders of the auditory or vestibular systems for the purpose of providing or offering to provide services modifying communicative disorders involving speech, language, or auditory or vestibular function or other aberrant behavior relating to hearing loss.

(3) "Board" means the State Board of Examiners for Speech-Language Pathology and Audiology.

(4) "Department" means the Department of State Health Services.

(4-a) "Hearing instrument" has the meaning assigned by Section 402.001.

(5) "Speech-language pathologist" means a person who meets the qualifications of this chapter to practice speech-language pathology.

(6) "Speech-language pathology" means the application of nonmedical principles, methods, and procedures for measurement, testing, evaluation, prediction, counseling, habilitation, rehabilitation, or instruction related to the development and disorders of communication, including speech, voice, language, oral pharyngeal function, or cognitive processes, for the purpose of evaluating, preventing, or modifying or offering to evaluate,



prevent, or modify those disorders and conditions in an individual or a group.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 1, eff. September 1, 2011.

Sec. 401.002. APPLICATION OF SUNSET ACT. The State Board of Examiners for Speech-Language Pathology and Audiology is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1112, Sec. 3.04, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 4.03, eff. June 15, 2007.

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 1.09, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 2, eff. September 1, 2011.

#### **SUBCHAPTER B. APPLICATION OF CHAPTER**

Sec. 401.051. PHYSICIANS. (a) This chapter does not prevent or restrict a physician from engaging in the practice of medicine in this state.

(b) This chapter does not restrict a licensed physician from personally conducting a speech or hearing test or evaluation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.052. NURSES. This chapter does not prevent or restrict a communication, speech, language, or hearing screening, as defined by board rule, from being conducted by a registered nurse:

- (1) licensed in this state; and
- (2) practicing in accordance with the standards of

professional conduct and ethics established by rules adopted by the Texas Board of Nursing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 46, eff. September 1, 2007.

Sec. 401.053. PERSONS TRAINED BY DEPARTMENT. (a) This chapter does not apply to a person who shows evidence of having received training by the department in a communication, speech, language, or hearing screening training program approved by the department if the person's activity is limited to screening as defined by board rule.

(b) A person who has received training by the department in a program under Subsection (a) may not:

- (1) practice speech-language pathology or audiology; or
- (2) represent that the person is a speech-language pathologist or audiologist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.054. PERSONS CERTIFIED BY TEXAS EDUCATION AGENCY. (a) This chapter does not prevent or restrict the activities and services or the use of an official title by a person who is certified in speech-language pathology by the Texas Education Agency if the person only performs speech-language pathology or audiology services as part of the person's duties within an agency, institution, or organization under the jurisdiction of the Texas Education Agency.

(b) The Texas Education Agency certificate in speech-language pathology must require an applicant to:

- (1) hold a master's degree in communicative disorders or the equivalent from a university program accredited by the American Speech-Language-Hearing Association; and
- (2) pass a national examination in speech-language pathology or audiology approved by the board.

(c) A person affected by this section who performs work as a speech-language pathologist or audiologist in addition to performing the person's duties within an agency, institution, or organization under the jurisdiction of the Texas Education Agency is required to

hold a license issued by the board unless that work is limited to speech and hearing screening procedures performed without compensation.

(d) For the purposes of Subsection (b)(1), an applicant's educational credentials are equivalent to a master's degree in communicative disorders if the credentials:

(1) consist of graduate-level course work and practicum from a program accredited by the American Speech-Language-Hearing Association; and

(2) meet requirements that are the same as those established by the board for a license in speech-language pathology or audiology.

(e) The clinical fellowship year experience or internship may not be a requirement for the Texas Education Agency certificate in speech-language pathology.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.055. UNIVERSITY OR COLLEGE TEACHERS. This chapter does not restrict the use of an official title by a person teaching in a university or college training program, if the person:

(1) is not engaged in the practice of speech-language pathology or audiology; and

(2) does not supervise a person engaged in the practice of speech-language pathology or audiology.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.056. STUDENTS. This chapter does not restrict the activities and services of a student pursuing a course of study leading to a degree in speech-language pathology or audiology at a college or university accredited by the Southern Association of Colleges and Universities or its equivalent if:

(1) the activities and services are part of the student's supervised course of study;

(2) the student is supervised by a person licensed under this chapter; and

(3) the student is designated as a "Speech-Language Pathology Trainee," an "Audiology Trainee," or by another title that

clearly indicates the student's professional preparation status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.057. HEARING CONSERVATION PROGRAM. This chapter does not prevent a person in an industrial setting from engaging in hearing testing as a part of a hearing conservation program in compliance with federal Occupational Safety and Health Administration regulations.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 40 (S.B. [312](#)), Sec. 1, eff. September 1, 2013.

Sec. 401.058. APPLICATION TO HEARING INSTRUMENT FITTERS AND DISPENSERS. (a) This chapter does not prevent or restrict a person licensed under Chapter 402 from engaging in the practice of fitting and dispensing hearing instruments.

(b) This chapter does not prohibit a fitter and dispenser of hearing instruments licensed under Chapter 402 from measuring human hearing by any means, including an audiometer, to make a selection, adaptation, or sale of a hearing instrument, including:

(1) making impressions for earmolds to be used as part of a hearing instrument; and

(2) providing post-fitting counseling to fit and dispense hearing instruments.

(c) A person who is not an audiologist who is licensed to fit and dispense hearing instruments under Chapter 402 may not:

(1) practice speech-language pathology or audiology; or

(2) represent that the person is a speech-language pathologist or audiologist by the use of any term restricted by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.059. APPLICATION TO OTHER LICENSED PROFESSIONALS. This chapter does not prevent a person licensed in this state under

another law from engaging in the profession for which the person is licensed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.060. MEDICAL PRACTICE. This chapter does not permit a person to perform an act that violates Subtitle B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER C. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY**

Sec. 401.101. BOARD WITHIN DEPARTMENT. The State Board of Examiners for Speech-Language Pathology and Audiology is within the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 3, eff. September 1, 2011.

Sec. 401.102. BOARD MEMBERSHIP. (a) The board consists of nine members appointed by the governor as follows:

- (1) three audiologist members;
- (2) three speech-language pathologist members; and
- (3) three members who represent the public.

(b) Board members must:

(1) have been a resident of this state for the two years preceding the date of appointment;

(2) be from the various geographic regions of the state;

and

(3) be from varying employment settings.

(c) The board members appointed under Subsections (a)(1) and (2) must:

(1) have been engaged in teaching, research, or providing services in speech-language pathology or audiology for at least five years; and

(2) be licensed under this chapter.

(d) One of the public board members must be a physician licensed in this state and certified in otolaryngology or pediatrics.

(e) Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.103. ELIGIBILITY OF PUBLIC MEMBERS. A person may not be a public member of the board, other than the public member described by Section 401.102(d), if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participating in the management of an agency or business entity that:

(A) provides health care services;

(B) sells, manufactures, or distributes health care supplies or equipment; or

(C) receives money from the board or the department;

(3) owns, controls, or has a direct or indirect interest of more than 10 percent in a business entity that:

(A) provides health care services;

(B) sells, manufactures, or distributes health care supplies or equipment; or

(C) receives money from the board or department; or

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 4, eff. September 1, 2011.

Sec. 401.104. MEMBERSHIP RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession

in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities in a health-related area.

(c) A person may not be a member of the board if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 5, eff. September 1, 2011.

Sec. 401.105. TERMS. (a) Members are appointed for staggered six-year terms. The terms of three members expire September 1 of each odd-numbered year.

(b) A person may not be appointed to serve more than two consecutive terms.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.106. COMPENSATION; PER DIEM. (a) A board member may not receive compensation for the member's services.

(b) A member is entitled to a per diem and travel allowance for each day the member engages in board business at the rate set for state employees in the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.107. BOARD OFFICERS. (a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor.

(b) The presiding officer must hold a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 6, eff. September 1, 2011.

Sec. 401.108. MEETINGS. (a) The board shall hold at least two regular meetings each year.

(b) Additional meetings may be held at the call of the presiding officer or on the written request of any three members of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.109. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 401.102;

(2) does not maintain during service on the board the qualifications required by Section 401.102;

(3) is ineligible for membership under Section 401.103 or 401.104;

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

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

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



ground for removal exists.

Added by Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 7, eff. September 1, 2011.

Sec. 401.110. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

- (1) this chapter;
- (2) the programs, functions, rules, and budget of the board;
- (3) the results of the most recent formal audit of the board;
- (4) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and
- (5) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 7, eff. September 1, 2011.

#### **SUBCHAPTER D. BOARD PERSONNEL**

Sec. 401.151. EMPLOYEES. The department shall provide administrative and clerical employees necessary to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.152. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER E. BOARD AND DEPARTMENT POWERS AND DUTIES**

Sec. 401.201. GENERAL POWERS AND DUTIES. (a) With the assistance of the department, the board shall:

- (1) administer, coordinate, and enforce this chapter;
- (2) evaluate the qualifications of license applicants;
- (3) provide for the examination of license applicants;
- (4) in connection with a hearing under Section 401.454, issue subpoenas, examine witnesses, and administer oaths under the laws of this state;
- (5) conduct hearings and keep records and minutes necessary to the orderly administration of this chapter; and
- (6) investigate persons engaging in practices that violate this chapter.

(b) The board may appoint subcommittees to work under its jurisdiction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.171(a), eff. Sept. 1, 2001.

Sec. 401.202. RULEMAKING AUTHORITY. The board shall adopt rules necessary to administer and enforce this chapter, including rules that establish standards of ethical practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.2021. JOINT RULES FOR HEARING INSTRUMENTS. With the assistance of the department, the board and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments shall jointly adopt rules to establish requirements for each sale of a hearing instrument. The rules must:

- (1) address:

(A) the information and other provisions required in each written contract for the purchase of a hearing instrument;

(B) records that must be retained under this chapter or Chapter 402; and

(C) guidelines for the 30-day trial period during which a person may cancel the purchase of a hearing instrument; and

(2) require that the written contract and 30-day trial period information provided to a purchaser of a hearing instrument be in plain language designed to be easily understood by the average consumer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 8, eff. September 1, 2011.

Sec. 401.202. JOINT RULES FOR FITTING AND DISPENSING OF HEARING INSTRUMENTS BY TELEPRACTICE. With the assistance of the department, the board and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments shall jointly adopt rules to establish requirements for the fitting and dispensing of hearing instruments by the use of telepractice.

Added by Acts 2013, 83rd Leg., R.S., Ch. 40 (S.B. 312), Sec. 2, eff. September 1, 2013.

Sec. 401.203. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall adopt a form to standardize information concerning complaints made to the board.

(b) The board by rule shall prescribe information to be provided to a person when the person files a complaint with the board.

(c) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.204. FEES. (a) The board by rule shall establish fees in amounts reasonable and necessary so that the fees in the aggregate are sufficient to cover the costs of administering this

chapter.

(b) All expenses for the administration of this chapter shall be paid from fees collected by the board under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.205. SEAL. The board shall adopt a seal to authenticate its proceedings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.206. LEGAL REPRESENTATION. The board shall be represented by the attorney general and the district and county attorneys of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.207. TRAINING. Each board member shall comply with the board member training requirements established by any other state agency authorized to establish the requirements for the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. PUBLIC ACCESS AND INFORMATION**

Sec. 401.251. COMPLAINTS. The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.252. RECORDS OF COMPLAINTS. (a) The board shall keep an information file about each complaint filed with the board. The file must be current and contain a record for each complaint of:

- (1) each person contacted in relation to the complaint;
- (2) a summary of findings made at each step of the

complaint process;

(3) for a complaint that is dismissed, an explanation of the legal basis and reason for dismissal;

(4) the schedule established for the complaint under Section 401.253(b)(2) and a notation of any change in the schedule; and

(5) other relevant information.

(b) If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.253. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules must:

(1) distinguish among categories of complaints;

(2) ensure that a complaint is not dismissed without appropriate consideration;

(3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(b) The board shall:

(1) dispose of each complaint in a timely manner; and

(2) establish a schedule for conducting each phase of a complaint investigation that is under the control of the board not later than the 30th day after the date the complaint is received by the board.

(c) Each party to a complaint shall be notified of the projected time requirements for pursuing the complaint.

(d) Each party to the complaint shall be notified of any change

in the schedule established under Subsection (b)(2) not later than the seventh day after the date the change is made.

(e) The director of the board shall notify the board of a complaint that is not resolved within the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.2535. COMPLAINT INVESTIGATION; SUBPOENA. (a) In an investigation of a complaint filed with the board, the board may request that the commissioner of public health or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The board may delegate the authority granted under Subsection (a) to the secretary-treasurer of the board.

(f) The board shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the board may charge for copies of its records.

(g) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

(h) All information and materials subpoenaed or compiled by the board in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in discipline of the holder of a license, except that this information may be

disclosed to:

- (1) persons involved with the board in a disciplinary action against the holder of a license;
- (2) professional speech-language pathologist and audiologist licensing or disciplinary boards in other jurisdictions;
- (3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges by the board against a holder of a license, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.172(a), eff. Sept. 1, 2001.

Sec. 401.254. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. LICENSE REQUIREMENTS**

Sec. 401.301. LICENSE REQUIRED. A person may not practice speech-language pathology or audiology or represent that the person is a speech-language pathologist or audiologist in this state unless the person holds a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.302. ISSUANCE OF LICENSE. (a) The board shall issue

a license to an applicant who meets the requirements of this chapter and who pays to the board the initial nonrefundable license fee.

(b) The board may issue to an applicant a license in either speech-language pathology or audiology.

(c) The board may issue a license in both speech-language pathology and audiology to an applicant.

(d) The board by rule shall establish qualifications for dual licensing in speech-language pathology and audiology and may develop a full range of licensing options and establish rules for qualifications.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.303. LICENSE APPLICATION. (a) A person who desires a license under this chapter must apply to the board on a form and in the manner the board prescribes.

(b) The application must be accompanied by a nonrefundable application fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.304. APPLICANT ELIGIBILITY. (a) To be eligible for licensing as a speech-language pathologist or audiologist, an applicant must:

(1) if the application is for a license in:

(A) speech-language pathology, possess at least a master's degree with a major in at least one of the areas of communicative sciences or disorders from a program accredited by a national accrediting organization that is approved by the board and recognized by the United States secretary of education under the Higher Education Act of 1965 (20 U.S.C. Section 1001 et seq.) in an accredited or approved college or university; or

(B) audiology, possess at least a doctoral degree in audiology or a related hearing science from a program accredited by a national accrediting organization that is approved by the board and recognized by the United States secretary of education under the Higher Education Act of 1965 (20 U.S.C. Section 1001 et seq.) in an accredited or approved college or university;

(2) submit a transcript from a public or private



institution of higher learning showing successful completion of course work in amounts set by the board in:

(A) normal development and use of speech, language, and hearing;

(B) evaluation, habilitation, and rehabilitation of speech, language, and hearing disorders; and

(C) related fields that augment the work of clinical practitioners of speech-language pathology and audiology;

(3) have successfully completed at least 36 semester hours in courses that are acceptable toward a graduate degree by the college or university in which the courses are taken, at least 24 of which must be in the professional area for which the license is requested;

(4) have completed the minimum number of hours, established by the board, of supervised clinical experience with persons who present a variety of communication disorders; and

(5) have completed the full-time supervised professional experience, as defined by board rule, in which clinical work has been accomplished in the major professional area for which the license is being sought.

(b) Clinical experience required under Subsection (a)(4) must be obtained:

(1) in the applicant's educational institution or in one of the institution's cooperating programs; and

(2) under the supervision of a person holding a license to practice speech-language pathology or audiology.

(c) Supervised professional experience under Subsection (a)(5) must:

(1) be under the supervision of a qualified person acceptable to the board under guidelines approved by the board; and

(2) begin after completion of the academic and clinical experience required by this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 617 (S.B. 613), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 40 (S.B. 312), Sec. 3, eff. September 1, 2013.

Sec. 401.3041. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) The board shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The board may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The board shall conduct a criminal history check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The Department of State Health Services on behalf of the board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history check.

Added by Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 9, eff. September 1, 2011.

Sec. 401.305. EXAMINATION. (a) To obtain a license, an applicant must:

(1) pass a validated examination approved by the board;

and

(2) pay fees in a manner prescribed by the board.

(b) The board shall:

(1) administer an examination at least twice each year;

(2) determine standards for acceptable performance on the examination; and

(3) maintain a record of all examination scores for at least two years after the date of examination.

(c) The board by rule may:

(1) establish procedures for the administration of the examination; and

(2) require a written or oral examination, or both.

(d) The board may examine an applicant in any theoretical or applied field of speech-language pathology or audiology it considers appropriate. The board may examine an applicant on professional skills and judgment in the use of speech-language pathology or audiology techniques or methods.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.306. EXAMINATION RESULTS. (a) If an examination is graded or reviewed by a national or state testing service that does not directly notify examinees of the examination results, the board shall notify each examinee of the results not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of examination results graded or reviewed by a national or state testing service will be delayed for longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 40 (S.B. 312), Sec. 4, eff. September 1, 2013.

Sec. 401.307. REEXAMINATION. (a) A person who fails the examination may take a subsequent examination on payment of a nonrefundable fee for the subsequent examination.

(b) An applicant who fails two examinations may not be reexamined until the person:

(1) submits a new application accompanied by a nonrefundable application fee; and

(2) presents evidence acceptable to the board of additional study in the area for which a license is sought.

(c) To request an analysis of the person's performance on the examination, a person who fails a licensing examination administered under this chapter must contact the testing service that administered

the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.308. PROVISIONAL LICENSE; CERTIFICATE OF CLINICAL COMPETENCE WAIVER. (a) The board may grant a provisional license to an applicant who:

(1) is licensed in good standing as a speech-language pathologist or an audiologist in another state that has licensing requirements that are substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the board relating to speech-language pathology or audiology; and

(3) is sponsored by a license holder with whom the provisional license holder may practice under this section.

(b) An applicant for a provisional license may be excused from the requirement of Subsection (a)(3) if the board determines that compliance with that requirement is a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license.

(d) The board shall issue a license under this chapter to a provisional license holder:

(1) who passes the examination required by Section 401.305;

(2) for whom the board verifies satisfaction of the academic and experience requirements for a license under this chapter; and

(3) who satisfies any other license requirements under this chapter.

(e) The board shall complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued.

(f) The board may waive the examination requirement and issue a license to an applicant who holds the Certificate of Clinical Competence of the American Speech-Language-Hearing Association.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.310. TEMPORARY CERTIFICATE OF REGISTRATION. (a) The

board shall issue a temporary certificate of registration to an applicant who:

- (1) satisfies the requirements of Section 401.304;
- (2) has not previously applied to take the examination;

and

- (3) pays the nonrefundable application fee.

(b) A holder of a temporary certificate of registration may practice speech-language pathology or audiology for a period ending eight weeks after the date the examination concludes.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.311. INTERN LICENSE. (a) A license applicant who has completed only the requirements of Sections 401.304(a)(1)-(4) may be licensed as an intern under this chapter.

(b) An applicant who has successfully completed the academic and clinical requirements of Sections 401.304(a)(1)-(4) but who has not had the degree officially conferred on the applicant may be licensed as an intern under this chapter.

(c) The board by rule shall:

- (1) prescribe the terms governing a person's practice as an intern under this section; and
- (2) establish general guidelines and renewal procedures for the holder of an intern license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.312. LICENSED ASSISTANTS. (a) The board may establish minimum qualifications for licensed assistants in speech-language pathology and in audiology.

(b) A licensed assistant in speech-language pathology or in audiology must meet the minimum qualifications established by the board.

(c) A licensed assistant in speech-language pathology shall work under the direction of a licensed speech-language pathologist.

(d) The qualifications for licensing as a licensed assistant in speech-language pathology must be uniform and be less stringent than the requirements under this chapter for a speech-language pathologist license.

(e) A licensed assistant in audiology shall work under the direction of a licensed audiologist.

(f) The qualifications for licensing as a licensed assistant in audiology must be uniform and be less stringent than the requirements under this chapter for an audiologist license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.313. INACTIVE STATUS. (a) The board by rule may provide for a license holder to be placed on inactive status.

(b) Rules adopted under this section must include a time limit for a license holder to remain on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.315. LICENSING FOR MILITARY SPOUSES. (a) In this section:

(1) "Military service member" means a person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) "Military spouse" means a person who is married to a military service member.

(b) The board shall issue a license to a military spouse who:

(1) was licensed in good standing as a speech-language pathologist or audiologist in another state as of the date of the application;

(2) holds a master's degree in at least one of the areas of communicative sciences or disorders from a program accredited by a national accrediting organization that is:

(A) approved by the board; and

(B) recognized by the United States secretary of education under the Higher Education Act of 1965 (20 U.S.C. Section 1001 et seq.); and

(3) has not been the subject of a disciplinary action in any jurisdiction in which the applicant is or has been licensed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 40 (S.B. 312), Sec. 5, eff. September 1, 2013.

**SUBCHAPTER H. LICENSE EXPIRATION AND RENEWAL**

Sec. 401.351. EXPIRATION. (a) The board by rule may adopt a system under which licenses expire on various dates during the year.

(b) For the year in which the license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each license holder pays only the portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.352. LICENSE RENEWAL. (a) Each licensed speech-language pathologist or audiologist must annually pay the nonrefundable fee for license renewal. The board shall allow a 60-day grace period. After expiration of the grace period, the board may renew a license on payment of a penalty set by board rule.

(b) An application for a license filed not later than the second anniversary of the license expiration date is considered an application for renewal. The board may not require a person who applies for renewal on or before the second anniversary of the license expiration date to take an examination as a condition of renewal.

(c) A person whose license has been expired for two years or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

For expiration of this section, see Subsection (d).

Sec. 401.3521. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. (a) An applicant renewing a license issued under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history check of the applicant as provided by Section 401.3041.

(b) The board may not renew the license of a person who does not comply with the requirement of Subsection (a).

(c) The requirements of this section do not apply to a license holder who has previously submitted fingerprints under this section or Section 401.3041.

(d) This section expires February 1, 2015.

Added by Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 10, eff. September 1, 2011.

Sec. 401.353. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The board may renew without reexamination an expired license of a person who was licensed in this state within the three years preceding application for renewal and who is currently licensed and has been in practice in another state for the two years preceding the application date.

(b) The person must pay to the board a fee that is equal to the amount of the license examination fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.354. MEDICAL HARDSHIP. The board may adopt rules concerning the reinstatement of a license in a case of medical hardship.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.355. CONTINUING EDUCATION. (a) The board shall establish uniform mandatory continuing education requirements. A license holder may not renew the person's license unless the person meets the continuing education requirements.

(b) The board shall establish the requirements in a manner that allows a license holder to comply without an extended absence from the license holder's county of residence.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 40, Sec. 9(3), eff. September 1, 2013.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 40 (S.B. 312), Sec. 9(3), eff. September 1, 2013.

**SUBCHAPTER I. PRACTICE BY LICENSE HOLDER**

Sec. 401.401. AUDIOMETRIC TESTING. (a) If audiometric testing is not conducted in a stationary acoustical enclosure, sound-level measurements must be conducted at the time of the testing to ensure that ambient noise levels meet permissible standards for testing threshold to 20 dB based on the most recent American National Standards Institute "ears covered" octave band criteria for permissible ambient noise levels during audiometric testing.

(b) A dBa equivalent level may be used to determine compliance.

(c) The board shall adopt rules necessary to enforce this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.402. PRACTICE BY SPEECH-LANGUAGE PATHOLOGISTS. (a) A speech-language pathologist may perform basic audiometric screening tests and aural habilitation or rehabilitation.

(b) A person licensed as a speech-language pathologist under this chapter may not fit, dispense, or sell hearing instruments unless the person meets the specific requirements for fitting and dispensing hearing instruments under this chapter or Chapter 402.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.403. PRACTICE BY AUDIOLOGISTS. (a) An audiologist may:

(1) engage in any act necessary to:

(A) evaluate hearing;

(B) train in the use of amplification, including hearing instruments;

(C) make earmolds for hearing instruments;

(D) fit, dispense, and sell hearing instruments; or

(E) manage cerumen;

(2) participate in consultation regarding noise control and

hearing conservation;

(3) provide evaluations of environment or equipment, including calibration of equipment used in testing auditory functioning and hearing conservation; and

(4) perform basic speech and language screening tests and procedures consistent with the audiologist's training.

(b) A person who meets the requirements of this chapter for licensing as an audiologist or audiologist intern and who fits and dispenses hearing instruments must:

(1) register with the board the person's intention to fit and dispense hearing instruments;

(2) comply with the profession's code of ethics;

(3) comply with the federal Food and Drug Administration guidelines for fitting and dispensing hearing instruments;

(4) when providing services in this state, use a written contract that contains the board's name, mailing address, and telephone number; and

(5) follow the guidelines adopted by board rule for a 30-day trial period on every hearing instrument purchased.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.404. HEARING INSTRUMENT SALES TO MINORS. A licensed audiologist may not sell a hearing instrument to a person under 18 years of age unless the person or the parent or guardian of the person presents to the audiologist a written statement signed by a licensed physician who specializes in diseases of the ear stating that:

(1) the person's hearing loss has been medically evaluated during the six-month period preceding the date the statement is presented; and

(2) the person may be considered a candidate for a hearing instrument.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.405. TELEPRACTICE. (a) In this section, "telepractice" means the use of telecommunications technology by a license holder for an assessment, intervention, or consultation

regarding a speech-language pathology or audiology client.

(b) The board may adopt rules consistent with the joint rules under Section 401.2022 to provide for the practice of speech-language pathology or audiology by the use of telepractice by a person licensed under this chapter, including rules that establish the qualifications and duties of license holders who use telepractice.

Added by Acts 2013, 83rd Leg., R.S., Ch. 40 (S.B. 312), Sec. 6, eff. September 1, 2013.

#### **SUBCHAPTER J. LICENSE DENIAL AND DISCIPLINARY PROCEDURES**

Sec. 401.451. GROUND FOR LICENSE DENIAL AND DISCIPLINARY ACTION. (a) After a hearing, the board may deny a license to an applicant or may suspend or revoke a person's license or place on probation a license holder if the applicant or license holder:

- (1) violates this chapter or an order or rule of the board;
- (2) obtains a license by means of fraud, misrepresentation, or concealment of a material fact;
- (3) sells, barter, or offers to sell or barter a license or certificate of registration; or
- (4) engages in unprofessional conduct that:
  - (A) endangers or is likely to endanger the health, welfare, or safety of the public as defined by board rule; or
  - (B) violates the code of ethics adopted and published by the board.

(b) Any person may commence a proceeding for revocation or suspension of a license by filing written charges with the board under oath.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.452. MONITORING OF LICENSE HOLDER. (a) The board by rule shall develop a system for monitoring a license holder's compliance with this chapter.

(b) Rules adopted under this section must include procedures to:

- (1) monitor for compliance a license holder who is ordered by the board to perform certain acts; and
- (2) identify and monitor license holders who represent a

risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.453. LICENSE DENIAL, REVOCATION, OR SUSPENSION FOR CRIMINAL CONVICTION. (a) The board may deny a license or may suspend or revoke a license if the applicant or license holder has been convicted of a misdemeanor involving moral turpitude or a felony. The board may take action authorized by this section when:

- (1) the time for appeal of the person's conviction has elapsed;
  - (2) the judgment or conviction has been affirmed on appeal;
- or
- (3) an order granting probation is made suspending the imposition of the person's sentence, without regard to whether a subsequent order:
    - (A) allows a withdrawal of a plea of guilty;
    - (B) sets aside a verdict of guilty; or
    - (C) dismisses an information or indictment.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is a conviction for purposes of this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.4531. RECUSAL OF BOARD MEMBER. (a) A board member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint:

- (1) may not vote on the matter at a board meeting related to the complaint; and
- (2) shall state at the meeting why the member is prohibited from voting on the matter.

(b) A statement under Subsection (a)(2) shall be entered into the minutes of the meeting.

Added by Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 11, eff. September 1, 2011.

Sec. 401.454. ADMINISTRATIVE PROCEDURE. (a) Except as

provided by this subchapter, a proceeding to deny a license application or to take disciplinary action against a license holder is subject to Chapter 2001, Government Code.

(b) A person whose application for a license is denied is entitled to a hearing before the board if the person submits a written request to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.455. INFORMAL PROCEDURES. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under Subsection (a) must:

(1) provide the complainant, if applicable and permitted by law, an opportunity to be heard;

(2) provide the license holder an opportunity to be heard; and

(3) require the presence of a legal representative of the department who represents the board or the board's employees or a representative of the attorney general to advise the board or the board's employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.456. SCHEDULE OF SANCTIONS. The board shall use the schedule of sanctions adopted by board rule for any sanction imposed as the result of a hearing conducted by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.457. REINSTATEMENT. (a) A person may apply for reinstatement of a revoked license on or after the first anniversary of the date of revocation.

(b) The board may:

(1) accept or reject the application; and

(2) require an examination as a condition for reinstatement of the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.458. PROBATION. The board may require a license holder whose license suspension is probated to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board;  
or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.459. REPRIMAND; CONTINUING EDUCATION. (a) In addition to other disciplinary action authorized by this subchapter, the board may:

(1) issue a written reprimand to a license holder who violates this chapter; or

(2) require that a license holder who violates this chapter attend continuing education programs.

(b) The board may specify the number of hours of continuing education that must be completed by a license holder to fulfill the requirement of Subsection (a)(2).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.460. EMERGENCY SUSPENSION. (a) The board or a three-member committee of board members designated by the board shall temporarily suspend the license of a license holder if the board or committee determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 4, eff. Sept. 1, 2003.

#### **SUBCHAPTER K. PENALTIES AND OTHER ENFORCEMENT PROVISIONS**

Sec. 401.501. DECEPTIVE TRADE PRACTICE. A violation of Section 401.301 is a deceptive trade practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.502. INJUNCTION. The board may apply to a district court in any county for an injunction or another order to restrain the violation of this chapter by a person other than a license holder under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.5021. BOARD-ORDERED REFUND. The board may order an audiologist to pay a refund to a consumer who returns a hearing instrument during the 30-day trial period required by rules adopted under Section 401.2021.

Added by Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 12, eff. September 1, 2011.

Sec. 401.5022. CEASE AND DESIST ORDER. (a) If it appears to the board that a person who is not licensed under this chapter is

violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of speech-language pathology or audiology, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter L.

Added by Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 12, eff. September 1, 2011.

Sec. 401.503. CRIMINAL OFFENSE. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is a misdemeanor punishable by:

- (1) confinement in the county jail for a period not to exceed six months;
- (2) a fine not to exceed \$1,000; or
- (3) both the confinement and the fine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER L. ADMINISTRATIVE PENALTY**

Sec. 401.551. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 5, eff. Sept. 1, 2003.

Sec. 401.552. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the administrative penalty may not be less than \$50 or more than \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the economic harm caused by the violation;



- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 5, eff. Sept. 1, 2003.

Sec. 401.553. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the commissioner of public health or the commissioner's designee determines that a violation occurred, the commissioner or the designee may issue to the board a report stating:

- (1) the facts on which the determination is based; and
- (2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the commissioner of public health or the commissioner's designee shall give written notice of the report to the person. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended administrative penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 5, eff. Sept. 1, 2003.

Sec. 401.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

- (1) accept the determination and recommended administrative penalty of the commissioner of public health or the commissioner's designee; or
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the commissioner of public health or the commissioner's designee, the board by order shall approve the determination and impose the recommended penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 5, eff. Sept. 1, 2003.

Sec. 401.555. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the commissioner of public health or the commissioner's designee shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 5, eff. Sept. 1, 2003.

Sec. 401.556. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the board by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 5, eff. Sept. 1, 2003.

Sec. 401.557. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Within 30 days after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and  
(ii) is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner of public health or the commissioner's designee by certified mail.

(c) If the commissioner of public health or the commissioner's designee receives a copy of an affidavit under Subsection (b)(2), the commissioner or the designee may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 5, eff. Sept. 1, 2003.

Sec. 401.558. COLLECTION OF PENALTY. (a) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 5, eff. Sept. 1, 2003.

Sec. 401.559. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 5, eff. Sept. 1, 2003.

Sec. 401.560. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 5, eff. Sept. 1, 2003.

Sec. 401.561. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is a contested case under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 5, eff. Sept. 1, 2003.

## **CHAPTER 402. HEARING INSTRUMENT FITTERS AND DISPENSERS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 402.001. DEFINITIONS. In this chapter:

(1) "Board" means the executive commissioner of the Health and Human Services Commission.

(2) "Committee" means the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

(3) "Department" means the Department of State Health Services.

(4) "Fitting and dispensing hearing instruments" means the measurement of human hearing by the use of an audiometer or other means to make selections, adaptations, or sales of hearing

instruments. The term includes the making of impressions for earmolds to be used as a part of the hearing instruments and any necessary postfitting counseling for the purpose of fitting and dispensing hearing instruments.

(5) "Hearing instrument" means any wearable instrument or device designed for, or represented as, aiding, improving, or correcting defective human hearing. The term includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

(6) "License" means a license issued by the committee under this chapter to a person authorized to fit and dispense hearing instruments.

(7) "Sale" includes a transfer of title or of the right to use by lease, bailment, or other contract. The term does not include a sale at wholesale by a manufacturer to a person licensed under this chapter or to a distributor for distribution and sale to a person licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 1, eff. September 1, 2011.

Sec. 402.002. APPLICATION OF SUNSET ACT. The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this chapter expires September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1112, Sec. 3.05, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 4.04, eff. June 15, 2007.

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 1.10, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 2, eff. September 1, 2011.

Sec. 402.003. APPLICABILITY OF CHAPTER. (a) This chapter does not apply to:

(1) a person engaged in the practice of measuring human hearing as a part of the academic curriculum of an accredited institution of higher learning if the person or the person's employees do not sell hearing instruments;

(2) a physician licensed by the Texas Medical Board;

(3) a person with a master's degree or doctorate in audiology from an accredited college or university who does not sell hearing instruments, to the extent the person engages in the measurement of human hearing by the use of an audiometer or by any other means to make selections and adaptations of or recommendations for a hearing instrument and to make impressions for earmolds to be used as part of a hearing instrument;

(4) an audiologist or an audiology intern licensed under Chapter 401, except as may otherwise be provided by the following provisions, which refer to Chapter 401:

(A) Section 402.051(a)(1);

(B) Section 402.202(b);

(C) Section 402.252;

(D) Section 402.255(a);

(E) Section 402.406(a); and

(F) Section 402.451(a)(6); and

(5) a student of audiology in an accredited college or university program, if the student's activities and services are part of the student's supervised course of study or practicum experience.

(b) A student described by Subsection (a)(5) is subject to Chapter 401.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 1, eff. September 1, 2009.

#### **SUBCHAPTER B. STATE COMMITTEE OF EXAMINERS IN THE FITTING AND DISPENSING OF HEARING INSTRUMENTS**

Sec. 402.051. COMMITTEE; MEMBERSHIP. (a) The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments is part of the department and consists of nine members appointed by the

governor with the advice and consent of the senate as follows:

(1) six members licensed under this chapter who have been residents of this state actually engaged in fitting and dispensing hearing instruments for at least five years preceding appointment, not more than one of whom may be licensed under Chapter 401;

(2) one member who is actively practicing as a physician licensed by the Texas State Board of Medical Examiners and who:

(A) has been a resident of this state for at least two years preceding appointment;

(B) is a citizen of the United States; and

(C) specializes in the practice of otolaryngology; and

(3) two members of the public.

(b) Appointments to the committee shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.052. PUBLIC MEMBER ELIGIBILITY. A person is not eligible for appointment as a public member of the committee if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that:

(A) provides health care services;

(B) sells, manufactures, or distributes health care supplies or equipment; or

(C) is regulated by or receives money from the committee or department;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that:

(A) provides health care services;

(B) sells, manufactures, or distributes health care supplies or equipment; or

(C) is regulated by or receives money from the committee or department; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the committee or department, other

than compensation or reimbursement authorized by law for committee membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 3, eff. September 1, 2011.

Sec. 402.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "trade association" means a cooperative and voluntarily joined national or statewide association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the committee if:

(1) the person is an officer, employee, or paid consultant of a trade association in the field of hearing instrument fitting and dispensing; or

(2) the person's spouse or another person related to the person within the second degree by affinity or consanguinity, as determined under Chapter 573, Government Code, is an officer, manager, or paid consultant of a trade association in the field of hearing instrument fitting and dispensing.

(c) A person may not serve as a member of the committee or act as the general counsel to the committee if the person is required to register as a lobbyist under Chapter 305, Government Code.

(d) A committee member appointed under Section 402.051(a)(2) may not have a financial interest in a hearing instrument manufacturing company or in a wholesale or retail hearing instrument company.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 4, eff. September 1, 2011.

Sec. 402.054. OFFICIAL OATH. Each person appointed to the committee shall take the constitutional oath of office not later than the 15th day after the date of appointment.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.055. TERMS; VACANCIES. (a) Members of the committee serve staggered six-year terms.

(b) A member who has served two full consecutive terms on the committee is not eligible for reappointment to the committee for the 12 months following the expiration of the second full term.

(c) In the event of the death, resignation, or removal of a member, the governor shall fill the vacancy of the unexpired term in the same manner as other appointments.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the committee that a member:

(1) does not have at the time of taking office the qualifications required by Sections 402.051, 402.052, and 402.053 for appointment to the committee;

(2) does not maintain during service on the committee the qualifications required by Sections 402.051, 402.052, and 402.053;

(3) is ineligible for membership under Section 402.052 or 402.053;

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

(5) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee.

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

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

shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 5, eff. September 1, 2011.

Sec. 402.057. OFFICERS. (a) The governor shall designate a member of the committee as the presiding officer of the committee to serve in that capacity at the will of the governor.

(b) The term of office as an officer of the committee is one year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 6, eff. September 1, 2011.

Sec. 402.058. MEETINGS. (a) The committee shall hold regular meetings at least twice a year.

(b) A special meeting of the committee shall be held at the call of the presiding officer or a majority of the members.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 7, eff. September 1, 2011.

Sec. 402.0581. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the committee may not vote, deliberate, or be counted as a member in attendance at a meeting of the committee until the person completes a training program that complies with this section.

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

- (1) this chapter;
- (2) the programs, functions, rules, and budget of the

committee;

(3) the results of the most recent formal audit of the committee;

(4) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(5) any applicable ethics policies adopted by the committee or the Texas Ethics Commission.

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 8, eff. September 1, 2011.

Sec. 402.059. COMMITTEE EMPLOYEES. The department shall provide administrative and clerical employees necessary to implement this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.060. SEAL OF COMMITTEE. The committee shall adopt a seal and use the seal to authenticate its proceedings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.061. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. The committee is subject to Chapters 2001 and 2002, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. COMMITTEE POWERS AND DUTIES**

Sec. 402.101. GENERAL POWERS AND DUTIES. With the assistance of the department, the committee shall:

(1) administer, coordinate, and enforce this chapter;

- (2) evaluate the qualifications of applicants;
- (3) examine applicants;
- (4) in connection with a hearing under Section 402.502, issue subpoenas, examine witnesses, and administer oaths under the laws of this state; and
- (5) conduct hearings and keep records and minutes necessary to the orderly administration of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.173(a), eff. Sept. 1, 2001.

Sec. 402.102. RULES. (a) Subject to the approval of the board, the committee may adopt procedural rules as necessary for the performance of the committee's duties.

(b) A license holder under this chapter is subject to the rules adopted by the committee and approved by the board under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.1021. JOINT RULES FOR HEARING INSTRUMENTS. With the assistance of the department, the committee and the State Board of Examiners for Speech-Language Pathology and Audiology shall jointly adopt rules to establish requirements for each sale of a hearing instrument. The rules must:

- (1) address:
  - (A) the information and other provisions required in each written contract for the purchase of a hearing instrument;
  - (B) records that must be retained under this chapter or Chapter 401; and
  - (C) guidelines for the 30-day trial period during which a person may cancel the purchase of a hearing instrument; and
- (2) require that the written contract and 30-day trial period information provided to a purchaser of a hearing instrument be in plain language designed to be easily understood by the average consumer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 9,

eff. September 1, 2011.

Sec. 402.1022. DIVISION OF RESPONSIBILITIES. The committee shall develop and implement policies that clearly separate the policy-making responsibilities of the committee and the management responsibilities of the staff of the department.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 9, eff. September 1, 2011.

Sec. 402.1023. JOINT RULES FOR FITTING AND DISPENSING OF HEARING INSTRUMENTS BY TELEPRACTICE. With the assistance of the department, the committee and the State Board of Examiners for Speech-Language Pathology and Audiology shall jointly adopt rules to establish requirements for the fitting and dispensing of hearing instruments by the use of telepractice.

Added by Acts 2013, 83rd Leg., R.S., Ch. 40 (S.B. 312), Sec. 7, eff. September 1, 2013.

Sec. 402.103. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The committee may not adopt rules restricting advertising or competitive bidding by a person regulated by the committee except to prohibit false, misleading, or deceptive practices by that person.

(b) The committee may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the committee a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts the person's personal appearance or the use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement used by the person; or
- (4) restricts the use of a trade name in advertising by the person.

(c) An advertisement is false, misleading, or deceptive if the advertisement:

- (1) contains a misrepresentation of fact;

(2) contains a false statement as to the license holder's professional achievements, education, skills, or qualifications in the hearing instrument dispensing profession;

(3) makes a partial disclosure of relevant fact, including the advertisement of:

(A) a discounted price of an item without identifying in the advertisement or at the location of the item:

(i) the specific product being offered at the discounted price; or

(ii) the usual price of the item; and

(B) the price of a specifically identified hearing instrument, if more than one hearing instrument appears in the same advertisement without an accompanying price;

(4) contains a representation that a product innovation is new, if the product was first offered by the manufacturer to the general public in this state not less than 12 months before the date of the advertisement;

(5) states that the license holder manufactures hearing instruments at the license holder's office location unless the next statement discloses that the instruments are manufactured by a specified manufacturer and remanufactured by the license holder; or

(6) contains any other representation, statement, or claim that is inherently misleading or deceptive.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.104. POWERS AND DUTIES REGARDING EXAMINATION. (a) The committee shall develop and maintain an examination that may include written, oral, or practical tests. The department shall administer or arrange for the administration of the examination.

(b) The examination shall be administered at least twice each year.

(c) The examination must be validated by an independent testing professional.

(d) The practical examination must be administered by one or more qualified proctors selected and assigned by the department.

(e) The committee by rule shall establish the qualifications for a proctor. The rules must:

(1) require a proctor to be licensed in good standing as a

hearing instrument fitter and dispenser;

(2) specify the number of years a proctor must be licensed as a hearing instrument fitter and dispenser; and

(3) specify the disciplinary actions or other actions that disqualify a person from serving as a proctor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 10, eff. September 1, 2011.

Sec. 402.105. SUBCOMMITTEES. (a) From its members the committee may appoint subcommittees to consider matters referred by the committee pertaining to the enforcement of this chapter. The subcommittees shall make recommendations to the committee.

(b) The committee shall appoint at least one public member to each subcommittee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 11, eff. September 1, 2011.

Sec. 402.106. FEES AND EXPENSES. (a) The committee by rule shall adopt fees in amounts reasonable and necessary so that the fees, in the aggregate, produce sufficient revenue to cover the costs of administering this chapter.

(b) The committee may adopt:

- (1) a license fee;
- (2) a license renewal fee;
- (3) an examination fee;
- (4) a temporary training permit fee;
- (5) an apprentice permit fee;
- (6) a duplicate document fee; and
- (7) other fees as necessary to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER D. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 402.151. PUBLIC INTEREST INFORMATION. (a) The committee shall prepare information of consumer interest describing the regulatory functions of the committee and the committee's procedures by which consumer complaints are filed with and resolved by the committee.

(b) The committee shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.1511. PUBLIC PARTICIPATION. The committee shall develop and implement policies that provide the public with a reasonable opportunity to appear before the committee and to speak on any issue under the jurisdiction of the committee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 12, eff. September 1, 2011.

Sec. 402.152. COMPLAINTS. (a) Each license or permit holder under this chapter shall at all times prominently display in the person's place of business a sign containing:

(1) the name, mailing address, and telephone number of the committee; and

(2) a statement informing consumers that a complaint against a license or permit holder may be directed to the committee.

(b) Each written contract for services in this state of a licensed hearing instrument dispenser must contain the committee's name, mailing address, and telephone number.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.153. RECORDS OF COMPLAINTS. (a) The committee shall keep an information file about each complaint filed with the committee relating to a license or permit holder.

(b) If a written complaint is filed with the committee relating to a license or permit holder, the committee, at least quarterly and until final disposition of the complaint, shall notify the parties to



the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.154. COMPLAINT INVESTIGATION; SUBPOENA. (a) In an investigation of a complaint filed with the committee, the committee may request that the commissioner of public health or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the committee may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the committee, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the committee may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The committee may delegate the authority granted under Subsection (a) to the presiding officer of the committee.

(f) The committee shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the committee may charge for copies of its records.

(g) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

(h) All information and materials subpoenaed or compiled by the committee in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the committee or its agents or employees who are involved in discipline of the holder of a license, except that this information may be disclosed to:

(1) persons involved with the committee in a disciplinary action against the holder of a license;

(2) professional licensing or disciplinary boards for the

fitting and dispensing of hearing instruments in other jurisdictions;

(3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges by the committee against a holder of a license, the nature of those charges, disciplinary proceedings of the committee, and final disciplinary actions, including warnings and reprimands, by the committee are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.174(a), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 13, eff. September 1, 2011.

#### **SUBCHAPTER E. LICENSE AND PERMIT REQUIREMENTS**

Sec. 402.201. LICENSE OR PERMIT REQUIRED. A person may not represent that the person is authorized to fit and dispense hearing instruments, or use in connection with the person's name any designation tending to imply that the person is authorized to engage in the fitting and dispensing of hearing instruments, unless the person holds a license or is otherwise authorized to do so under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.202. EXAMINATION REQUIRED. (a) To engage in fitting and dispensing hearing instruments in this state a person must pass an examination required by the committee.

(b) A person licensed under Chapter 401 as an audiologist or an audiology intern who is applying for a license under this chapter is exempt from the examination required under this chapter but must comply with all other requirements under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 14, eff. September 1, 2011.

Sec. 402.203. APPLICATION FOR EXAMINATION. (a) An applicant for examination must:

(1) apply to the committee on a form provided by the committee;

(2) provide on the form:

(A) sworn evidence that the applicant has attained the age of majority and has graduated from an accredited high school or equivalent; and

(B) other information determined necessary by the committee; and

(3) pay any required fees for application and examination.

(b) A permit holder may not take the examination until the satisfactory completion of the requirements of Subchapter F by the supervisor and permit holder is verified.

(c) The committee may refuse to examine an applicant who has been convicted of a misdemeanor that involves moral turpitude or a felony.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.204. CONTENTS OF EXAMINATION. (a) The examination must consist of written, oral, or practical tests that are objective in method and applied in a consistent manner.

(b) The examination must cover the following subjects as they relate to the fitting and dispensing of hearing instruments:

(1) basic physics of sound;

(2) structure and function of hearing instruments;

(3) fitting of hearing instruments;

(4) pure tone audiometry, including air conduction testing and bone conduction testing;

(5) live voice and recorded voice speech audiometry;

(6) masking when indicated for air conduction, bone

conduction, and speech;

(7) recording and evaluation of audiograms and speech audiometry to determine the hearing instrument candidacy;

(8) selection and adaptation of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance;

(9) taking of earmold impressions;

(10) verification of hearing instrument fitting and functional gain measurements using a calibrated system;

(11) anatomy and physiology of the ear;

(12) counseling and aural rehabilitation of the hearing impaired for the purpose of fitting and dispensing hearing instruments;

(13) use of an otoscope for the visual observation of the entire ear canal; and

(14) laws, rules, and regulations of this state and the United States.

(c) The examination may not test knowledge of the diagnosis or treatment of any disease of or injury to the human body.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.205. EXAMINATION PROCEDURES. (a) The department shall give each applicant due notice of the date and place of the examination and the subjects, areas, and skills that will be included in the examination. A change may not be made in those subjects, areas, and skills after the date of the examination has been announced and publicized.

(b) An examination shall be conducted in writing and by other means the committee determines adequate to ascertain the qualifications of applicants.

(c) On reexamination, an applicant who previously failed an examination may be examined only on those portions of the examination that the applicant failed.

(d) If requested in writing by a person who fails the licensing examination administered under this chapter, the department shall provide to the person an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 15, eff. September 1, 2011.

Sec. 402.206. NOTICE OF EXAMINATION RESULTS. (a) Not later than the 30th day after the examination date, the committee shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the committee shall notify each examinee of the results of the examination not later than the 14th day after the date the committee receives the results from the testing service.

(b) If the notice of the results of an examination graded or reviewed by a national testing service will not be given before the 91st day after the examination date, the committee shall notify each examinee of the reason for the delay before the 90th day.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.207. ISSUANCE OF APPRENTICE PERMIT. (a) The committee shall issue an apprentice permit to fit and dispense hearing instruments to a temporary training permit holder who has:

(1) passed all parts of the examination with a score of 70 percent or greater;

(2) paid the required fees; and

(3) met all requirements of this chapter.

(b) An apprentice permit is valid for one year. The committee may extend the apprentice permit for an additional period not to exceed six months.

(c) An apprentice permit holder shall work under the supervision of a licensed hearing instrument dispenser for at least one year. During the apprentice year, the apprentice permit holder shall complete 20 hours of classroom continuing education as required by Section 402.303 for a license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 3, eff. September 1, 2009.

Sec. 402.208. ISSUANCE OF LICENSE. The committee shall issue a hearing instrument dispenser's license to an apprentice permit holder when the committee has received sufficient evidence that the apprentice permit holder has met all the licensing requirements of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.209. APPLICATION BY LICENSE HOLDER FROM ANOTHER STATE.

(a) A person licensed to fit and dispense hearing instruments in another state may apply for a license under this chapter by submitting an application on a form prescribed by the committee.

(b) An applicant for a license under this section must complete the application form completely and accurately. The department may not consider an incomplete application. If an applicant fails to provide any information required on the application form, the department shall send the applicant a notice of deficiency that explains the additional information that must be submitted before the department may review the application.

(c) An applicant for a license under this section shall provide as part of the application:

(1) written verification that the applicant is licensed in good standing as a fitter and dispenser of hearing instruments in another state and has held the license for at least three years preceding the date of application;

(2) written verification that:

(A) the requirements to obtain a license to fit and dispense hearing instruments in the state in which the applicant is licensed include passing an examination approved by the committee by rule; or

(B) the applicant holds a certification from a professional organization approved by the committee by rule;

(3) a written statement from the licensing entity in the state in which the applicant is licensed that details any disciplinary action taken by the entity against the applicant; and

(4) a statement of the applicant's criminal history acceptable to the committee.

(d) The department may deny an application under this section based on the applicant's criminal history or history of disciplinary

action.

(e) If the department approves an application, on the next regularly scheduled examination date the applicant may take the practical section of the examination required under Section 402.202 and a written examination of Texas law administered by the department. If the applicant passes the examinations required under this section, the committee shall issue to the applicant a license under this chapter.

(f) The department may allow an applicant under this section who satisfies all application requirements other than the requirement under Subsection (c)(2) to take all sections of the examination required under Section 402.202. If the applicant passes the examination, the committee shall issue to the applicant a license under this chapter.

(g) An applicant under this section who fails an examination may request in writing, not later than the 30th day after the date the department sends the applicant notice of the examination results, that the department furnish the applicant with an analysis of the applicant's performance on the examination.

(h) An applicant under this section who fails an examination may not retake the examination under this section. The person must comply with the requirements for an applicant for an original license under this chapter.

(i) The committee may not issue a license under this section to an applicant who is a licensed audiologist in another state. The committee shall refer the applicant to the State Board of Examiners for Speech-Language Pathology and Audiology.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 16, eff. September 1, 2011.

Sec. 402.210. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) The committee shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the committee, to the committee

or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The committee may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The committee shall conduct a criminal history check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the committee by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The department on behalf of the committee may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history check.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 17, eff. September 1, 2011.

#### **SUBCHAPTER F. TEMPORARY TRAINING PERMIT**

Sec. 402.251. TEMPORARY TRAINING PERMIT QUALIFICATIONS. (a) The committee shall issue a temporary training permit to a person who:

(1) has never taken the examination administered under this chapter;

(2) possesses the qualifications required under Section 402.203(a);

(3) submits a written application on a form provided by the committee furnishing sworn evidence that the applicant satisfies the requirements of Subdivisions (1) and (2); and

(4) pays the temporary training permit fee.

(b) The committee may issue a new temporary training permit under this section to a person on or after the 365th day after the person's previous temporary training permit expired.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:



Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 5, eff. September 1, 2009.

Sec. 402.252. SUPERVISION AFFIDAVIT. (a) An application for a temporary training permit must be accompanied by the affidavit of a person licensed to fit and dispense hearing instruments under this chapter or Chapter 401, other than a person licensed under Section 401.311 or 401.312.

(b) The affidavit must state that:

(1) the applicant, if granted a temporary training permit, will be supervised by the affiant in all work done by the applicant under the temporary training permit;

(2) the affiant will notify the committee not later than the 10th day after the date of the applicant's termination of supervision by the affiant; and

(3) if the affiant is licensed under Chapter 401, the affiant will comply with all provisions of this chapter and rules adopted under this chapter that relate to the supervision and training of a temporary training permit holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 6, eff. September 1, 2009.

Sec. 402.253. EXPIRATION OF TEMPORARY TRAINING PERMIT. (a) A temporary training permit authorizes the permit holder to fit and dispense hearing instruments until the earlier of:

(1) the date the permit expires; or

(2) the date the permit holder passes the examination required for a license under this chapter.

(b) A temporary training permit automatically expires on the first anniversary of the date of issuance unless the committee extends the permit for an additional period not to exceed six months.

(c) The committee may not extend a temporary training permit more than once.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.254. GUIDELINES FOR TRAINING OF TEMPORARY TRAINING PERMIT HOLDERS. (a) The committee shall establish formal and practical education guidelines for the training of temporary training permit holders.

(b) The guidelines must include directions to the supervisor about:

- (1) the subject matter to be taught;
- (2) the length of the training;
- (3) the extent of a temporary training permit holder's contact with the public; and
- (4) the responsibility of the supervisor for direct and indirect supervision of all aspects of the training.

(c) The training period begins on the date of issuance of the temporary permit. A temporary training permit holder must complete at least 150 hours of directly supervised practicum that includes:

- (1) 25 contact hours of pure tone air conduction, bone conduction, and speech audiometry, recorded and live voice, with 15 of the required hours being with actual clients;
- (2) 25 client contact hours of hearing instrument evaluations, including sound-field measurements with recorded and live voice;
- (3) 20 contact hours of instrument fittings with actual clients;
- (4) 10 contact hours of earmold orientation types, uses, and terminology;
- (5) five contact hours of earmold impressions and otoscopic examinations of the ear;
- (6) 15 contact hours of troubleshooting of defective hearing instruments;
- (7) 20 contact hours of case history with actual clients;
- (8) 10 contact hours regarding the laws governing the licensing of persons fitting and dispensing hearing instruments and federal Food and Drug Administration and Federal Trade Commission regulations relating to the fitting and dispensing of hearing instruments; and
- (9) 20 contact hours of supplemental work in one or more of the areas described by Subdivisions (1) through (8).

(d) A contact hour consists of 55 minutes.

(e) On completion of the directly supervised practicum required under Subsection (c), the temporary training permit holder shall

complete the permit holder's training under the indirect supervision of the permit holder's supervisor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.255. SUPERVISOR REQUIREMENTS. (a) A supervisor of a temporary training permit holder must:

(1) be licensed to fit and dispense hearing instruments under this chapter or Chapter 401, other than Section 401.311 or 401.312;

(2) currently practice in an established place of business; and

(3) be responsible for the direct supervision and education of a temporary training permit holder.

(b) A supervisor as appropriate shall directly and indirectly supervise a temporary training permit holder. A supervisor shall provide direct supervision by being located on the premises and available to the temporary training permit holder for prompt consultation. A supervisor shall provide indirect supervision by reviewing daily a temporary training permit holder's patient contact and daily work.

(c) A supervisor shall:

(1) be responsible for day-to-day supervision of the temporary training permit holder and be ultimately responsible for the service to a client treated by the permit holder;

(2) provide to the permit holder materials and equipment necessary for appropriate audiometric and hearing instrument evaluation and fitting procedures;

(3) supplement the permit holder's background information with reading lists and other references;

(4) conduct in-service training for the permit holder;

(5) act as a consultant to the permit holder by providing time for conferences for the permit holder and providing a variety of resource materials, approaches, and techniques that are based on sound theory, successful practice, or documented research;

(6) establish goals with the permit holder that are realistic, easily understandable, and directed toward the successful completion of the training requirements;

(7) observe the permit holder during the practicum, confer

with the permit holder after the permit holder's contact with clients, and provide an opportunity for comment on the practicum experience in writing or through conferences, during and after the practicum experience;

(8) establish that the supervisor is solely responsible for the practicum and daily supervision of the permit holder;

(9) assist and encourage the permit holder's use of supportive professional sources;

(10) know and adhere to state and federal laws relating to hearing instrument fitting and dispensing; and

(11) assist the permit holder in fulfilling licensing requirements of this chapter.

(d) The supervisor shall maintain a log of the contact hours by practicum category on a form provided by the committee. After the temporary training permit holder has completed 150 contact hours, the supervisor and the permit holder shall sign the form, and the form shall be notarized and mailed to the committee.

(e) A supervisor may not supervise more than two temporary training permit holders at one time.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 7, eff. September 1, 2009.

Sec. 402.256. AUTHORITY OF TEMPORARY TRAINING PERMIT HOLDER.

(a) A temporary training permit holder may provide routine fitting and dispensing of hearing instruments that has been ordered by the supervisor. The supervisor is the sole judge of whether the permit holder has the qualifications necessary to perform routine fitting and dispensing. A supervisor is accountable to the committee for the actions and misdeeds of a temporary training permit holder acting at the supervisor's discretion.

(b) A temporary training permit holder may not:

(1) own, manage, or independently operate a business that engages in the fitting or sale of hearing instruments; or

(2) advertise or otherwise represent that the permit holder holds a license as a hearing instrument dispenser.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.257. TRANSFER TO ANOTHER SUPERVISOR. (a) On the request of a supervisor or temporary training permit holder, the committee may approve a transfer of a permit holder from the permit holder's supervisor to another eligible supervisor before completion of the training.

(b) The committee must act on a transfer request at the first committee meeting held after the date the request is made.

(c) The committee may approve a second transfer request before completion of the training only under exceptional circumstances. The committee may not approve more than two transfers.

(d) If a transfer is approved, credit may be transferred at the discretion of the committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. LICENSE RENEWAL**

Sec. 402.301. LICENSE RENEWAL. (a) A license under this chapter is valid for two years. The committee shall renew the license every two years on payment of the renewal fee unless the license is suspended or revoked.

(b) The committee may adopt a system under which licenses expire on various dates during the year. For a year in which the expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only the portion of the license fee that is applicable to the number of months the license is valid.

(c) A person may renew an unexpired license by paying the required renewal fee to the committee before the expiration date of the license.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the committee the required renewal fee and a fee that is equal to half of the amount of the examination fee for the license. If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the committee all unpaid renewal fees and a fee that is equal to the amount of the examination fee for the license.

(e) A person whose license has been expired for two years or

more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(f) The committee may not renew a license unless the license holder provides proof that all equipment that is used by the license holder to produce a measurement in the testing of hearing acuity has been properly calibrated or certified by a qualified technician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 8, eff. September 1, 2009.

For expiration of this section, see Subsection (d).

Sec. 402.302. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. (a) An applicant renewing a license issued under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history check of the applicant as provided by Section 402.210.

(b) The committee may not renew the license of a person who does not comply with the requirement of Subsection (a).

(c) The requirements of this section do not apply to a license holder who has previously submitted fingerprints under this section or Section 402.210.

(d) This section expires February 1, 2015.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 18, eff. September 1, 2011.

Sec. 402.303. CONTINUING EDUCATION. (a) The committee by rule shall adopt requirements for the continuing education of a license holder, including online continuing education requirements and a requirement that a license holder complete 20 hours of continuing education every two years. The committee may not renew a license unless the license holder demonstrates compliance with the continuing education requirements established by the committee.

(b) A license holder shall provide written proof of attendance or completion of an approved course on a form prescribed by the

committee.

(c) The committee may waive compliance with the continuing education requirement for license renewal for a license holder who provides evidence of hardship or inability to meet the requirement. The waiver may be granted after review by the committee on an annual basis.

(d) The committee shall adopt rules to establish reasonable requirements for continuing education sponsors and courses and to clearly define what constitutes a manufacturer or nonmanufacturer sponsor. The department shall review and approve continuing education sponsor and course applications. The department may request assistance from licensed members of the committee in approving a sponsor or course. The department must provide a list of approved continuing education sponsors and continuing education courses, including online courses. The list must be revised and updated periodically. Any continuing education activity must be provided by an approved sponsor. The department shall approve at least five hours of specific courses each year.

(e) A license holder may not receive more than five continuing education credit hours for attendance at a course sponsored by a manufacturer.

(e-1) The committee must allow a license holder to report at least 10 hours of online continuing education credit hours in a single reporting period.

(f) A course summary and resume for each teacher of a course seeking approval from the department must be submitted at least 30 days before the date the course is scheduled to take place, unless the course is an online course. The committee shall establish criteria for the approval of submitted courses and reasonable requirements for the approval of online courses and sponsors.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 19, eff. September 1, 2011.

Sec. 402.304. ALTERNATIVES TO CONTINUING EDUCATION REQUIREMENT.

(a) On written request to the department, a license holder may take the state examination. A license holder who pays the examination fee

and passes the examination is exempt from the continuing education requirement for the reporting period in which the test is taken.

(b) A license holder may be credited with continuing education credit hours for a published book or article written by the license holder that contributes to the license holder's professional competence. The continuing education committee may grant credit hours based on the degree to which the published book or article advances knowledge regarding the fitting and dispensing of hearing instruments. A license holder may claim in a reporting period not more than five credit hours for preparation of a publication.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 20, eff. September 1, 2011.

Sec. 402.305. CONTINUING EDUCATION EXEMPTIONS. The committee may renew the license of a license holder who does not comply with the continuing education requirements of Sections 402.303 or 402.304 if the license holder:

(1) was licensed for the first time during the 24 months before the reporting date;

(2) has served in the regular armed forces of the United States during part of the 24 months before the reporting date; or

(3) submits proof from an attending physician that the license holder suffered a serious or disabling illness or physical disability that prevented compliance with the continuing education requirements during the 24 months before the reporting date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 21, eff. September 1, 2011.

Sec. 402.306. DUPLICATE LICENSE. The committee shall issue a duplicate license to a license holder whose license has been lost or destroyed. The committee may prescribe the procedure and requirements for issuance of a duplicate license.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER H. PRACTICE BY LICENSE HOLDER**

Sec. 402.351. DISPLAY OF LICENSE. A person engaged in fitting and dispensing hearing instruments shall display the person's license in a conspicuous place in the person's principal office and, when required, shall exhibit the license to the committee or its authorized representative.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.352. INFORMATION ON PROSPECTIVE AMPLIFICATION CANDIDATES. A license holder shall try to obtain, personally or through a proper referral, at least the following information on each prospective candidate for amplification:

- (1) the candidate's pertinent case history;
- (2) otoscopic inspection of the outer ear, including canal and drumhead;
- (3) evaluation of hearing acuity using pure tone techniques through air and bone conduction pathways through a calibrated system;
- (4) an aided and unaided speech reception threshold and ability to differentiate between the phonemic elements of language through speech audiometry, using a calibrated system or other acceptable verification techniques; and
- (5) verification of satisfactory aided instrument performance by use of appropriate sound-field speech, noise, or tone testing, using a calibrated system.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.353. SOUND-LEVEL MEASUREMENTS. (a) If audiometric testing is not conducted in a stationary acoustical enclosure, sound-level measurements must be conducted at the time of the testing to ensure that ambient noise levels meet permissible standards for testing threshold to 20 dB based on the most current American National Standards Institute "ears covered" octave band criteria for Permissible Ambient Noise Levels During Audiometric Testing.

- (b) A dBA equivalent level may be used to determine compliance.

(c) The committee shall adopt rules necessary to enforce this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.354. TELEPRACTICE. (a) In this section, "telepractice" means the use of telecommunications technology by a license holder for the fitting and dispensing of hearing instruments.

(b) The committee may adopt rules consistent with the joint rules under Section 402.1023 to provide for the fitting and dispensing of hearing instruments by the use of telepractice, including rules that establish the qualifications and duties of license holders who use telepractice.

Added by Acts 2013, 83rd Leg., R.S., Ch. 40 (S.B. 312), Sec. 8, eff. September 1, 2013.

#### **SUBCHAPTER I. GENERAL BUSINESS REGULATIONS**

Sec. 402.401. TRIAL PERIOD. The committee shall establish guidelines for a 30-day trial period during which a person may cancel the purchase of a hearing instrument.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.402. SALE TO MINOR. (a) A licensed hearing instrument fitter and dispenser may not sell a hearing instrument to a person under 18 years of age unless the prospective user or a parent or guardian of the prospective user has presented to the hearing instrument fitter and dispenser a written statement, signed by a licensed physician specializing in diseases of the ear, that states that the patient's hearing loss has been medically evaluated and that the patient may be considered a candidate for a hearing instrument.

(b) The physician's evaluation must have taken place within the preceding six months.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.403. WRITTEN CONTRACT. The owner of a hearing instrument fitting and dispensing practice shall ensure that each client receives a written contract at the time of purchase of a hearing instrument that contains:

(1) the signature of the license holder who dispensed the hearing instrument;

(2) the printed name of the license holder who dispensed the hearing instrument;

(3) the address of the principal office of the license holder who dispensed the hearing instrument;

(4) the license number of the license holder who dispensed the hearing instrument;

(5) a description of the make and model of the hearing instrument;

(6) the amount charged for the hearing instrument;

(7) a statement of whether the hearing instrument is new, used, or rebuilt;

(8) notice of the 30-day trial period under Section 402.401; and

(9) the name, mailing address, and telephone number of the committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 9, eff. September 1, 2009.

Sec. 402.404. SURETY BONDING. (a) A sole proprietor, partnership, corporation, or other legal entity engaged in the fitting and dispensing of hearing instruments shall file with the committee security in a form provided by Subsection (b) in the amount of \$10,000 and conditioned on the promise to pay all:

(1) taxes and contributions owed to the state and political subdivisions of the state by the entity; and

(2) judgments that the entity may be required to pay for:

(A) negligently or improperly dispensing hearing instruments; or

(B) breaching a contract relating to the dispensing of hearing instruments.

(b) The security may be a bond, a cash deposit, or another negotiable security acceptable to the committee.

(c) A bond required by this section remains in effect until canceled by action of the surety, the principal, or the committee. A person must take action on the bond not later than the third anniversary of the date the bond is canceled.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.405. RECOVERY ON SURETY BOND. The purchaser of a hearing instrument may rescind the purchase and recover as provided by Section 402.404 for:

(1) a material misstatement of fact or misrepresentation by a license holder employed by an entity subject to Section 402.404 regarding the instrument or services to be provided by the license holder that was relied on by the purchaser or that induced the purchaser to purchase the instrument;

(2) the failure by the entity subject to Section 402.404 to provide the purchaser with an instrument or with fitting and dispensing services that conform to the specifications of the purchase agreement;

(3) the diagnosis of a medical condition unknown to the purchaser at the time of the purchase that precludes the purchaser's use of the instrument;

(4) the failure by the entity subject to Section 402.404 to remedy a significant material defect of the instrument within a reasonable time;

(5) the provision by the entity subject to Section 402.404 of fitting and dispensing services that are not in accordance with accepted industry practices; or

(6) the failure by a license holder employed by the entity subject to Section 402.404 to meet the standards of conduct prescribed by this chapter or under rules adopted under this chapter that adversely affects the transactions between the purchaser and the license holder or the entity subject to Section 402.404.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.406. OWNERSHIP OF DISPENSING PRACTICE. (a) A person

who owns, maintains, or operates an office or place of business in which the person employs or engages under contract a person who practices the fitting and dispensing of hearing instruments is considered to be practicing the fitting and dispensing of hearing instruments under this chapter and is required to be licensed under this chapter or licensed as an audiologist under Chapter 401.

(b) If the person who owns, maintains, or operates an office or place of business under this section is a partnership, each partner must be licensed as provided by this section. If the person who owns, maintains, or operates an office or place of business under this section is a corporation or other legal entity, the chief executive officer of the corporation or entity must be licensed as provided by this section.

(c) All of the business's records and contracts are solely the property of the person who owns the business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 10, eff. September 1, 2009.

#### **SUBCHAPTER J. PROHIBITED PRACTICES**

Sec. 402.451. PROHIBITED ACTS. (a) A person may not:

- (1) buy, sell, or fraudulently obtain a license or aid another person to do so;
- (2) alter a license with the intent to defraud;
- (3) wilfully make a false statement in an application to the committee for a license, a temporary training permit, or the renewal of a license;
- (4) falsely impersonate a license holder;
- (5) engage in the fitting and dispensing of hearing instruments when the person's license is suspended or revoked;
- (6) dispense or fit a hearing instrument on a person who has ordered the hearing instrument or device by mail unless the person dispensing or fitting is a license holder under this chapter or under Chapter 401; or
- (7) sell a hearing instrument by mail.

(b) A license or permit holder may not:

- (1) solicit a potential customer by telephone unless the

license or permit holder clearly discloses the holder's name and business address and the purpose of the communication;

(2) use or purchase for use a list of names of potential customers compiled by telephone by a person other than the license or permit holder, the license or permit holder's authorized agent, or another license or permit holder; or

(3) perform any act that requires a license from the Texas Optometry Board or the Texas State Board of Medical Examiners.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.452. INVESTIGATION BY BOARD. The board, with the aid of the department, shall investigate a person who violates this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.453. TREATMENT OF EAR DEFECTS; ADMINISTRATION OF DRUGS. (a) A license holder may not treat the ear in any manner for any defect or administer any drug or physical treatment unless the license holder is a physician licensed to practice by the Texas State Board of Medical Examiners.

(b) This chapter does not affect a law regulating the practice of medicine as defined by Subtitle B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER K. LICENSE DENIAL AND DISCIPLINARY PROCEDURES**

Sec. 402.501. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY ACTION. The committee may refuse to issue or renew a license, revoke or suspend a license or permit, place on probation a person whose license or permit has been suspended, or reprimand a license or permit holder who:

(1) makes a material misstatement in furnishing information to the committee or to another state or federal agency;

(2) violates this chapter or a rule adopted under this chapter;

(3) is convicted of a felony or misdemeanor that includes

dishonesty as an essential element or of a crime directly related to the practice of fitting and dispensing hearing instruments;

(4) makes a misrepresentation for the purpose of obtaining or renewing a license, including falsifying the educational requirements under this chapter;

(5) is professionally incompetent or engages in malpractice or dishonorable, unethical, or unprofessional conduct that is likely to deceive, defraud, or harm the public;

(6) aids or assists another person in violating this chapter or a rule adopted under this chapter;

(7) does not provide information in response to a written request made by the board within 60 days;

(8) directly or indirectly knowingly employs, hires, procures, or induces a person not licensed under this chapter to fit and dispense hearing instruments unless the person is exempt under this chapter;

(9) aids a person not licensed under this chapter in the fitting or dispensing of hearing instruments unless the person is exempt under this chapter;

(10) is habitually intoxicated or addicted to a controlled substance;

(11) directly or indirectly gives to or receives from a person a fee, commission, rebate, or other form of compensation for a service not actually provided;

(12) violates a term of probation;

(13) wilfully makes or files a false record or report;

(14) has a physical illness that results in the inability to practice the profession with reasonable judgment, skill, or safety, including the deterioration or loss of motor skills through aging;

(15) solicits a service by advertising that is false or misleading;

(16) participates in subterfuge or misrepresentation in the fitting or dispensing of a hearing instrument;

(17) knowingly advertises for sale a model or type of hearing instrument that cannot be purchased;

(18) falsely represents that the service of a licensed physician or other health professional will be used or made available in the fitting, adjustment, maintenance, or repair of a hearing instrument;

(19) falsely uses the term "doctor," "audiologist," "clinic," "clinical audiologist," "state licensed," "state certified," "licensed hearing instrument dispenser," "board certified hearing instrument specialist," "hearing instrument specialist," or "certified hearing aid audiologist," or uses any other term, abbreviation, or symbol that falsely gives the impression that:

(A) a service is being provided by a person who is licensed or has been awarded a degree or title; or

(B) the person providing a service has been recommended by a government agency or health provider;

(20) advertises a manufacturer's product or uses a manufacturer's name or trademark in a way that implies a relationship between a license or permit holder and a manufacturer that does not exist;

(21) directly or indirectly gives or offers to give, or permits or causes to be given, money or another thing of value to a person who advises others in a professional capacity as an inducement to influence the person to influence the others to:

(A) purchase or contract to purchase products sold or offered for sale by the license or permit holder; or

(B) refrain from purchasing or contracting to purchase products sold or offered for sale by another license or permit holder under this chapter;

(22) with fraudulent intent fits and dispenses a hearing instrument under any name, including a false name or alias;

(23) does not adequately provide for the service or repair of a hearing instrument fitted and sold by the license holder; or

(24) violates a regulation of the federal Food and Drug Administration or the Federal Trade Commission relating to hearing instruments.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 11, eff. September 1, 2009.

Sec. 402.502. ADMINISTRATIVE PROCEDURE. (a) If the committee proposes to refuse a person's application for examination, to suspend or revoke a person's license or permit, or to place on probation or



reprimand a person, the person is entitled to a hearing before the committee.

(b) A proceeding is begun by filing written charges with the committee under oath. The charges may be made by any person.

(c) Proceedings under this subchapter are subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.503. REISSUANCE OF LICENSE. On application, the committee may reissue a license to a person whose license has been revoked. The application may not be made before the expiration of six months after the date the order of revocation becomes final. The application shall be made in the manner and form required by the committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.504. EMERGENCY SUSPENSION. (a) The committee or a three-member subcommittee of committee members designated by the committee shall temporarily suspend the license or permit of a license or permit holder if the committee or subcommittee determines from the evidence or information presented to it that continued practice by the license or permit holder would constitute a continuing and imminent threat to the public welfare.

(b) A license or permit may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 6, eff. Sept. 1, 2003.

Sec. 402.505. INFORMAL PROCEEDINGS; INFORMAL SETTLEMENT CONFERENCE. (a) The committee by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) The committee by rule shall establish procedures by which a panel appointed by the department may conduct an informal settlement conference to resolve a complaint against a person licensed under this chapter.

(c) Procedures established under Subsection (b) must:

(1) require the panel conducting the conference to use the schedule of sanctions adopted by the committee to determine the appropriate disciplinary action, if any, to recommend to the committee; and

(2) require the panel to:

(A) recommend a settlement of the complaint to the committee; or

(B) refer the complaint to the State Office of Administrative Hearings for a formal hearing and notify the committee of the referral.

(d) The committee may approve, modify, or reject the settlement recommendation of the panel.

(e) Rules adopted under this section must:

(1) provide the complainant and the license holder with an opportunity to be heard; and

(2) require the presence of an attorney to advise the panel.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 22, eff. September 1, 2011.

Sec. 402.506. RECUSAL OF COMMITTEE MEMBER. (a) A committee member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint:

(1) may not vote on the matter at a committee meeting related to the complaint; and

(2) shall state at the meeting why the member is prohibited from voting on the matter.

(b) A statement under Subsection (a)(2) shall be entered into the minutes of the meeting.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 22, eff. September 1, 2011.

#### **SUBCHAPTER L. PENALTIES AND OTHER ENFORCEMENT PROVISIONS**

Sec. 402.551. ADMINISTRATIVE PENALTY. (a) The committee, with the board's approval, may impose an administrative penalty on a person described in this chapter for a violation of this chapter or a rule adopted under this chapter.

(b) The amount of the administrative penalty may not exceed \$250 plus costs for the first violation and \$1,000 plus costs for each subsequent violation.

(c) The administrative penalty may be imposed as an alternative to any other disciplinary measure, except for the placement of a license or permit holder on probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.552. INJUNCTION. The committee may apply to a district court of any county for an injunction or other order to restrain conduct by a person, other than a license holder, who has engaged in any act that is an offense under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.5521. COMMITTEE-ORDERED REFUND. The committee may order a license holder to pay a refund to a consumer who returns a hearing instrument during the 30-day trial period required by rules adopted under Section 402.1021.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 23, eff. September 1, 2011.

Sec. 402.5522. CEASE AND DESIST ORDER. (a) If it appears to the committee that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of fitting and dispensing hearing instruments, the committee, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 23, eff. September 1, 2011.

Sec. 402.553. CIVIL PENALTY. (a) A person who violates this chapter or a rule or order adopted by the committee under this chapter is liable for a civil penalty not to exceed \$5,000 a day.

(b) At the request of the committee, the attorney general shall bring an action to recover a civil penalty authorized under this section.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 7, eff. Sept. 1, 2003.

## **CHAPTER 403. LICENSED DYSLEXIA PRACTITIONERS AND LICENSED DYSLEXIA THERAPISTS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 403.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "License holder" means a person who holds a license issued under this chapter.

(5) "Multisensory structured language education" means a program described by the International Multisensory Structured Language Education Council for the treatment of individuals with

dyslexia and related disorders that provides instruction in the skills of reading, writing, and spelling:

- (A) through program content that includes:
  - (i) phonology and phonological awareness;
  - (ii) sound and symbol association;
  - (iii) syllables;
  - (iv) morphology;
  - (v) syntax; and
  - (vi) semantics; and
- (B) following principles of instruction that include:
  - (i) simultaneous multisensory instruction, including visual-auditory-kinesthetic-tactile instruction;
  - (ii) systematic and cumulative instruction;
  - (iii) explicit instruction;
  - (iv) diagnostic teaching to automaticity; and
  - (v) synthetic and analytic instruction.

(6) "Qualified instructor" means a person described by Section 403.110.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

Sec. 403.002. ADMINISTRATION BY DEPARTMENT OF STATE HEALTH SERVICES. The department shall administer this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

Sec. 403.003. APPLICABILITY. This chapter does not:

- (1) require a school district to employ a person licensed under this chapter;
- (2) require an individual who is licensed under Chapter 501 to obtain a license under this chapter; or
- (3) authorize a person who is not licensed under Chapter 401 to practice audiology or speech-language pathology.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

**SUBCHAPTER B. POWERS AND DUTIES**

Sec. 403.051. ADVISORY COMMITTEE. The department shall appoint an advisory committee to advise the department in administering this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

Sec. 403.052. RULES. The executive commissioner shall adopt rules necessary to administer and enforce this chapter, including rules that establish standards of ethical practice.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

**SUBCHAPTER C. LICENSE REQUIREMENTS**

Sec. 403.101. LICENSE REQUIRED. A person may not use the title "licensed dyslexia practitioner" or "licensed dyslexia therapist" in this state unless the person holds the appropriate license under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.

Sec. 403.102. ISSUANCE OF LICENSE. The department shall issue a licensed dyslexia practitioner or licensed dyslexia therapist license to an applicant who meets the requirements of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

Sec. 403.103. LICENSE APPLICATION. (a) A license applicant must apply to the department on a form and in the manner the department prescribes.

(b) The application must be accompanied by a nonrefundable application fee.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

Sec. 403.104. ELIGIBILITY FOR LICENSED DYSLEXIA PRACTITIONER LICENSE. (a) To be eligible for a licensed dyslexia practitioner license, an applicant must have:

(1) earned a bachelor's degree from an accredited public or private institution of higher education;

(2) successfully completed at least 45 hours of course work in multisensory structured language education from a training program that meets the requirements of Section 403.106;

(3) completed at least 60 hours of supervised clinical experience in multisensory structured language education;

(4) completed at least five demonstration lessons of the practice of multisensory structured language education, each observed by an instructor from a training program that meets the requirements of Section 403.106 and followed by a conference with and a written report by the instructor; and

(5) successfully completed a national multisensory structured language education competency examination approved by the department and administered by a national certifying professional organization.

(b) Clinical experience required under Subsection (a)(3) must be obtained under:

(1) the supervision of a qualified instructor or an instructor from an accredited training program that meets the requirements of Section 403.106; and

(2) guidelines approved by the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

Sec. 403.105. ELIGIBILITY FOR LICENSED DYSLEXIA THERAPIST LICENSE. (a) To be eligible for a licensed dyslexia therapist license, an applicant must have:

(1) earned at least a master's degree from an accredited public or private institution of higher education;

(2) successfully completed at least 200 hours of course

work in multisensory structured language education from a training program that meets the requirements of Section 403.106;

(3) completed at least 700 hours of supervised clinical experience in multisensory structured language education;

(4) completed at least 10 demonstration lessons of the practice of multisensory structured language education, each observed by an instructor from a training program that meets the requirements of Section 403.106 and followed by a conference with and a written report by the instructor; and

(5) successfully completed a national multisensory structured language education competency examination approved by the department and administered by a national certifying professional organization.

(b) Clinical experience required under Subsection (a)(3) must be obtained under:

(1) the supervision of a qualified instructor or an instructor from an accredited training program that meets the requirements of Section 403.106; and

(2) guidelines approved by the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

Sec. 403.106. REQUIREMENTS FOR TRAINING PROGRAMS. (a) For purposes of determining whether an applicant satisfies the training requirements for a license under this chapter, a multisensory structured language education training program completed by the applicant must:

(1) be accredited by a nationally recognized accrediting organization;

(2) have in writing defined goals and objectives, areas of authority, and policies and procedures;

(3) have the appropriate financial and management resources to operate the training program, including a knowledgeable administrator and standard accounting and reporting procedures;

(4) have a physical site, equipment, materials, supplies, and environment suitable for the training program;

(5) have a sufficient number of instructional personnel who have completed the requirements for certification in multisensory



structured language education;

(6) have been reviewed by multisensory structured language education professionals who are not affiliated with the training program;

(7) have developed and followed procedures to maintain and improve the quality of training provided by the program;

(8) have provided direct instruction in the principles and in each element of multisensory structured language education for a minimum of:

(A) 200 contact hours of course work for training program participants who seek a licensed dyslexia therapist license; and

(B) 45 contact hours of course work for training program participants who seek a licensed dyslexia practitioner license;

(9) have required training program participants to complete a program of supervised clinical experience in which the participants provided multisensory structured language education to students or adults, either individually or in small groups for a minimum of:

(A) 700 hours for training program participants who seek a licensed dyslexia therapist license; and

(B) 60 hours for training program participants who seek a licensed dyslexia practitioner license;

(10) have required training program participants to demonstrate the application of multisensory structured language education principles of instruction by completing demonstration lessons observed by an instructor and followed by a conference with and a written report by the instructor; and

(11) have provided instruction based on the Texas Education Agency publication "The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders (2007)," or a revised version of that publication approved by the department.

(b) A training program must require a training program participant who seeks a licensed dyslexia practitioner license to have completed at least five demonstration lessons described by Subsection (a)(10) and a participant who seeks a licensed dyslexia therapist license to have completed at least 10 demonstration lessons.

(c) The department, in consultation with the advisory committee, shall determine whether a training program meets the

requirements of this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

Sec. 403.107. EXAMINATION; RULES. (a) To obtain a license, an applicant must:

(1) pass a written examination approved by the department under Subsection (b); and

(2) pay fees set by the executive commissioner.

(b) The department shall, in consultation with the advisory committee:

(1) identify and designate a competency examination that is related to multisensory structured language education and that will be administered at least twice each year by a professional organization that issues national certifications; and

(2) maintain a record of all examinations for at least two years after the date of examination.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

Sec. 403.108. WAIVER OF EXAMINATION REQUIREMENT. The department, in consultation with the advisory committee, may waive the examination requirement and issue a license to an applicant who holds an appropriate certificate or other accreditation from a nationally accredited multisensory structured language education organization recognized by the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

Sec. 403.109. INACTIVE STATUS; RULES. (a) The executive commissioner by rule may provide for a license holder to be placed on inactive status.

(b) Rules adopted under this section must include a time limit for a license holder to remain on inactive status.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

Sec. 403.110. QUALIFIED INSTRUCTOR. To be considered a qualified instructor under this chapter, a person must:

- (1) be a licensed dyslexia therapist;
- (2) have at least 1,400 hours of clinical teaching experience in addition to the hours required to obtain a licensed dyslexia therapist license; and
- (3) have completed a two-year course of study dedicated to the administration and supervision of multisensory structured language education programs taught by a nationally accredited training program that meets the requirements of Section 403.106.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

#### **SUBCHAPTER D. PRACTICE BY LICENSE HOLDER**

Sec. 403.151. PRACTICE SETTING. (a) A licensed dyslexia practitioner may practice only in an educational setting, including a school, learning center, or clinic.

(b) A licensed dyslexia therapist may practice in a school, learning center, clinic, or private practice setting.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

Sec. 403.152. CONTINUING EDUCATION. (a) A license holder's license may not be renewed unless the license holder meets the continuing education requirements established by the executive commissioner.

(b) The executive commissioner, in consultation with the advisory committee, shall establish the continuing education requirements in a manner that allows a license holder to comply without an extended absence from the license holder's county of residence.

(c) The department shall:

- (1) provide to a license applicant, with the application

form on which the person is to apply for a license, information describing the continuing education requirements; and

(2) notify each license holder of any change in the continuing education requirements at least one year before the date the change takes effect.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

**SUBCHAPTER E. LICENSE DENIAL; COMPLAINT AND DISCIPLINARY PROCEDURES**

Sec. 403.201. COMPLAINTS. Any person may file a complaint with the department alleging a violation of this chapter or a rule adopted under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.

Sec. 403.202. PROHIBITED ACTIONS. A license holder may not:

- (1) obtain a license by means of fraud, misrepresentation, or concealment of a material fact;
- (2) sell, barter, or offer to sell or barter a license; or
- (3) engage in unprofessional conduct that endangers or is likely to endanger the health, welfare, or safety of the public as defined by executive commissioner rule.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.

Sec. 403.203. GROUNDS FOR DISCIPLINARY ACTION. If a license holder violates this chapter or a rule or code of ethics adopted by the executive commissioner, the department shall:

- (1) revoke or suspend the license;
- (2) place on probation the person if the person's license has been suspended;
- (3) reprimand the license holder; or
- (4) refuse to renew the license.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1,

eff. September 1, 2010.

Sec. 403.204. LICENSE DENIAL, REVOCATION, OR SUSPENSION FOR CRIMINAL CONVICTION. (a) The department may deny a license or may suspend or revoke a license if the applicant or license holder has been convicted of a misdemeanor involving moral turpitude or a felony. The department may take action authorized by this section when:

- (1) the time for appeal of the person's conviction has elapsed;
  - (2) the judgment or conviction has been affirmed on appeal;
- or
- (3) an order granting probation is made suspending the imposition of the person's sentence, without regard to whether a subsequent order:
    - (A) allows withdrawal of a plea of guilty;
    - (B) sets aside a verdict of guilty; or
    - (C) dismisses an information or indictment.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is a conviction for purposes of this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.

Sec. 403.205. HEARING. (a) If the department proposes to revoke, suspend, or refuse to renew a person's license, the person is entitled to a hearing before a hearings officer appointed by the State Office of Administrative Hearings.

(b) The executive commissioner shall prescribe procedures for appealing to the commissioner a decision to revoke, suspend, or refuse to renew a license.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.

Sec. 403.206. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter to suspend, revoke, or refuse to renew a license is governed by Chapter 2001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.

Sec. 403.207. SANCTIONS. (a) The executive commissioner, in consultation with the advisory committee, by rule shall adopt a broad schedule of sanctions for a violation of this chapter.

(b) The State Office of Administrative Hearings shall use the schedule of sanctions for a sanction imposed as the result of a hearing conducted by that office.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.

Sec. 403.208. PROBATION. The department may require a license holder whose license suspension is probated to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to areas prescribed by the department;

or

(3) continue the license holder's professional education until the license holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.

Sec. 403.209. MONITORING OF LICENSE HOLDER. (a) The executive commissioner by rule shall develop a system for monitoring a license holder's compliance with the requirements of this chapter.

(b) Rules adopted under this section must include procedures to:

(1) monitor for compliance a license holder who is ordered by the department to perform certain acts; and

(2) identify and monitor license holders who represent a risk to the public.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.

Sec. 403.210. INFORMAL PROCEDURES. (a) The executive commissioner by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under Subsection (a) must:

(1) provide the complainant and the license holder an opportunity to be heard; and

(2) require the presence of a representative of the attorney general or the department's legal counsel to advise the department or the department's employees.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.

Sec. 403.211. REINSTATEMENT. (a) A person may apply for reinstatement of a revoked license on or after the first anniversary of the date of revocation.

(b) The department may:

(1) accept or reject the application; and

(2) require an examination as a condition for reinstatement of the license.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.

Sec. 403.212. REPRIMAND; CONTINUING EDUCATION. (a) In addition to other disciplinary action authorized by this subchapter, the department may:

(1) issue a written reprimand to a license holder who violates this chapter; or

(2) require that a license holder who violates this chapter attend continuing education programs.

(b) The department, in consultation with the advisory committee, may specify the number of hours of continuing education that must be completed by a license holder to fulfill the requirement

of Subsection (a)(2).

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.

**SUBCHAPTER F. PENALTIES AND OTHER ENFORCEMENT PROCEDURES**

Sec. 403.251. CIVIL PENALTY. (a) A person who violates this chapter, a rule adopted by the executive commissioner, or an order adopted by the commissioner under this chapter is liable for a civil penalty not to exceed \$500 for each occurrence.

(b) At the request of the department, the attorney general shall bring an action to recover a civil penalty authorized under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.

Sec. 403.252. CEASE AND DESIST ORDER. (a) If it appears to the commissioner that a person who is not licensed under this chapter is violating this chapter or a rule adopted under this chapter, the commissioner after notice and an opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing a civil penalty under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.

**SUBTITLE H. PROFESSIONS RELATED TO CERTAIN TYPES OF THERAPY**

**CHAPTER 451. ATHLETIC TRAINERS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 451.001. DEFINITIONS. In this chapter:

(1) "Athletic injury" means an injury sustained by a person as a result of the person's participation in an organized sport or sport-related exercise or activity, including interscholastic, intercollegiate, intramural, semiprofessional, and professional sports activities.



(2) "Athletic trainer" means a person who practices athletic training, is licensed by the board, and may use the initials "LAT," "LATC," and "AT" to designate the person as an athletic trainer. The terms "sports trainer" and "licensed athletic trainer" are equivalent to "athletic trainer."

(3) "Athletic training" means the form of health care that includes the practice of preventing, recognizing, assessing, managing, treating, disposing of, and reconditioning athletic injuries under the direction of a physician licensed in this state or another qualified, licensed health professional who is authorized to refer for health care services within the scope of the person's license.

(4) "Board" means the Advisory Board of Athletic Trainers.

(5) "Commissioner" means the commissioner of public health.

(6) "Department" means the Texas Department of Health.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.201(a), eff. Sept. 1, 2001.

Sec. 451.002. INTERPRETATION; PRACTICE OF MEDICINE. This chapter does not authorize the practice of medicine by a person not licensed by the Texas State Board of Medical Examiners.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.003. APPLICABILITY. This chapter does not apply to:

(1) a physician licensed by the Texas State Board of Medical Examiners;

(2) a dentist, licensed under the laws of this state, engaged in the practice of dentistry;

(3) a licensed optometrist or therapeutic optometrist engaged in the practice of optometry or therapeutic optometry as defined by statute;

(4) an occupational therapist engaged in the practice of occupational therapy;

(5) a nurse engaged in the practice of nursing;

(6) a licensed podiatrist engaged in the practice of podiatry as defined by statute;

(7) a physical therapist engaged in the practice of physical therapy;

(8) a registered massage therapist engaged in the practice of massage therapy;

(9) a commissioned or contract physician, physical therapist, or physical therapist assistant in the United States Army, Navy, Air Force, or Public Health Service; or

(10) an athletic trainer who does not live in this state, who is licensed, registered, or certified by an authority recognized by the board, and who provides athletic training in this state for a period determined by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.201(b), eff. Sept. 1, 2001.

#### **SUBCHAPTER B. ADVISORY BOARD OF ATHLETIC TRAINERS**

Sec. 451.051. BOARD; MEMBERSHIP. (a) The Advisory Board of Athletic Trainers is a part of the department and shall perform its duties as a board within the department.

(b) The board consists of five members appointed by the governor with the advice and consent of the senate as follows:

- (1) three members who are athletic trainers; and
- (2) two members who represent the public.

(c) Each member of the board must be a citizen of the United States and a resident of this state for the five years preceding appointment.

(d) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.202(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1170, Sec. 4.01, eff. Sept. 1, 2003.

Sec. 451.0511. PUBLIC MEMBER ELIGIBILITY. A person may not be a public member of the board if the person or the person's spouse:

- (1) is registered, certified, or licensed by a regulatory agency in the field of athletic training;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;

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

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

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.202(b), eff. Sept. 1, 2001.

Sec. 451.0512. MEMBERSHIP RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of athletic training; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of athletic training.

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

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.202(b), eff. Sept. 1, 2001.

Sec. 451.0513. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 451.051;

(2) does not maintain during service on the board the

qualifications required by Section 451.051;

(3) is ineligible for membership under Section 451.0512;

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

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by the board.

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

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

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.202(b), eff. Sept. 1, 2001.

Sec. 451.052. OFFICIAL OATH. A person appointed to the board shall take the constitutional oath of office not later than the 15th day after the date of appointment. On presentation of the oath, the secretary of state shall issue a commission to the appointee as evidence of the appointee's authority to act as a member of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.053. TERMS; VACANCY. (a) Board members serve staggered six-year terms with the terms of one or two members expiring on January 31 of each odd-numbered year.

(b) If a vacancy occurs on the board, the governor shall appoint a successor to serve for the unexpired portion of the term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2003, 78th Leg., ch. 1170, Sec. 4.02, eff. Sept. 1, 2003.

Sec. 451.054. COMPENSATION. A member or employee of the board is entitled to compensation and reimbursement of travel expenses incurred by the member or employee as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.055. OFFICERS. (a) The governor shall designate a member of the board as the board's presiding officer to serve in that capacity at the will of the governor. The board shall elect an assistant presiding officer and secretary-treasurer from its members. The assistant presiding officer and secretary-treasurer serve a one-year term.

(b) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(36).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.203(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 285, Sec. 31(36), eff. Sept. 1, 2003.

Sec. 451.056. MEETINGS. The board shall meet at least twice a year. The board may hold additional meetings on the call of the presiding officer or at the written request of any three members of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.057. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) the legislation that created the board;

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

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

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.202(b), eff. Sept. 1, 2001.

#### **SUBCHAPTER C. BOARD POWERS AND DUTIES**

Sec. 451.101. GENERAL POWERS AND DUTIES. (a) The board shall:

- (1) adopt an official seal;
- (2) prescribe the application form for a license applicant;
- (3) prescribe a suitable form for a license certificate;

and

(4) prepare and conduct an examination for license applicants.

(b) The board shall have suitable office space to:

- (1) administer this chapter; and
- (2) maintain permanent records.

(c) The board may appoint committees that the board considers

necessary to carry out its duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.204(a), eff. Sept. 1, 2001.

Sec. 451.1015. STANDARDS OF CONDUCT INFORMATION. The commissioner or the commissioner's designee shall provide to members of the board, as often as necessary, information regarding the requirements for office under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.202(c), eff. Sept. 1, 2001.

Sec. 451.1016. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the commissioner and the staff of the department.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.202(c), eff. Sept. 1, 2001.

Sec. 451.102. EXECUTIVE SECRETARY AND EMPLOYEES. The board may employ an executive secretary and other personnel necessary to administer this chapter. The executive secretary has the duties and responsibilities determined by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.103. RULES. The board may adopt rules necessary for the performance of its duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.1035. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the board may not include a rule that:

- (1) restricts the use of any medium for advertising;
- (2) restricts the use of a license holder's personal appearance or voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the license holder; or
- (4) restricts the license holder's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.205(a), eff. Sept. 1, 2001.

Sec. 451.104. RECORDS. (a) The board shall:

- (1) keep a record of its proceedings in a book kept for that purpose;
- (2) maintain a complete record of all licensed athletic trainers; and
- (3) annually prepare a roster showing the names and addresses of all licensed athletic trainers.

(b) The board shall make a copy of the roster available to any person requesting it on payment of a fee established by the board in an amount sufficient to cover the cost of the roster.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.105. EXPENDITURES. (a) The department may expend funds appropriated to it to administer this chapter.

(b) The board may authorize all necessary expenditures to administer this chapter, including expenditures for:

- (1) stationery;
- (2) equipment; and
- (3) facilities.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



Sec. 451.106. FEES. After consultation with the commissioner of public health or the department, the board by rule shall set fees under this chapter in amounts reasonable and necessary to cover the cost of administering this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.108. PUBLIC PARTICIPATION. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.203(b), eff. Sept. 1, 2001.

Sec. 451.109. COMPLAINTS. (a) The board shall maintain a file on each written complaint filed with the board. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the board;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint.

(b) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(c) The board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.203(b), eff. Sept. 1, 2001.

Sec. 451.110. SUBPOENAS. (a) In an investigation of a complaint filed with the board, the board may request that the commissioner or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with the subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The board may delegate the authority granted under Subsection (a) to the secretary-treasurer or executive secretary of the board.

(f) The board shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the board may charge for copies of its records.

(g) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

(h) All information and materials subpoenaed or compiled by the board in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in discipline of the holder of a license, except that this information may be disclosed to:

(1) persons involved with the board in a disciplinary action against the holder of a license;

(2) athletic trainer licensing or disciplinary boards in other jurisdictions;

(3) peer assistance programs approved by the board under

Chapter 467, Health and Safety Code;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges by the board against a holder of a license, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.203(b), eff. Sept. 1, 2001.

#### **SUBCHAPTER D. LICENSE REQUIREMENTS**

Sec. 451.151. LICENSE REQUIRED. A person may not hold the person out as an athletic trainer or perform any activity of an athletic trainer unless the person holds a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.152. LICENSE APPLICATION. An applicant for an athletic trainer license must submit to the board:

- (1) an application on a form prescribed by the board; and
- (2) the required examination fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.153. APPLICANT QUALIFICATIONS. (a) An applicant for an athletic trainer license must:

(1) have met the athletic training curriculum requirements of a college or university approved by the board and give proof of graduation;

(2) hold a degree or certificate in physical therapy and have completed:

(A) a basic athletic training course from an accredited college or university; and

(B) an apprenticeship described by Subsection (b); or

(3) have a degree in corrective therapy with at least a minor in physical education or health that includes a basic athletic training course and meet the apprenticeship requirement or any other requirement established by the board.

(b) The apprenticeship required to be completed by an applicant consists of 720 hours completed in two years under the direct supervision of a licensed athletic trainer acceptable to the board. Actual working hours include a minimum of 20 hours a week during each fall semester.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.154. OUT-OF-STATE LICENSE APPLICANTS. (a) An out-of-state applicant must:

- (1) satisfy the requirements under Section 451.153; and
- (2) submit proof of active engagement as an athletic trainer in this state as described by Subsection (b).

(b) A person is actively engaged as an athletic trainer if the person:

(1) is employed on a salary basis by an educational institution for the institution's school year or by a professional or other bona fide athletic organization for the athletic organization's season; and

(2) performs the duties of athletic trainer as the major responsibility of that employment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.155. EXAMINATION RESULTS. (a) Not later than the 30th day after the day on which a licensing examination is administered under this chapter, the board shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than the 14th day after the day on which the board receives the results from the testing service.

(b) If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify the examinee of

the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails a licensing examination administered under this chapter, the board shall furnish the person with an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.156. REQUIREMENTS FOR LICENSE ISSUANCE. An applicant for an athletic trainer license is entitled to receive the license if the applicant:

- (1) satisfies the requirements of Section 451.153 or 451.154;
- (2) satisfactorily completes the examination administered by the board;
- (3) pays the required license fee; and
- (4) has not committed an act that constitutes grounds for refusal of a license under Section 451.251.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.157. TEMPORARY LICENSE. (a) The board may issue a temporary license to an applicant if the applicant satisfies:

- (1) the requirements of Section 451.153 or 451.154; and
- (2) any other requirement established by the board.

(b) The board by rule shall prescribe the time during which a temporary license is valid.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER E. LICENSE RENEWAL**

Sec. 451.201. LICENSE EXPIRATION. (a) A license issued under Section 451.156 expires on the first anniversary of the date of issuance.

(b) The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the license fee shall be prorated on a monthly basis so that a license holder pays only that portion of

the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.202. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the board a renewal fee that is 1-1/2 times the normally required renewal fee.

(c) If the person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee for the license.

(d) If the person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(e) At least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.206(a), eff. Sept. 1, 2001.

Sec. 451.203. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The board may renew without examination the expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application.

(b) The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1420, Sec. 14.206(b), eff. Sept. 1, 2001.

Sec. 451.204. CONTINUING EDUCATION. The board shall recognize, prepare, or administer continuing education programs for its license holders. A license holder must participate in the programs to the extent required by the board to keep the person's license.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.204(b), eff. Sept. 1, 2001.

#### **SUBCHAPTER F. DISCIPLINARY PROCEDURES**

Sec. 451.251. GROUNDS FOR DENIAL OF LICENSE OR DISCIPLINARY ACTION. (a) The board may refuse to issue a license to an applicant and shall reprimand a license holder or suspend, revoke, or refuse to renew a person's license if the person:

- (1) has been convicted of a misdemeanor involving moral turpitude or a felony;
- (2) obtained the license by fraud or deceit;
- (3) violated or conspired to violate this chapter or a rule adopted under this chapter; or
- (4) provided services outside the scope of practice of athletic training.

(b) For the purposes of Subsection (a)(1), the record of conviction is conclusive evidence of conviction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.207(a), eff. Sept. 1, 2001.

Sec. 451.2512. PROBATION. The board may place on probation a person whose license is suspended. If a suspension is probated, the board may require the person to:

- (1) report regularly to the board on matters that are the basis of the probation;
  - (2) limit practice to the areas prescribed by the board;
- or
- (3) continue or review professional education until the

person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.207(b), eff. Sept. 1, 2001.

Sec. 451.252. ADMINISTRATIVE HEARING. A person whose application for a license or license renewal is denied is entitled to a hearing before the board in accordance with Chapter 2001, Government Code, if the person submits to the board a written request for a hearing not later than the 30th day after the day the license or license renewal is denied.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.253. AUTHORITY TO ISSUE SUBPOENA. The board may issue a subpoena to compel a witness to testify or produce evidence in a proceeding to deny, revoke, or suspend a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.254. ADMINISTRATIVE PROCEDURE. A proceeding to revoke or suspend a license and an appeal from the proceeding are governed by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.255. EMERGENCY SUSPENSION. (a) The board or a three-member committee of board members designated by the board shall temporarily suspend the license of a license holder if the board or committee determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously



with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 8, eff. Sept. 1, 2003.

#### **SUBCHAPTER G. PENALTIES**

Sec. 451.301. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$25 or more than \$200.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER H. ADMINISTRATIVE PENALTY**

Sec. 451.351. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The board may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. A penalty collected under this section or Section 451.352 shall be deposited in the state treasury in the general revenue fund.

(b) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

(c) The amount of the penalty may not exceed \$500 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$2,500.

(d) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the threat to health or safety caused by the violation;
- (3) the history of previous violations;

- (4) the amount necessary to deter a future violation;
- (5) whether the violator demonstrated good faith, including, when applicable, whether the violator made good faith efforts to correct the violation; and
- (6) any other matter that justice may require.

(e) If the executive secretary determines that a violation occurred, the executive secretary shall give written notice of the violation by certified mail to the person.

(f) The notice under Subsection (e) must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) Within 20 days after the date the person receives the notice under Subsection (e), the person in writing may:

- (1) accept the determination and recommended penalty of the executive secretary; or
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the board by order shall approve the determination and impose the recommended penalty.

(i) If the person requests a hearing, the board shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(j) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(k) Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may determine that:

- (1) a violation occurred and impose a penalty; or
- (2) a violation did not occur.

(l) The notice of the board's order under Subsection (k) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial

review of the order.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.208(a), eff. Sept. 1, 2001.

Sec. 451.352. PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an order of the board under Section 451.351(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the board's order contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that is:

(i) for the amount of the penalty; and

(ii) effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the board by certified mail.

(c) If the board receives a copy of an affidavit under Subsection (b)(2), the board may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(d) If the person does not pay the penalty and the enforcement

of the penalty is not stayed, the penalty may be collected. The attorney general may sue to collect the penalty.

(e) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(f) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

(g) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date the judgment of the court becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(h) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.208(a), eff. Sept. 1, 2001.

## **CHAPTER 452. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 452.001. DEFINITIONS. In this chapter:

(1) "Executive council" means the Executive Council of Physical Therapy and Occupational Therapy Examiners.

(2) "Occupational therapy board" means the Texas Board of Occupational Therapy Examiners.

(3) "Physical therapy board" means the Texas Board of Physical Therapy Examiners.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.002. APPLICATION OF SUNSET ACT. The Executive Council of Physical Therapy and Occupational Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the executive council is abolished and the following laws expire September 1, 2017:

- (1) this chapter;
- (2) Chapter 453; and
- (3) Chapter 454.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1112, Sec. 3.06, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 4.05, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 3.07, eff. June 17, 2011.

#### **SUBCHAPTER B. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS**

Sec. 452.051. APPOINTMENT OF EXECUTIVE COUNCIL. (a) The Executive Council of Physical Therapy and Occupational Therapy Examiners consists of:

- (1) an occupational therapist member of the occupational therapy board appointed by that board;
- (2) a public member of the occupational therapy board appointed by that board;
- (3) a physical therapist member of the physical therapy board appointed by that board;
- (4) a public member of the physical therapy board appointed by that board; and
- (5) a public member appointed by the governor.

(b) The occupational therapy board and the physical therapy board may designate an alternate to attend an executive council meeting if a member appointed by that board cannot attend. The alternate has the same powers and duties and is subject to the same qualifications as the appointed member.

(c) Appointments to the executive council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.052. ELIGIBILITY OF PUBLIC MEMBER APPOINTED BY GOVERNOR. A person is not eligible for appointment by the governor as a public member of the executive council if the person or the person's spouse:

- (1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;
- (2) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the executive council, the occupational therapy board, or the physical therapy board;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the executive council, the occupational therapy board, or the physical therapy board; or
- (4) uses or receives a substantial amount of tangible goods, services, or funds from the executive council, the occupational therapy board, or the physical therapy board, other than compensation or reimbursement authorized by law for executive council, occupational therapy board, or physical therapy board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a member of the executive council and may not be an employee of the executive council who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a member of the executive council and may not be an employee of the executive council who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.054. TERMS; VACANCY. (a) Members of the executive council are appointed for two-year terms that expire on February 1 of each odd-numbered year.

(b) A member appointed to fill a vacancy holds office for the unexpired portion of the term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.055. PRESIDING OFFICER. The member appointed by the governor is the presiding officer of the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the executive council that a member:

(1) does not have at the time of appointment the qualifications required by Section 452.051;

(2) does not maintain during service on the executive council the qualifications required by Section 452.051;

(3) violates a prohibition established by Section 452.053;

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

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

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

(c) If the director has knowledge that a potential ground for removal exists, the director shall notify the presiding officer of the executive council of the potential ground. The presiding officer shall then notify the authority that appointed the member that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.057. COMPENSATION; REIMBURSEMENT. (a) The presiding officer of the executive council is entitled to a per diem as provided by the General Appropriations Act for each day that the presiding officer engages in the business of the executive council.

(b) A member of the executive council, other than the presiding officer, may not receive compensation for service on the executive council. A member may receive reimbursement for transportation expenses as provided by the General Appropriations Act. A member may not receive reimbursement for any other travel expenses, including expenses for meals and lodging.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.058. MEETINGS; QUORUM. (a) The executive council shall hold at least two regular meetings each year.

(b) The executive council may hold additional meetings on the request of the presiding officer or on the written request of three members of the executive council.

(c) A quorum of the executive council exists if both therapist members and one public member are present.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



**SUBCHAPTER C. DIRECTOR AND OTHER EXECUTIVE COUNCIL PERSONNEL**

Sec. 452.101. DIRECTOR; PERSONNEL. (a) The executive council shall employ a director and administrative and clerical employees as necessary to carry out the functions of the executive council, the occupational therapy board, and the physical therapy board.

(b) The director shall employ a coordinator of occupational therapy programs and a coordinator of physical therapy programs to carry out the functions of the respective boards. The coordinators may request the executive council to assign additional employees to carry out the duties of the coordinators.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.102. DIVISION OF RESPONSIBILITIES. The executive council shall develop and implement policies that clearly define the respective responsibilities of the executive council and the staff of the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.103. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The director or the director's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The director or the director's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for executive council employees must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.104. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

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

include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with the requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the executive council workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the executive council workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Texas Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. POWERS AND DUTIES**

Sec. 452.151. GENERAL POWERS AND DUTIES. (a) Except as otherwise provided by this chapter, the executive council shall administer and enforce Chapters 453 and 454.

(b) The executive council shall:

(1) develop and prepare a budget for the executive council, the occupational therapy board, and the physical therapy board; and

(2) manage all physical property used by the executive council, the occupational therapy board, or the physical therapy board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.152. ADMINISTRATIVE FUNCTIONS. (a) In administering Chapters 453 and 454, the executive council shall:

- (1) perform data processing functions; and
- (2) administer records relating to payroll, personnel files, and employee leave, benefits, and applications.

(b) The executive council shall perform the administrative functions relating to issuing and renewing licenses, including:

- (1) the administration of written examinations and collection of fees; and
- (2) the ministerial functions of preparing and delivering licenses, obtaining material and information in connection with the renewal of a license, and receiving and forwarding complaints to the appropriate board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.153. LIMITATION ON EXECUTIVE COUNCIL AUTHORITY. (a) The executive council may not exercise discretionary authority in the review of an applicant's qualifications for a license.

(b) The administration of practical examinations and other examinations requiring skill or expertise in a particular area on the part of the person administering the examination is the responsibility of the appropriate board. The selection of standardized national or generally accepted examinations for a profession or the design of individual examinations is the responsibility of the appropriate board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.154. FEES. The executive council shall set all fees for a license issued or service performed by a board represented on the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.155. RULES. Subject to Section 452.156, the appropriate professional board shall adopt rules concerning the qualifications, licensing, regulation, or practice of a profession.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.156. REVIEW OF RULES. (a) Before submitting a rule for publication in the Texas Register, a board represented on the executive council shall forward the proposed rule to the executive council for review.

(b) The executive council may review the rule and shall approve the rule for submission for publication unless the rule exceeds the rulemaking authority of the board.

(c) If the executive council fails to approve a rule, it shall return the rule to the board with an explanation of the reasons for the denial.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.157. REVIEW OF BOARDS. (a) The executive council shall routinely examine and evaluate the operations of the boards represented on the executive council.

(b) The executive council may structure the examination in a manner that the executive council considers appropriate to produce an efficient and thorough review.

(c) Each board represented on the executive council shall cooperate with the examination conducted by the executive council under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.158. DISBURSEMENT OF FUNDS. The executive council may authorize from its appropriated funds all necessary disbursements to carry out:

- (1) this chapter;
- (2) Chapter 453; and
- (3) Chapter 454.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.159. BIENNIAL REPORT. (a) Repealed by Acts 2011,

82nd Leg., R.S., Ch. 1083, Sec. 25(144), eff. June 17, 2011.

(b) The executive council shall prepare a report of its activities and file the report before January 1 of each odd-numbered year with the presiding officer of each house of the legislature, the governor, and the Legislative Budget Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(144), eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 14.002, eff. September 1, 2013.

#### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 452.201. PUBLIC INTEREST INFORMATION. (a) The executive council shall prepare information of public interest describing the functions of the executive council and the procedures by which complaints are filed with and resolved by the executive council, the occupational therapy board, or the physical therapy board.

(b) The executive council shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.202. COMPLAINTS. (a) The executive council by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the executive council for the purpose of directing complaints to the executive council. The executive council may provide for that notice:

- (1) on each registration form, application, or written contract for services of a person regulated by the executive council, the occupational therapy board, or the physical therapy board;
- (2) on a sign prominently displayed in the place of business of each person regulated by the executive council, the occupational therapy board, or the physical therapy board; or
- (3) in a bill for service provided by a person regulated by the executive council, the occupational therapy board, or the physical therapy board.

(b) The executive council shall list with its regular telephone number any toll-free telephone number established under other state law for presenting a complaint about a health professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.203. PUBLIC PARTICIPATION. (a) The executive council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the executive council and to speak on any issue under the jurisdiction of the executive council.

(b) The executive council shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the executive council's programs and services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## **CHAPTER 453. PHYSICAL THERAPISTS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 453.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Physical Therapy Examiners.

(2) "Coordinator of physical therapy programs" is the person employed in that position under Section 452.101.

(3) "Executive council" means the Executive Council of Physical Therapy and Occupational Therapy Examiners.

(4) "Physical therapist" means a person who is licensed by the board as a physical therapist and practices physical therapy. The term includes a hydrotherapist, physiotherapist, mechanotherapist, functional therapist, physical therapy practitioner, physical therapist specialist, physical therapy specialist, physiotherapy practitioner, kinesiotherapist, physical rehabilitation specialist, and myofunctional therapist.

(5) "Physical therapist assistant" means a person licensed by the board as a physical therapist assistant:

(A) who assists and is supervised by a physical therapist in the practice of physical therapy; and

(B) whose activities require an understanding of physical therapy.

(6) "Physical therapy" means a form of health care that prevents, identifies, corrects, or alleviates acute or prolonged movement dysfunction or pain of anatomic or physiologic origin.

(7) "Physical therapy aide" or "physical therapy technician" means a person:

(A) who aids in the practice of physical therapy under the on-site supervision of a physical therapist or a physical therapist assistant; and

(B) whose activities require on-the-job training.

(8) "Physical therapy facility" means a physical site, including a building, office, or portable facility, where the practice of physical therapy takes place.

(9) "Referring practitioner" means a qualified licensed health care professional who, within the scope of professional licensure, may refer a person for health care services. The term includes:

(A) a physician licensed to practice medicine by a state board of medical examiners;

(B) a dentist licensed by a state board of dental examiners;

(C) a chiropractor licensed by a state board of chiropractic examiners; and

(D) a podiatrist licensed by a state board of podiatric medical examiners.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.002. APPLICATION OF SUNSET ACT. The Texas Board of Physical Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1112, Sec. 3.07, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. [3249](#)), Sec. 4.06, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. [652](#)), Sec. 3.08, eff. June 17, 2011.

Sec. 453.003. CONFLICT WITH OTHER LAW. To the extent of any conflict between this chapter and Chapter 452, Chapter 452 controls. Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.004. EFFECT OF CHAPTER; APPLICABILITY. (a) This chapter does not restrict the holder of a license issued by another state agency from performing health care services within the scope of the applicable licensing act if the license holder:

(1) does not represent to another that the license holder is a physical therapist;

(2) does not violate Sections 453.201(a) and (c) and 453.304; and

(3) practices strictly in conformity with the statutes and rules relating to the license holder's license.

(b) This chapter does not apply to:

(1) a physical therapy aide;

(2) a physical therapy student or physical therapist assistant student:

(A) participating in an accredited physical therapy or physical therapist assistant educational program; and

(B) being supervised by a license holder under this chapter;

(3) a student:

(A) participating in an accredited allied health science program leading to licensure by another state agency; and

(B) being supervised by properly licensed, certified, or registered personnel;

(4) a physical therapist who is licensed in another jurisdiction of the United States if the person is engaging, for not more than 90 days in a 12-month period and under the supervision of a physical therapist licensed in this state, in a special project or clinic required for completion of a post-professional degree in physical therapy from an accredited college or university, and the person notifies the board of the person's intent to practice in this state; or

(5) a person who practices physical therapy or as a



physical therapy assistant and who is:

(A) practicing physical therapy in the United States armed services, United States Public Health Service, or Veterans Administration in compliance with federal regulations for licensure of health care providers;

(B) licensed in another jurisdiction of the United States or credentialed to practice physical therapy in another country if the person:

(i) is teaching, demonstrating, or practicing physical therapy in an educational seminar in this state for not more than 60 days in a 12-month period, and the person notifies the board of the person's intent to practice in this state; or

(ii) by contract or employment, is practicing physical therapy in this state for not more than 60 days in a 12-month period for an athletic team or organization or a performing arts company temporarily competing or performing in this state; or

(C) licensed in another jurisdiction of the United States, if the person notifies the board of the person's intent to practice in this state, and:

(i) is practicing physical therapy for not more than 60 days during a declared local, state, or national disaster or emergency; or

(ii) is displaced from the person's residence or place of employment due to a declared local, state, or national disaster and is practicing physical therapy in this state for not more than 60 days after the date the disaster is declared.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1188 (H.B. [3717](#)), Sec. 1, eff. June 19, 2009.

Sec. 453.005. PRACTICE OF PHYSICAL THERAPY. (a) The practice of physical therapy requires that a person practicing have education, training, and experience in physical therapy.

(b) The practice of physical therapy includes:

(1) measurement or testing of the function of the musculoskeletal, neurological, pulmonary, or cardiovascular system;

(2) rehabilitative treatment concerned with restoring

function or preventing disability caused by illness, injury, or birth defect;

(3) treatment, consultative, educational, or advisory services to reduce the incidence or severity of disability or pain to enable, train, or retrain a person to perform the independent skills and activities of daily living; and

(4) delegation of selective forms of treatment to support personnel while a physical therapist retains the responsibility for caring for the patient and directing and supervising the support personnel.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.006. PRACTICE OF MEDICINE. (a) A person may not engage in diagnosing diseases or in practicing medicine as defined by law on the basis of a license issued under this chapter.

(b) A person may not use an affix indicating or implying that the person is a physician on the basis of a license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS**

Sec. 453.051. BOARD MEMBERSHIP. (a) The Texas Board of Physical Therapy Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

- (1) six physical therapist members; and
- (2) three members who represent the public.

(b) Appointments to the board shall be made without regard to the race, creed, sex, religion, disability, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.052. PURPOSE OF BOARD. The board shall regulate the practice of physical therapy in this state to safeguard the public health and welfare.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.053. PUBLIC MEMBER ELIGIBILITY. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

- (1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;
- (2) is employed by or participates in the management of a business entity or other organization regulated by the executive council or board or receiving funds from the executive council or board;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the executive council or board or receiving funds from the executive council or board; or
- (4) uses or receives a substantial amount of tangible goods, services, or funds from the executive council or board, other than compensation or reimbursement authorized by law for executive council or board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.054. MEMBERSHIP RESTRICTIONS. (a) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

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

(c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a member of the board.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.055. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms with the terms of two physical therapist members and one public member expiring January 31 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired part of the term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of appointment the qualifications required by Section 453.051(a);

(2) does not maintain during service on the board the qualifications required by Section 453.051(a);

(3) violates a prohibition established by Section 453.054;

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

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

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

(c) If the coordinator of physical therapy programs has knowledge that a potential ground for removal exists, the coordinator shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.057. PER DIEM REIMBURSEMENT. (a) A member of the board is entitled to a per diem as set by the General Appropriations Act for each day the member engages in the business of the board.

(b) A member may receive reimbursement for meals, lodging, and transportation expenses as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.058. OFFICERS. After the appointment of members every two years, the members of the board shall elect from among its members a presiding officer, secretary, and other officers required to conduct the business of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.059. MEETINGS. (a) A special meeting of the board:

(1) may be called jointly by the presiding officer and secretary; or

(2) shall be called on the written request of any two members.

(b) The secretary shall keep a record of each meeting of the board. The record shall be open to public inspection at all times.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.060. TRAINING. (a) Before a member of the board may assume the member's duties, the member must complete at least a course of the training program established by the board under this section.

(b) A training program shall provide information to a participant regarding:

(1) this chapter;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of Chapters 551, 552, 2001, and 2002,

Government Code;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) In developing the training requirements provided for by this section, the board shall consult with the governor's office, the attorney general's office, and the Texas Ethics Commission.

(d) If another state agency or entity is given the authority to establish the training requirements, the board shall allow that training instead of developing its own program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.061. CIVIL LIABILITY. A member of the board is not liable in a civil action for an act performed in good faith in executing duties as a board member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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

Sec. 453.101. GENERAL POWERS AND DUTIES. Except as provided by Chapter 452, the board shall administer and enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.102. RULES. (a) The board may adopt rules necessary to implement this chapter.

(b) The board may adopt bylaws and rules necessary to govern its proceedings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.103. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in rules to prohibit false, misleading, or deceptive practices a rule that:

- (1) restricts the person's use of any medium for advertising;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.104. FEES. (a) The board may recommend to the executive council reasonable and necessary fees for licenses issued or services performed under this chapter that in the aggregate produce sufficient revenue to cover the cost of administering this chapter.

(b) The board may not recommend to the executive council a fee that existed on September 1, 1993, for an amount less than the amount of that fee on that date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.105. EMPLOYEES; DIVISION OF RESPONSIBILITIES. (a) The board may request the executive council to assign administrative and clerical employees as necessary to carry out the board's functions.

(b) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.106. LIST OF LICENSE HOLDERS. (a) The secretary shall maintain a list of the names of each physical therapist licensed under this chapter.

(b) The list shall be open to public inspection at all times.

(c) On March 1 of each year, the coordinator of physical therapy programs shall transmit an official copy of the list to the executive council.

(d) A certified copy of the list of license holders is admissible as evidence in a court of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.209(a), eff. Sept. 1, 2001.

Sec. 453.107. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

(1) adopt a form to standardize information concerning complaints made to the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.108. PROSECUTING VIOLATIONS. The board shall assist the proper legal authorities in prosecuting a person who violates this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 453.151. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

(c) Information maintained by the executive council or the board under this chapter regarding the home address or personal telephone number of a person licensed under this chapter or a person who is an owner or manager of a physical therapy facility registered



under this chapter is confidential and not subject to disclosure under Chapter 552, Government Code. A person licensed under this chapter or a person who is an owner or manager of a physical therapy facility registered under this chapter must provide the board with a business address or address of record that will be subject to disclosure under Chapter 552, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 867 (H.B. 588), Sec. 1, eff. September 1, 2013.

Sec. 453.152. COMPLAINTS. A license holder shall at all times prominently display in the license holder's place of business a sign containing:

- (1) the board's name, mailing address, and telephone number; and
- (2) a statement informing consumers that a complaint against a license holder can be directed to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.153. RECORD OF COMPLAINTS. (a) The board shall keep an information file about each complaint filed with the executive council and referred to the board. The board's information file must be kept current and contain a record for each complaint of:

- (1) each person contacted in relation to the complaint;
- (2) a summary of findings made at each step of the complaint process;
- (3) an explanation of the legal basis and reason for a complaint that is dismissed;
- (4) the schedule required under Section 453.154 and a notation about a change in the schedule; and
- (5) other relevant information.

(b) If a written complaint is received by the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.154. GENERAL RULES INVOLVING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules relating to the investigation of a complaint received by the board. The rules shall:

- (1) distinguish between categories of complaints;
- (2) ensure that complaints are not dismissed without appropriate consideration;
- (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
- (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;
- (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator; and
- (6) require the board to advise the executive council of complaints that have been disposed of.

(b) The board shall:

- (1) dispose of each complaint in a timely manner; and
- (2) establish a schedule for conducting each phase of the investigation of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) Each party shall be notified of the projected time requirements for the complaint.

(d) Each party to the complaint must be notified of a change in the schedule not later than the seventh day after the date the change is made.

(e) The coordinator of physical therapy programs shall notify the board of a complaint that is unresolved after the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.155. PUBLIC PARTICIPATION. (a) The board shall

develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER E. LICENSE REQUIREMENTS; REGISTRATION OF FACILITIES**

Sec. 453.201. LICENSE REQUIRED; USE OF TITLE. (a) A person may not practice physical therapy or practice as a physical therapist assistant, unless the person is an individual who holds a license issued by the board.

(b) A person, including the person's employee or other agent or representative, may not extend or provide physical therapy services unless the services are provided by a physical therapist.

(c) A person is considered to be practicing physical therapy if the person:

(1) performs, offers to perform, or attempts to perform physical therapy; or

(2) publicly professes to be or holds the person out to be a physical therapist or as providing physical therapy.

(d) Unless the person is a physical therapist, a person, including the person's employee or other agent or representative, may not use in connection with the person's name or business activity:

(1) the words "physical therapy," "physical therapist," "physiotherapy," "physiotherapist," "licensed physical therapist," "registered physical therapist," or "physical therapist assistant";

(2) the letters "PT," "PhT," "LPT," "RPT," "DPT," "MPT," or "PTA"; or

(3) any other words, letters, abbreviations, or insignia indicating or implying, by any means or in any way, that physical therapy is provided or supplied.

(e) A person may not use the title "Physical Therapist" unless the person is a physical therapist.

(f) A person may not use the title "Physical Therapist Assistant" unless the person is a physical therapist assistant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1420, Sec. 14.2095, eff. Sept. 1, 2001.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 474 (S.B. 1099), Sec. 1, eff.  
September 1, 2013.

Sec. 453.202. LICENSE APPLICATION. (a) An applicant for a physical therapist license or a physical therapist assistant license must submit to the board a written application on a form provided by the board.

(b) The application must be accompanied by:

- (1) an examination fee prescribed by the board; and
- (2) a nonrefundable application fee prescribed by the

board.

(c) The examination fee under Subsection (b)(1) is refundable if the applicant does not take the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.203. QUALIFICATIONS FOR PHYSICAL THERAPIST OR PHYSICAL THERAPIST ASSISTANT LICENSE. (a) An applicant for a physical therapist license must, in addition to other requirements and qualifications established by the board, present:

- (1) evidence satisfactory to the board that the applicant has completed an accredited physical therapy educational program; or
- (2) official documentation from an educational credentials review agency approved by the board certifying that the applicant has completed:

(A) a program equivalent to a Commission on Accreditation of Physical Therapy Education accredited program; and

(B) at least 60 academic semester credits or the equivalent from an accredited institution of higher education.

(b) An applicant for a physical therapist assistant license must, in addition to other requirements and qualifications established by the board, present evidence satisfactory to the board that the applicant has completed an accredited physical therapist assistant program or an accredited physical therapy educational program, including courses in the anatomical, biological, and physical sciences, and clinical procedures prescribed and approved by

the board.

(c) A physical therapy educational program or physical therapist assistant program is an accredited program if the program is:

- (1) accredited by the Commission on Accreditation in Physical Therapy Education; and
- (2) associated with an institution of higher education.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.204. FOREIGN-TRAINED APPLICANTS. (a) To obtain a license under this chapter, an applicant who is foreign-trained must satisfy the examination requirements of Section 453.208.

(b) Before allowing a foreign-trained applicant to take the examination, the board shall require the applicant to furnish proof of:

- (1) good moral character; and
- (2) completion of requirements substantially equal to those under Section 453.203.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.205. LICENSE EXAMINATION. (a) The board shall examine applicants for licenses at least once each year at a reasonable place and time designated by the board.

(b) The examination must cover the subjects generally taught by an accredited physical therapy educational program or an accredited physical therapist assistant program and may include clinical decision-making and evaluation, treatment program planning and implementation, and administration, education, consultation, and research in physical therapy.

(c) The board by rule may establish a procedure for administering the examination, including the conditions under which and the number of times an applicant may retake an examination.

(d) The board shall have any written portion of the examination validated by an independent testing entity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.206. EXAMINATION RESULTS. (a) The board shall notify each examinee of the results of the examination not later than the 30th day after the day on which the examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than the 14th day after the day on which the board receives the results from the testing service.

(b) If the notice of the examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails a licensing examination, the board shall furnish the person with an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.207. REEXAMINATION. (a) An applicant who fails to pass a one-part examination or a part of a divided examination may take another one-part examination or the part of the divided examination that the applicant failed on payment of an additional examination fee.

(b) If an applicant fails to pass a second or subsequent examination, the board shall require the applicant to complete an additional course of study designated by the board. Before taking a subsequent examination, the applicant must:

- (1) present to the board satisfactory evidence that the applicant has completed the required course of study; and
- (2) pay an additional fee equal to the amount of the fee required for filing the original application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.208. ISSUANCE OF LICENSE. (a) The board shall issue a license to an applicant who:

- (1) passes the examination under Section 453.205;
  - (2) meets the qualifications prescribed by Section 453.203;
- and
- (3) has not committed an act that constitutes a ground for

denial of a license under Section 453.351.

(b) The board may issue a physical therapist assistant license to a person who has not completed an accredited physical therapist assistant program if the person:

- (1) meets the requirements under Section 453.203(a); and
- (2) has not been the subject of disciplinary action in another state or nation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.209. PROVISIONAL LICENSE. (a) The board may issue a provisional license to an applicant licensed in another state that maintains professional standards considered by the board to be equivalent to and has licensing requirements that are substantially equivalent to the requirements under this chapter. An applicant for a provisional license under this section must:

- (1) present proof to the board that the applicant is licensed in good standing as a physical therapist or physical therapist assistant in that state;
- (2) have passed a national examination or other examination recognized by the board relating to the practice of physical therapy; and
- (3) be sponsored by a person licensed under this chapter with whom the provisional license holder may practice.

(b) The board may waive the requirement of Subsection (a)(3) for an applicant if the board determines that compliance with that requirement constitutes a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a physical therapist or physical therapist assistant license.

(d) The board shall issue a physical therapist or physical therapist assistant license to the provisional license holder if:

- (1) the provisional license holder passes a jurisprudence examination, if required;
- (2) the board verifies that the provisional license holder has the academic and experience requirements for a physical therapist or physical therapist assistant license; and
- (3) the provisional license holder satisfies any other requirements for a physical therapist or physical therapist assistant

license.

(e) The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend that deadline if the results on an examination have not been received by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.210. TEMPORARY LICENSE. (a) The board by rule may provide for the issuance of a temporary license.

(b) The holder of a temporary license must practice under the supervision of a physical therapist.

(c) A rule adopted under this section must include a time limit for a person to hold a temporary license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.211. INACTIVE STATUS. (a) The board by rule may provide for a license holder to place the holder's license under this chapter on inactive status.

(b) A rule adopted under this section must include a time limit for a license holder's license to remain on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.212. DISPLAY OF LICENSE. A license holder under this chapter shall display the license holder's license in a conspicuous place in the principal office in which the license holder practices physical therapy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 867 (H.B. 588), Sec. 2, eff. September 1, 2013.

Sec. 453.213. PHYSICAL THERAPY FACILITY REGISTRATION. (a) The



board by rule shall adopt requirements for the registration and renewal of a registration of a physical therapy facility. A facility licensed under Subtitle B, Title 4, Health and Safety Code, is exempt from the registration requirements under this section. The board by rule may exempt other facilities as appropriate.

(b) If a person owns more than one physical therapy facility, the board may require the person to make only one application for the registration of all facilities.

(c) In accordance with Section 453.004, a rule adopted under this section may not prohibit a license holder from practicing in a physical therapy facility within the scope of the license holder's license.

(d) A physical therapy facility must be under the direction of a physical therapist and meet any other requirements established by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 833 (H.B. [3369](#)), Sec. 1, eff. September 1, 2011.

#### **SUBCHAPTER F. LICENSE RENEWAL**

Sec. 453.251. LICENSE EXPIRATION. (a) A physical therapist or physical therapist assistant license expires on the second anniversary of the date the license is issued.

(b) The board may adopt a system under which licenses expire on various dates during the year. For the term in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.252. RENEWAL OF LICENSE. (a) A person may renew an unexpired license by paying the required renewal fee to the executive council before the expiration date of the license.

(b) A person whose license has been expired for 90 days or less

may renew the license by paying to the executive council the renewal fee and a late fee set by the executive council in an amount that does not exceed one-half of the amount charged for examination for the license. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the executive council all unpaid renewal fees and a late fee set by the executive council in an amount that does not exceed the amount charged for examination for the license.

(c) A person whose license has been expired for one year or longer must comply with the board's requirements and procedures to reinstate the license and pay a reinstatement fee in the amount set by the executive council. If the person is unable to comply with the board's requirements to reinstate the license, the person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(d) At least 30 days before the expiration of a person's license, the executive council shall provide the person with notice of the impending license expiration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 867 (H.B. 588), Sec. 3, eff. September 1, 2013.

Sec. 453.253. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The board may renew without reexamination the expired license of a person who was licensed to practice as a physical therapist or physical therapist assistant in this state, moved to another state, is currently licensed and in good standing in the other state, and meets the board's requirements for renewal.

(b) The person must pay to the executive council a renewal fee set by the executive council in an amount that does not exceed the examination fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 867 (H.B. 588), Sec. 4, eff. September 1, 2013.

Sec. 453.254. CONTINUING COMPETENCE. (a) The board by rule shall:

(1) adopt requirements for continuing competence for license holders in subjects pertaining to the practice of physical therapy;

(2) establish a minimum number of continuing competence units required to renew a license; and

(3) develop a process to approve continuing competence activities.

(b) The board may require license holders to complete continuing competence activities specified by the board. The board shall adopt a procedure to assess a license holder's participation and performance in continuing competence activities.

(c) The board may identify the key factors for the competent performance by a license holder of the license holder's professional duties.

(d) In developing a process under Subsection (a) for the approval of continuing competence activities, the board may authorize appropriate organizations to approve the activities.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.210(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1021 (H.B. [4281](#)), Sec. 1, eff. June 19, 2009.

#### **SUBCHAPTER G. PRACTICE BY LICENSE HOLDER**

Sec. 453.301. TREATING PATIENT UNDER PRIOR REFERRAL. (a) A physical therapist may treat a patient for an injury or condition that was the subject of a prior referral if the physical therapist:

(1) has been licensed to practice physical therapy for at least one year;

(2) notifies the referring practitioner of the therapy not later than the fifth business day after the date therapy is begun;

(3) begins any episode of treatment before the first anniversary of the referral by the referring practitioner;

(4) for physical therapy episodes subsequent to the episode which was initiated by the referral, treats the patient for not more

than 20 treatment sessions or 30 consecutive calendar days, whichever occurs first; and

(5) satisfies any other requirement set by the board.

(b) The physical therapist must confer with the referring practitioner before the physical therapist may continue treatment that exceeds treatment authorized under Subsection (a)(4).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.302. TREATING PATIENT WITHOUT REFERRAL. (a) In this section:

(1) "Emergency circumstance" means an instance in which emergency medical care is necessary.

(2) "Emergency medical care" means a bona fide emergency service provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(A) serious jeopardy to the patient's health;

(B) serious dysfunction of any bodily organ or part;

or

(C) serious impairment to bodily functions.

(b) In an emergency circumstance, including a minor emergency, a physical therapist may provide emergency medical care to a person to the best of the therapist's ability without a referral from a referring practitioner.

(c) A physical therapist may provide physical assessments or instructions to an asymptomatic person without a referral from a referring practitioner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.303. PROHIBITED USE OF CERTAIN PROCEDURES. In practicing physical therapy, a person may not use:

(1) roentgen rays or radium for a diagnostic or therapeutic purpose; or

(2) electricity for a surgical purpose, including cauterization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.304. PROHIBITED PRACTICE. It is a violation of this chapter for an individual licensed by the board to violate Section 102.001.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.826, eff. Sept. 1, 2001.

#### **SUBCHAPTER H. DISCIPLINARY ACTION AND PROCEDURE**

Sec. 453.351. GROUNDS FOR DENIAL OF LICENSE OR DISCIPLINE OF LICENSE HOLDER. (a) The board may deny a license or suspend or revoke a license, place a license holder on probation, reprimand a license holder, impose an administrative penalty, or otherwise discipline a license holder if the applicant or license holder has:

- (1) except as provided by Section 453.301 or 453.302, provided physical therapy to a person without a referral from a referring practitioner;
- (2) used drugs or intoxicating liquors to an extent that affects the license holder's or applicant's professional competence;
- (3) been convicted of a felony, including a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere, in this state or in any other state or nation;
- (4) obtained or attempted to obtain a license by fraud or deception;
- (5) been grossly negligent in the practice of physical therapy or in acting as a physical therapist assistant;
- (6) been found to be mentally incompetent by a court;
- (7) practiced physical therapy in a manner detrimental to the public health and welfare;
- (8) had a license to practice physical therapy revoked or suspended or had other disciplinary action taken against the license holder or applicant;
- (9) had the license holder's or applicant's application for a license refused, revoked, or suspended by the proper licensing authority of another state or nation; or
- (10) in the case of a physical therapist assistant, treated a person other than under the direction of a physical therapist.

(b) The board shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of this chapter or a rule adopted by the board.

(c) If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board;  
or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.352. PROCEDURE FOR LICENSE DENIAL OR DISCIPLINARY ACTION; SCHEDULE OF SANCTIONS. (a) A person whose application for a license is denied is entitled to a hearing before the State Office of Administrative Hearings if the applicant submits a written request for a hearing to the board.

(b) A proceeding to take action under Section 453.351 or an appeal from the proceeding is a contested case for the purposes of Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall use the schedule of sanctions adopted by the board by rule for a sanction imposed as the result of a hearing conducted by the office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.353. SUBPOENAS. (a) The board may request or compel by subpoena:

(1) the attendance of a witness for examination under oath;  
and

(2) the production for inspection or copying of evidence relevant to an investigation of an alleged violation of this chapter.

(b) If a person fails to comply with the subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in

which a hearing conducted by the board may be held.

(c) If the court determines that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish for contempt a person who fails to obey the court order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.354. TEMPORARY LICENSE SUSPENSION. (a) The board may temporarily suspend a license issued under this chapter on an emergency basis if the board, by at least a two-thirds vote, determines from the evidence or information presented to the board that the continued practice by the license holder constitutes a continuing or imminent threat to the public health or welfare.

(b) The board may suspend a license under this section without notice or a hearing if, at the time the suspension is ordered, a hearing on whether to institute disciplinary proceedings against the license holder is scheduled to be held not later than the 14th day after the date of the temporary suspension.

(c) The board shall hold a second hearing on the license suspension not later than the 60th day after the date the temporary suspension was ordered. If the second hearing is not held within the required time, the suspended license is automatically reinstated.

(d) The board shall adopt rules that establish procedures and standards for the temporary suspension of a license under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.355. REISSUANCE OF LICENSE; ISSUANCE OF LICENSE AFTER DENIAL. (a) On application by the person, the board may reissue a license to a person whose license has been revoked.

(b) An application to reinstate a revoked license:

(1) may not be made before the 180th day after the date the revocation order became final; and

(2) must be made in the manner and form the board requires.

(c) On application by the person, the board may issue a license to a person whose license application has been denied. The application may not be made before the first anniversary of the date

of the denial.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.356. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) A rule adopted under this section must:

(1) provide the complainant and the license holder an opportunity to be heard; and

(2) require the presence of the board's legal counsel or a representative of the attorney general to advise the board or the board's employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER I. ADMINISTRATIVE PENALTY**

Sec. 453.401. IMPOSITION OF PENALTY. The board may impose an administrative penalty on a person licensed or regulated under this chapter or a facility registered under this chapter who violates this chapter or a rule or order adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.402. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$200 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of a prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of previous violations;



- (3) the amount necessary to deter future violations;
- (4) efforts to correct the violation; and
- (5) any other matter that justice may require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.403. ADMINISTRATIVE PROCEDURE. (a) The board shall adopt rules that establish procedures for assessing an administrative penalty and that provide for notice and a hearing for a license holder or facility administrator that may be subject to a penalty under this subchapter.

(b) A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROCEDURES**

Sec. 453.451. INJUNCTIVE RELIEF. The attorney general, a district attorney, a county attorney, or any other person may institute a proceeding to enforce this chapter, including a suit to enjoin or restrain a person from practicing physical therapy without complying with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.452. MONITORING OF LICENSE HOLDER. The board by rule shall develop a system for monitoring a license holder's compliance with this chapter. The rules must include procedures for:

- (1) monitoring for compliance a license holder who is ordered by the board to perform a certain act; and
- (2) identifying and monitoring each license holder who represents a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.453. CIVIL PENALTY. (a) A person found by a court to have violated this chapter is liable to the state for a civil penalty

of \$200 for each day the violation continues.

(b) A civil penalty may be recovered in a suit brought by the attorney general, a district attorney, a county attorney, or any other person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.454. RECOVERY OF COSTS AND FEES. A person other than the attorney general, a district attorney, or a county attorney who brings an action to enforce this chapter or for injunctive relief may recover the person's court costs and attorney's fees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.455. CRIMINAL OFFENSE. (a) A person commits an offense if the person knowingly violates this chapter.

(b) An offense under this section is a Class A misdemeanor.

(c) Each day of violation constitutes a separate offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## **CHAPTER 454. OCCUPATIONAL THERAPISTS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 454.001. SHORT TITLE. This chapter may be cited as the Occupational Therapy Practice Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Occupational Therapy Examiners.

(2) "Coordinator of occupational therapy programs" is the person employed in that position under Section 452.101.

(3) "Executive council" means the Executive Council of Physical Therapy and Occupational Therapy Examiners.

(4) "Occupational therapist" means a person licensed to practice occupational therapy.

(5) "Occupational therapy aide" means a person:

(A) who aids in the practice of occupational therapy;

and

(B) whose activities require on-the-job training and on-site supervision by an occupational therapist or an occupational therapy assistant.

(6) "Occupational therapy assistant" means a person licensed by the board as an occupational therapy assistant who assists in the practice of occupational therapy under the general supervision of an occupational therapist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.003. APPLICATION OF SUNSET ACT. The Texas Board of Occupational Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1112, Sec. 3.08, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. [3249](#)), Sec. 4.07, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. [652](#)), Sec. 3.09, eff. June 17, 2011.

Sec. 454.004. CONFLICT WITH OTHER LAW. To the extent of any conflict between this chapter and Chapter 452, Chapter 452 controls.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.005. APPLICABILITY. (a) This chapter does not apply to a holder of a license issued by another state agency who is performing health care services within the scope of the applicable licensing act.

(b) The licensing provisions of this chapter do not apply to:

(1) an occupational therapy aide assisting a license holder

under this chapter;

(2) a person engaged in a course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program if:

(A) the activities and services constitute a part of a supervised course of study; and

(B) the person is designated by a title that clearly indicates the person's status as a student or trainee;

(3) a person fulfilling the supervised field work experience requirements of Section 454.203, if those activities and services constitute a part of the experience necessary to meet the requirement of that section;

(4) an occupational therapist performing a special project in patient care while working toward an advanced degree from an accredited college or university;

(5) an occupational therapist who does not live in this state and who:

(A) is licensed by another state or who meets the requirements for certification established by the American Occupational Therapy Association as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA); and

(B) comes into this state for not more than four consecutive months to:

(i) provide or attend an educational activity;

(ii) assist in a case of medical emergency; or

(iii) engage in a special occupational therapy project; or

(6) a qualified and properly trained person acting under a physician's supervision under Section 157.001.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.006. PRACTICE OF OCCUPATIONAL THERAPY. (a) In this section, "diagnosis" means the identification of a disease from its symptoms.

(b) A person practices occupational therapy if the person:

(1) evaluates or treats a person whose ability to perform the tasks of living is threatened or impaired by developmental

deficits, the aging process, environmental deprivation, sensory impairment, physical injury or illness, or psychological or social dysfunction;

(2) uses therapeutic goal-directed activities to:

(A) evaluate, prevent, or correct physical or emotional dysfunction; or

(B) maximize function in a person's life; or

(3) applies therapeutic goal-directed activities in treating patients on an individual basis, in groups, or through social systems, by means of direct or monitored treatment or consultation.

(c) The practice of occupational therapy does not include diagnosis or psychological services of the type typically performed by a licensed psychologist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.007. USE OF TITLE OF DOCTOR. An occupational therapist or occupational therapy assistant may not use the abbreviation "Dr.," the word "Doctor," or any suffix or affix indicating or implying that the person is a physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS**

Sec. 454.051. BOARD MEMBERSHIP. (a) The Texas Board of Occupational Therapy Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) four occupational therapist members who have practiced occupational therapy for at least the three years preceding appointment to the board;

(2) two occupational therapy assistant members, each of whom has practiced as an occupational therapy assistant for at least the three years preceding appointment to the board; and

(3) three members who represent the public and who are not occupational therapists.

(b) Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.211(a), eff. Sept. 1, 2001.

Sec. 454.052. PUBLIC MEMBER ELIGIBILITY. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

- (1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;
- (2) is employed by or participates in the management of a business entity or other organization regulated by the executive council or the board or that receives funds from the executive council or the board;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the executive council or the board or that receives funds from the executive council or the board; or
- (4) uses or receives a substantial amount of tangible goods, services, or funds from the executive council or the board, other than compensation or reimbursement authorized by law for executive council or board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.053. MEMBERSHIP RESTRICTIONS. (a) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

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

(c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a member of the board.

(d) A person may not serve as a member of the board if the person is required to register as a lobbyist under Chapter 305,

Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the executive council or the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.054. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms, with the terms of two members licensed under this chapter and one member who represents the public expiring on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.211(b), eff. Sept. 1, 2001.

Sec. 454.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of appointment the qualifications required by Section 454.051(a);

(2) does not maintain during service on the board the qualifications required by Section 454.051(a);

(3) violates a prohibition established by Section 454.053;

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

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

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

(c) If the coordinator of occupational therapy programs has knowledge that a potential ground for removal exists, the coordinator shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.056. PER DIEM; REIMBURSEMENT. (a) A member of the board is entitled to a per diem as set by the General Appropriations Act for each day the member engages in board business.

(b) A member may receive reimbursement for meals, lodging, and transportation expenses as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.212(a), eff. Sept. 1, 2001.

Sec. 454.057. OFFICERS. After the appointment of members every two years, the members of the board shall elect from among its members a presiding officer, a secretary, and other officers required to conduct the business of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.058. MEETINGS. (a) The board shall hold at least two regular meetings each year.

(b) Additional meetings may be held on the call of the presiding officer or on the written request of three members of the board.

(c) The coordinator of occupational therapy programs shall keep a record of each meeting of the board. The record must be open to public inspection at all times.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.059. TRAINING. (a) Before a member of the board may assume the member's duties, the member must complete at least a course of the training program established by the board under this section.

(b) The training program shall provide information to a participant regarding:



- (1) this chapter;
- (2) the programs operated by the board;
- (3) the role and functions of the board;
- (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the board;
- (6) the results of the most recent formal audit of the board;
- (7) the requirements of Chapters 551, 552, 2001, and 2002, Government Code;
- (8) the requirements of the conflict of interest laws and other laws relating to public officials; and
- (9) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) In developing the training requirements provided for by this section, the board shall consult with the governor's office, the attorney general's office, and the Texas Ethics Commission.

(d) If another state agency or entity is given the authority to establish the training requirements, the board shall allow that training instead of developing its own program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.060. CIVIL LIABILITY. A member of the board is not liable in a civil action for an act performed in good faith while performing duties as a board member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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

Sec. 454.101. GENERAL POWERS AND DUTIES. Except as provided by Chapter 452, the board shall administer and enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.102. RULES. The board shall adopt rules consistent with this chapter to carry out its duties in administering this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.103. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the use of any medium for advertising;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.104. FEES. (a) The board may recommend to the executive council reasonable and necessary fees for licenses issued or services performed under this chapter that in the aggregate provide sufficient revenue to cover the cost of administering this chapter.

(b) The board may not recommend to the executive council a fee that existed on September 1, 1993, for an amount less than the amount of the fee on that date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.105. EMPLOYEES; DIVISION OF RESPONSIBILITIES. (a) The board may request the executive council to assign administrative and clerical employees as necessary to carry out the board's functions.

(b) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.106. LIST OF LICENSE HOLDERS. (a) The coordinator of occupational therapy programs shall maintain a list of the names of each person licensed under this chapter.

(b) The list shall be open to public inspection at all times.

(c) On March 1 of each year, the coordinator of occupational therapy programs shall transmit an official copy of the list to the executive council.

(d) A certified copy of the list is admissible as evidence in a court of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.213(a), eff. Sept. 1, 2001.

Sec. 454.107. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

(1) adopt a form to standardize information concerning complaints made to the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 454.151. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.152. RECORD OF COMPLAINTS. (a) The board shall keep an information file about each complaint filed with the executive council and referred to the board. The board's information file shall be kept current and contain a record for each complaint of:

- (1) each person contacted in relation to the complaint;
- (2) a summary of findings made at each step of the complaint process;
- (3) an explanation of the legal basis and reason for a complaint that is dismissed;
- (4) the schedule required under Section 454.153 and a notation about a change in the schedule; and
- (5) other relevant information.

(b) If a written complaint is received by the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.153. GENERAL RULES INVOLVING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules relating to the investigation of a complaint received by the board. The rules shall:

- (1) distinguish between categories of complaints;
- (2) ensure that complaints are not dismissed without appropriate consideration;
- (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
- (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;
- (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator; and
- (6) require the board to advise the executive council of complaints that have been disposed of.

(b) The board shall:

- (1) dispose of each complaint in a timely manner; and

(2) establish a schedule for conducting each phase of an investigation of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) Each party shall be notified of the projected time requirements for the complaint.

(d) Each party to the complaint must be notified of a change in the schedule not later than the seventh day after the date the change is made.

(e) The coordinator of occupational therapy programs shall notify the board of a complaint that extends beyond the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.154. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER E. LICENSE REQUIREMENTS; REGISTRATION OF FACILITIES**

Sec. 454.201. LICENSE REQUIRED; USE OF TITLE. (a) A person may not practice occupational therapy or practice as an occupational therapy assistant unless the person is an individual licensed under this chapter.

(b) A person who is not licensed under this chapter as an occupational therapist or an occupational therapy assistant or whose license has been suspended or revoked may not:

(1) use in connection with the person's practice or place of business:

(A) the words "occupational therapy," "occupational therapist," "licensed occupational therapist," "occupational therapist registered," "occupational therapy assistant," "licensed

occupational therapy assistant," or "certified occupational therapy assistant";

(B) the letters "O.T.," "O.T.R.," "L.O.T.," "O.T.R./L.," "O.T.A.," "L.O.T.A.," or "C.O.T.A.;" or

(C) any other words, letters, abbreviations, or insignia indicating or implying that the person is an occupational therapist or an occupational therapy assistant;

(2) in any way directly or by implication represent that the person is an occupational therapist or an occupational therapy assistant; or

(3) in any way directly or indirectly represent that occupational therapy is provided, or extend or provide occupational therapy services unless the services are provided by an occupational therapist or an occupational therapy assistant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.202. APPLICATION. (a) An applicant for an occupational therapist license or an occupational therapy assistant license must submit to the board a written application on a form provided by the board, showing to the satisfaction of the board that the applicant meets the requirements of Section 454.203.

(b) The board shall approve applicants for licenses at least once each year at reasonable times and places designated by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.203. QUALIFICATIONS FOR OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT LICENSE. (a) An applicant for an occupational therapist license or an occupational therapy assistant license must present evidence satisfactory to the board that the applicant has:

(1) successfully completed the academic requirements of an educational program in occupational therapy recognized by the board, as provided by Section 454.204;

(2) successfully completed a period of supervised field work experience arranged by the recognized educational institution at which the applicant met the academic requirements; and

(3) passed an examination as provided by Section 454.207.

(b) To satisfy the supervised field work experience required by Subsection (a)(2):

(1) an occupational therapist must have completed a period of at least six months; and

(2) an occupational therapy assistant must have completed a period of at least two months.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.204. EDUCATIONAL REQUIREMENTS. To satisfy Section 454.203(a)(1):

(1) an applicant applying for an occupational therapist license must have, from a program approved by the Accreditation Council for Occupational Therapy Education, its predecessor organization, or another national credentialing agency approved by the board:

(A) a baccalaureate degree in occupational therapy, if the applicant graduated before January 1, 2007;

(B) a certificate evidencing successful completion of required undergraduate occupational therapy course work awarded to persons with a baccalaureate degree that is not in occupational therapy, if the applicant graduated before January 1, 2007; or

(C) a postbaccalaureate degree in occupational therapy; and

(2) an applicant applying for an occupational therapy assistant license must have:

(A) an associate degree in occupational therapy; or

(B) an occupational therapy assistant certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 401 (H.B. 1785), Sec. 1, eff. June 19, 2009.

Sec. 454.205. FOREIGN-TRAINED APPLICANTS. (a) To obtain a license under this chapter, an applicant who is foreign-trained must satisfy the examination requirements of Section 454.203(a)(3).

(b) Before allowing the applicant to take the examination, the

board shall require the applicant to furnish proof of:

- (1) good moral character; and
- (2) completion of the educational and supervised field work requirements substantially equal to those under Section 454.203.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.206. APPLICATION FOR EXAMINATION. (a) A person must satisfy the requirements of Sections 454.202(a) and 454.203(a)(1) and (2) before the person may apply for the examination.

(b) The board shall prescribe the manner in which the person may apply for the examination.

(c) The application must be accompanied by a nonrefundable fee prescribed by the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.207. LICENSE EXAMINATION. (a) The board shall examine each applicant for a license by written examination to test the applicant's knowledge of the basic and clinical sciences relating to occupational therapy, occupational therapy techniques and methods, and other subjects the board may require to determine the applicant's fitness to practice.

(b) The board shall examine applicants for licenses at least twice each year at the board's regular meetings and under the supervision required by the board.

(c) The board shall:

- (1) approve an examination for:
  - (A) occupational therapists; and
  - (B) occupational therapy assistants;
- (2) establish standards for acceptable performance; and
- (3) have the written portion of the examination validated by an independent testing entity.

(d) The board shall give reasonable public notice of the examination in accordance with its rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



Sec. 454.208. EXAMINATION RESULTS. (a) The board shall notify each examinee of the results of the licensing examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of the examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

(c) An applicant may obtain the applicant's examination score and review the applicant's papers in accordance with rules adopted by the board. If requested in writing by a person who fails a licensing examination, the board shall furnish the person with an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.209. REEXAMINATION. (a) An applicant who fails an examination given by the board may take a second examination on payment of the prescribed fees.

(b) An applicant who fails the second examination may take a third examination after a specific period of not longer than one year if the applicant meets the requirements prescribed for previous examinations.

(c) An applicant who fails the third examination may take additional tests at the board's discretion.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.210. PROVISIONAL LICENSE. (a) On application, the board shall issue a provisional license for the practice of occupational therapy to an applicant who:

(1) is licensed in good standing as an occupational therapist or occupational therapy assistant in another state that has licensing requirements that are substantially equivalent to the requirements of this chapter; and

(2) has passed a national examination or other examination

recognized by the board relating to the practice of occupational therapy.

(b) A provisional license is valid until the date the board approves or denies the provisional license holder's application for an occupational therapist or occupational therapy assistant license.

(c) The board shall issue an occupational therapist or occupational therapy assistant license to the provisional license holder if:

(1) the provisional license holder passes a jurisprudence examination, if required;

(2) the board verifies that the provisional license holder has the academic and experience requirements for an occupational therapist or occupational therapy assistant license; and

(3) the provisional license holder satisfies any other requirements for an occupational therapist or occupational therapy assistant license.

(d) The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend that deadline if the results of an examination have not been received by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.214(a), eff. Sept. 1, 2001.

Sec. 454.211. TEMPORARY LICENSE. (a) The board by rule may provide for the issuance of a temporary license.

(b) The holder of a temporary license must practice under the supervision of an occupational therapist.

(c) A rule adopted under this section must include a time limit for a person to hold a temporary license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.212. INACTIVE STATUS. (a) The board by rule may provide for a license holder to place the holder's license under this chapter on inactive status.

(b) A rule adopted under this section must include a time limit

for a license holder's license to remain on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.213. ACCEPTED PRACTICE; PRACTITIONER'S REFERRAL. (a)  
An occupational therapist may enter a case to:

- (1) provide consultation and monitored services; or
- (2) evaluate a person for the need for services.

(b) Implementation of direct occupational therapy to a person for a specific health care condition must be based on a referral from:

- (1) a physician licensed by a state board of medical examiners;
- (2) a dentist licensed by a state board of dental examiners;
- (3) a chiropractor licensed by a state board of chiropractic examiners;
- (4) a podiatrist licensed by a state board of podiatric medical examiners; or
- (5) another qualified, licensed health care professional who is authorized to refer for health care services within the scope of the professional's license.

(c) The professional who takes action under this section is a referring practitioner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.215(a), eff. Sept. 1, 2001.

Sec. 454.214. DISPLAY OF LICENSE AND RENEWAL CERTIFICATE. A license holder under this chapter shall display the license holder's license and renewal certificate in a conspicuous place in the principal office in which the license holder practices occupational therapy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.215. OCCUPATIONAL THERAPY FACILITY REGISTRATION. (a)

The board by rule shall adopt requirements for the registration and renewal of a registration of a facility in which the practice of occupational therapy is conducted. A facility licensed under Subtitle B, Title 4, Health and Safety Code, is exempt from the registration requirements under this section. The board by rule may exempt other facilities as appropriate.

(b) If a person owns more than one occupational therapy facility, the board may require only one application for the registration of all facilities.

(c) The board by rule shall adopt a procedure whereby an occupational therapy facility may apply for exemption from any registration fees under this section.

(d) A facility may not represent that it offers occupational therapy services unless it employs the services of a license holder under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. LICENSE RENEWAL**

Sec. 454.251. LICENSE EXPIRATION. (a) The board by rule may adopt a system under which licenses expire on various dates during the year.

(b) For the term in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.252. RENEWAL OF LICENSE. (a) A person may renew an unexpired license by paying the required renewal fee to the executive council before the expiration date of the license.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the executive council the renewal fee and a late fee set by the executive council that may not exceed one-half of the examination fee for the license. If a person's license has been expired for more than 90 days but less than one

year, the person may renew the license by paying to the executive council all unpaid renewal fees and a late fee set by the executive council that may not exceed the amount charged for examination for the license.

(c) A person whose license has been expired for one year or longer must comply with the board's requirements and procedures to reinstate the license, and pay a reinstatement fee set by the executive council. If the board requirements cannot be met, the person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(d) At least 30 days before the expiration of a person's license, the executive council shall send written notice of the impending license expiration to the license holder at the person's last known address.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 401 (H.B. 1785), Sec. 2, eff. June 19, 2009.

Sec. 454.253. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The board may renew without reexamination the expired license of a person who was licensed to practice as an occupational therapist or occupational therapy assistant in this state, moved to another state, is currently licensed and in good standing in the other state, and meets the board's requirements.

(b) The person must pay to the executive council a renewal fee set by the executive council in an amount that may not exceed the examination fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 401 (H.B. 1785), Sec. 3, eff. June 19, 2009.

Sec. 454.254. MANDATORY CONTINUING EDUCATION. (a) The board by rule shall:

(1) assess the continuing education needs of license

holders;

(2) establish a minimum number of hours of continuing education required to renew a license; and

(3) develop a process to evaluate and approve continuing education courses.

(b) The board may require license holders to attend continuing education courses specified by the board. The board shall adopt a procedure to assess a license holder's participation in continuing education programs.

(c) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties.

(d) In adopting rules under Subsection (a)(3), the board may authorize license holder peer organizations in this state to evaluate and approve continuing education courses in accordance with the board's evaluation and approval process.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 166, Sec. 1, eff. May 18, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 401 (H.B. 1785), Sec. 4, eff. June 19, 2009.

#### **SUBCHAPTER G. DISCIPLINARY ACTION AND PROCEDURE**

Sec. 454.301. GROUNDS FOR DENIAL OF LICENSE OR DISCIPLINE OF LICENSE HOLDER. (a) The board may deny, suspend, or revoke a license or take other disciplinary action against a license holder if the applicant or license holder has:

(1) used drugs or intoxicating liquors to an extent that affects the applicant's or license holder's professional competence;

(2) been convicted of a crime, other than a minor offense defined as a "minor misdemeanor," "violation," or "offense," in any court if the act for which the applicant or license holder was convicted is determined by the board to have a direct bearing on whether the applicant or license holder should be entrusted to serve the public in the capacity of an occupational therapist or occupational therapy assistant;

(3) obtained or attempted to obtain a license by fraud or deception;

- (4) been grossly negligent in the practice of occupational therapy or in acting as an occupational therapy assistant;
- (5) been found mentally incompetent by a court;
- (6) practiced occupational therapy in a manner detrimental to the public health and welfare;
- (7) advertised in a manner that in any way tends to deceive or defraud the public;
- (8) had a license to practice occupational therapy revoked or suspended or had other disciplinary action taken against the applicant or license holder by the proper licensing authority of another state, territory, or nation; or
- (9) had the applicant's or license holder's application for a license refused, revoked, or suspended by the proper licensing authority of another state, territory, or nation.

(b) If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board;

or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.302. PROCEDURES FOR DISCIPLINARY ACTION; SCHEDULE OF SANCTIONS. (a) Proceedings for disciplinary action against a license holder and appeals from those proceedings are governed by Chapter 2001, Government Code.

(b) After a hearing by the State Office of Administrative Hearings, the board may deny or refuse to renew a license, suspend or revoke a license, reprimand a license holder, or impose probationary conditions.

(c) The State Office of Administrative Hearings shall use the schedule of sanctions adopted by the board by rule for a sanction imposed as the result of a hearing conducted by the office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.303. ISSUANCE OF LICENSE AFTER DENIAL; REISSUANCE OF LICENSE. On application by the person, the board may issue a license to a person whose license has been denied or reissue a license to a person who has been disciplined by the board. The application:

- (1) may not be made before the 180th day after the date the denial or discipline order became final; and
- (2) must be made in the manner and form the board requires.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.304. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

- (1) informal disposition of a contested case under Section 2001.056, Government Code; and
- (2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) A rule adopted under this section must:

- (1) provide the complainant and the license holder an opportunity to be heard; and
- (2) require the presence of the board's legal counsel or a representative of the attorney general to advise the board or the board's employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.305. EMERGENCY SUSPENSION. (a) The board may temporarily suspend a license issued under this chapter on an emergency basis if the board determines that the continued practice by the license holder constitutes a continuing or imminent threat to the public health or welfare.

(b) A temporary suspension under this section requires a two-thirds vote by the board.

(c) A license temporarily suspended under this section may be suspended without notice or hearing if, at the time the suspension is ordered, a hearing on whether to institute a disciplinary proceeding against the license holder is scheduled to be held not later than the 14th day after the date of the temporary suspension. A second hearing on the suspended license must be held not later than the 60th day after the date the temporary suspension was ordered. If the



second hearing is not held within the required time, the suspended license is automatically reinstated.

(d) The board shall adopt rules that establish procedures and standards for the temporary suspension of a license under this section.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.216(a), eff. Sept. 1, 2001.

Sec. 454.306. SUBPOENA. (a) The board may request or compel by subpoena:

(1) the attendance of a witness for examination under oath; and

(2) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) If a person fails to comply with a subpoena issued under this section, the board, acting through the attorney general, may bring an action to enforce the subpoena in a district court in Travis County or in a county in which a hearing conducted by the board may be held. If the court determines that good cause exists for the subpoena, the court shall order compliance. The court may punish for contempt a person who does not obey the order.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.217(a), eff. Sept. 1, 2001.

#### **SUBCHAPTER H. PENALTIES AND ENFORCEMENT PROCEDURES**

Sec. 454.351. INJUNCTIVE RELIEF. The attorney general, a district attorney, a county attorney, or any other person may institute a proceeding to enforce this chapter, including a suit to enjoin a person from practicing occupational therapy without complying with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.352. MONITORING OF LICENSE HOLDER. The board by rule shall develop a system for monitoring a license holder's compliance

with this chapter. The rules must include procedures for:

- (1) monitoring for compliance a license holder who is ordered by the board to perform a certain act; and
- (2) identifying and monitoring each license holder who represents a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.3521. ADMINISTRATIVE PENALTY. (a) The board may impose an administrative penalty against a person licensed or facility registered under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty may not exceed \$200, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount of the penalty shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts to correct the violation; and
- (5) any other matter that justice requires.

(c) The person may stay enforcement during the time the order is under judicial review if the person pays the penalty to the court clerk or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay enforcement by filing an affidavit like that required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, except that the board may contest the affidavit as provided by those rules.

(d) A proceeding to impose an administrative penalty is subject to Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.218(a), eff. Sept. 1, 2001.

Sec. 454.353. CIVIL PENALTY. (a) A person found by a court to have violated this chapter is liable to this state for a civil

penalty of \$200 for each day the violation continues.

(b) A civil penalty may be recovered in a suit brought by the attorney general, a district attorney, a county attorney, or any other person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.354. RECOVERY OF COSTS AND FEES. A person other than the attorney general, a district attorney, or a county attorney who brings an action to enforce this chapter or for injunctive relief may recover the person's court costs and attorney's fees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.355. CRIMINAL OFFENSE. (a) A person commits an offense if the person knowingly violates this chapter.

(b) An offense under this section is a Class A misdemeanor.

(c) Each day of violation constitutes a separate offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**CHAPTER 455. MASSAGE THERAPY**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 455.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Instructor" means a person who instructs a student in any section of the course of instruction required for a massage therapist license.

(4) "Internship program" means a program supervised by a massage therapy instructor in which a student provides massage therapy to the public.

(5) "Massage establishment" means a place of business that advertises or offers massage therapy or other massage services. The term includes a place of business that advertises or offers any service described by a derivation of the terms "massage therapy" or

"other massage services."

(6) "Massage school" means an entity that:

- (A) teaches at a minimum the course of instruction required for a massage therapist license; and
- (B) has at least two instructors.

(7) "Massage therapist" means a person who practices or administers massage therapy or other massage services to a client for compensation. The term includes a licensed massage therapist, therapeutic massage practitioner, massage technician, masseur, masseuse, myotherapist, body massager, body rubber, or any derivation of those titles.

(8) "Massage therapy" means the manipulation of soft tissue by hand or through a mechanical or electrical apparatus for the purpose of body massage and includes effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics. The terms "massage," "therapeutic massage," "massage technology," "myotherapy," "body massage," "body rub," or any derivation of those terms are synonyms for "massage therapy."

(9) "Massage therapy instructor" means a licensed massage therapist who provides to one or more students instruction approved by the department in massage therapy.

(10) "Sexually oriented business" has the meaning assigned by Section 243.002, Local Government Code, unless another meaning applies under local law.

(11) "Other massage services" include any services offered or performed for compensation at a massage establishment that involve physical contact with a client, and may include the use of oil, lubricant, salt glow, a heat lamp, a hot and cold pack, or a tub, shower, jacuzzi, sauna, steam, or cabinet bath.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. [2696](#)), Sec. 1, eff. September 1, 2005.

Sec. 455.002. MASSAGE THERAPY AS HEALTH CARE SERVICE. (a) Massage therapy constitutes a health care service if the massage therapy is for therapeutic purposes. Massage therapy does not

constitute the practice of chiropractic.

(b) In this chapter, therapy or therapeutic procedures do not include:

- (1) the diagnosis or treatment of illness or disease; or
- (2) a service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 455.003. PRACTICES INCLUDED IN MASSAGE THERAPY. Massage therapy includes the use of oil, salt glows, heat lamps, hot and cold packs, and tub, shower, or cabinet baths.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 455.004. APPLICABILITY OF CHAPTER. This chapter does not apply to:

- (1) a person licensed in this state as a physician, chiropractor, occupational therapist, physical therapist, nurse, cosmetologist, or athletic trainer or as a member of a similar profession subject to state licensing while the person is practicing within the scope of the license;
- (2) a school approved by the Texas Education Agency or otherwise approved by the state; or
- (3) an instructor otherwise approved by the state to teach in an area of study included in the required course of instruction for issuance of a massage therapist license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. [2696](#)), Sec. 2, eff. September 1, 2005.

Sec. 455.005. EFFECT ON LOCAL LAW. (a) Except as provided by Subsection (b), this chapter supersedes any regulation adopted by a political subdivision of this state relating to the licensing or regulation of massage therapists.

(b) This chapter does not affect a local regulation that:

(1) relates to zoning requirements or other similar regulations for massage establishments;

(2) authorizes or requires an investigation into the background of an owner or operator of, or an investor in, a massage establishment; or

(3) does not relate directly to the practice of massage therapy as performed by a licensed massage therapist, including a regulation related to a license holder listed in Section 455.004, while the therapist:

(A) performs under the applicable licensing law; and

(B) works with a licensed massage therapist.

(c) Except as provided by Chapter 243, Local Government Code, a political subdivision may not adopt a regulation of the type described by Subsection (b) that is more restrictive for massage therapists or massage establishments than for other health care professionals or establishments.

(d) This chapter may not be construed to limit a municipality's authority to regulate establishments that offer bathing or showering services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 3, eff. September 1, 2005.

#### **SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER**

Sec. 455.051. GENERAL RULEMAKING AUTHORITY. The executive commissioner shall adopt rules consistent with this chapter as necessary for the performance of duties under this chapter.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 4, eff. September 1, 2005.

Sec. 455.052. RULES REGARDING MASSAGE ESTABLISHMENTS. Rules adopted under this chapter relating to a massage establishment must contain minimum standards for:

- (1) the issuance, denial, renewal, suspension, revocation, or probation of a license under this chapter;
- (2) the qualifications of professional personnel;
- (3) the supervision of professional personnel;
- (4) the equipment essential to the health and safety of massage establishment personnel and the public;
- (5) the sanitary and hygienic conditions of a massage establishment;
- (6) the provision of massage therapy or other massage services by a massage establishment;
- (7) the records kept by a massage establishment;
- (8) the organizational structure of a massage establishment, including the lines of authority and the delegation of responsibility;
- (9) fire prevention and safety in a massage establishment;
- (10) the inspection of a massage establishment; and
- (11) any other aspect of the operation of a massage establishment necessary to protect massage establishment personnel or the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. [2696](#)), Sec. 4, eff. September 1, 2005.

Sec. 455.053. RULES REGARDING MASSAGE SCHOOLS. Rules adopted under this chapter relating to a massage school must contain minimum standards for:

- (1) the issuance, denial, renewal, suspension, revocation, or probation of a license under this chapter;
- (2) the qualifications of professional personnel;
- (3) the supervision of professional personnel;
- (4) the equipment essential to the education, health, and safety of students, massage school personnel, and the public;
- (5) the sanitary and hygienic conditions of a massage school;
- (6) the provision of massage therapy or other massage services by a massage school or student;
- (7) the maximum number of hours a student may accumulate in

a massage school's internship program before the student is required to be licensed under this chapter;

(8) the educational and clinical records kept by a massage school;

(9) the organizational structure of a massage school, including the lines of authority and the delegation of responsibility;

(10) fire prevention and safety in a massage school;

(11) the massage school's curriculum and educational material;

(12) massage school inspections; and

(13) any other aspect of the operation of a massage school that the executive commissioner considers necessary to protect students, massage school personnel, or the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. [2696](#)), Sec. 4, eff. September 1, 2005.

Sec. 455.054. RULES REGARDING MASSAGE THERAPISTS. Rules adopted under this chapter relating to a massage therapist must contain minimum standards for:

(1) the issuance, denial, renewal, suspension, revocation, or probation of a license under this chapter;

(2) the qualifications of a massage therapist;

(3) the sanitary and hygienic conditions of the physical environment in which a massage therapist practices massage therapy;

(4) the records kept by a massage therapist;

(5) the inspection of the records, equipment, and sanitary and hygienic conditions of the physical environment used by a massage therapist in practicing massage therapy; and

(6) any other aspect of the practice of a massage therapist necessary to protect the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. [2696](#)), Sec. 4, eff. September 1, 2005.



## Sec. 455.055. RULES REGARDING MASSAGE THERAPY INSTRUCTORS.

Rules adopted under this chapter relating to a massage therapy instructor must contain minimum standards for:

- (1) the issuance, denial, renewal, suspension, revocation, or probation of a license under this chapter;
- (2) the qualifications of a massage therapy instructor;
- (3) the supervision of a student by a massage therapy instructor;
- (4) the maximum number of hours a student may accumulate in an internship program under the supervision of a massage therapy instructor before the student is required to be licensed under this chapter;
- (5) the equipment essential to the education, health, and safety of students and the public;
- (6) the sanitary and hygienic conditions of the physical environment in which a massage therapy instructor teaches;
- (7) the provision of massage therapy or other massage services by a student or a massage therapy instructor;
- (8) the educational and clinical records kept by a massage therapy instructor;
- (9) the curriculum taught and educational material used by a massage therapy instructor;
- (10) the inspection of the records, equipment, and physical environment of a massage therapy instructor; and
- (11) any other aspect of a massage therapy instructor's instruction or operation of any portion of the course of instruction required for a massage therapist license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. [2696](#)), Sec. 4, eff. September 1, 2005.

Sec. 455.056. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. (a) The executive commissioner may not adopt rules restricting advertising or competitive bidding by a person licensed under this chapter except to prohibit false, misleading, or deceptive practices.

(b) In rules to prohibit false, misleading, or deceptive

practices, the executive commissioner may not include a rule that:

- (1) restricts the use of any medium for advertising;
- (2) restricts the use of a licensed person's personal appearance or voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the licensed person; or
- (4) restricts the licensed person's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.219(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 4, eff. September 1, 2005.

Sec. 455.057. CONTINUING EDUCATION. The executive commissioner shall recognize, prepare, or administer continuing education programs for persons licensed under this chapter. A licensed person must participate in the programs to the extent required by the executive commissioner to keep the person's license.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.219(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 4, eff. September 1, 2005.

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

Sec. 455.101. GENERAL DUTIES OF DEPARTMENT. The department shall:

- (1) administer this chapter;
- (2) investigate a person who may be engaging in a practice that violates this chapter;
- (3) regulate the number and content of school hours provided by a massage school or a massage therapy instructor; and
- (4) prepare and administer a state examination under this chapter.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 455.103. MEMORANDUM OF UNDERSTANDING REGARDING MASSAGE SCHOOLS. (a) The department may enter into a memorandum of understanding with the Texas Education Agency to regulate massage schools.

(b) A memorandum must:

- (1) be adopted by rule; and
- (2) limit the total amount of the fees charged by the department and the Texas Education Agency for licensing a massage school to an amount equal to the amount of the fees the department would charge for licensing the massage school in the absence of the memorandum.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 5, eff. September 1, 2005.

Sec. 455.104. INSPECTIONS; INVESTIGATIONS. (a) The department, its authorized representative, or a peace officer may enter the premises of an applicant for a license or a license holder at:

- (1) reasonable times to conduct an inspection incidental to the issuance of a license; and
- (2) other times that the department or peace officer considers necessary to ensure compliance with this chapter and the rules adopted under this chapter.

(b) A peace officer appointed or employed by a law enforcement agency of a political subdivision of this state may enter the premises of a massage establishment to ensure compliance with this chapter and rules adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 6, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1399 (H.B. 2644), Sec. 1, eff. September 1, 2007.

Sec. 455.105. REGISTRY. (a) The department shall annually prepare a registry of licensed massage therapists.

(b) The department shall make the registry available to the public, license holders, other state agencies, and peace officers.

Added by Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 7, eff. September 1, 2005.

#### SUBCHAPTER D. LICENSING

Sec. 455.151. LICENSE REQUIRED. (a) Unless the person is exempt from the licensing requirement, a person may not act as a massage therapist, massage school, massage therapy instructor, or massage establishment unless the person holds an appropriate license issued under this chapter.

(b) Unless the person is exempt from the licensing requirement, a person may not represent that the person is a massage therapist, massage school, massage therapy instructor, or massage establishment unless the person holds an appropriate license under this chapter.

(c) A person may not for compensation perform or offer to perform any service with a purported health benefit that involves physical contact with a client unless the person:

(1) holds an appropriate license issued under this chapter;

or

(2) is licensed or authorized under other law to perform the service.

(d) The department may issue one or more types of licenses not otherwise provided for by this chapter that authorize the license holder to perform a service described by Subsection (c). The department may adopt rules governing a license issued under this subsection.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 9, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1399 (H.B. 2644), Sec. 2, eff. September 1, 2007.

Sec. 455.152. INELIGIBILITY FOR LICENSE. (a) A person is not

eligible for a license as a massage establishment, massage school, massage therapist, or massage therapy instructor if the person is an individual and has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication for an offense involving prostitution or another sexual offense.

(b) A person convicted of a violation of this chapter is ineligible for a license as a massage establishment, massage school, massage therapist, or massage therapy instructor until the fifth anniversary of the date of the conviction.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 9, eff. September 1, 2005.

Sec. 455.1525. CRIMINAL BACKGROUND CHECKS. (a) On receipt of an application for a license under this chapter, the department shall conduct a criminal background check on the applicant.

(b) An applicant is not eligible for a license under this chapter if the applicant, in the five years preceding the date of the application, has been finally convicted of a misdemeanor involving moral turpitude or a felony.

Added by Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 10, eff. September 1, 2005.

Sec. 455.153. APPLICATION FOR LICENSE. An applicant for a license under this chapter must:

(1) submit an application form provided by the department;  
and

(2) include with the application the application fee set by the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 11, eff. September 1, 2005.

Sec. 455.154. GENERAL PROVISIONS RELATING TO LICENSES. (a) The holder of a license may exercise all professional rights, honors, and privileges relating to the practice of massage therapy.

(b) A license is the property of the department and must be surrendered on demand.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 11, eff. September 1, 2005.

Sec. 455.155. LICENSE EXEMPTION. (a) Section 455.151 does not apply to an establishment or person that:

(1) holds a license, permit, certificate, or other credential issued by this state under another law; and

(2) offers or performs massage therapy under the scope of that credential.

(b) A licensed massage therapist who practices as a solo practitioner is not required to hold a license as a massage establishment.

(c) A place of business is not required to hold a license under this chapter if:

(1) the place of business is owned by the federal government, the state, or a political subdivision of the state;

(2) at the place of business, a licensed massage therapist practices as a solo practitioner and:

(A) does not use a business name or assumed name; or

(B) uses a business name or an assumed name and provides the massage therapist's full legal name or license number in each advertisement and each time the business name or assumed name appears in writing;

(3) at the place of business, an acupuncturist, athletic trainer, chiropractor, cosmetologist, midwife, nurse, occupational therapist, perfusionist, physical therapist, physician, physician assistant, podiatrist, respiratory care practitioner, or surgical assistant licensed or certified in this state employs or contracts with a licensed massage therapist to provide massage therapy as part of the person's practice; or

(4) at the place of business, a person offers to perform or

performs massage therapy:

(A) for not more than 72 hours in any six-month period;

and

(B) as part of a public or charity event, the primary purpose of which is not to provide massage therapy.

(d) A sexually oriented business may not:

(1) hold a license under this chapter; or

(2) operate as a massage establishment under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 11, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1399 (H.B. 2644), Sec. 3, eff. September 1, 2007.

Sec. 455.156. LICENSE REQUIREMENTS FOR MASSAGE THERAPIST. (a) The department shall issue a license to each qualified applicant who applies for a massage therapist license.

(b) An applicant for a license under this section must be an individual and:

(1) present evidence satisfactory to the department that the person has satisfactorily completed massage therapy studies in a 500-hour minimum, supervised course of instruction provided by a massage therapy instructor at a massage school, a licensed massage school, a state-approved educational institution, or any combination of instructors or schools, in which at least:

(A) 200 hours are taught by a licensed massage therapy instructor and dedicated to the study of massage therapy techniques and theory and the practice of manipulation of soft tissue, with at least 125 hours dedicated to the study of Swedish massage therapy techniques;

(B) 50 hours are dedicated to the study of anatomy;

(C) 25 hours are dedicated to the study of physiology;

(D) 50 hours are dedicated to the study of kinesiology;

(E) 40 hours are dedicated to the study of pathology;

(F) 20 hours are dedicated to the study of

hydrotherapy;

(G) 45 hours are dedicated to the study of massage

therapy laws and rules, business practices, and professional ethics standards;

(H) 20 hours are dedicated to the study of health, hygiene, first aid, universal precautions, and cardiopulmonary resuscitation (CPR); and

- (I) 50 hours are spent in an internship program;
- (2) pass the written state examination; and
  - (3) be at least 18 years of age.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.220(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 11, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1399 (H.B. 2644), Sec. 4, eff. September 1, 2007.

Sec. 455.1565. NOTIFICATION OF EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes a licensing examination under this chapter, the department shall notify the person of the results of the examination.

(b) If the examination is graded or reviewed by a testing service:

(1) the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails a licensing examination administered under this chapter, the department shall furnish the person with an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.219(b), eff. Sept. 1, 2001.



Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 12, eff. September 1, 2005.

Sec. 455.1571. APPLICANT LICENSED IN ANOTHER JURISDICTION. (a) The department may waive any prerequisite to obtaining a license for an applicant for licensing as a massage therapist or massage therapy instructor after reviewing the applicant's credentials and determining that the applicant holds a license or certificate of registration issued by another jurisdiction that has licensing or registration requirements substantially equivalent to those of this state.

(b) The department may waive any prerequisite to obtaining a license for an applicant for licensing as a massage therapist or massage therapy instructor who holds a license or certificate of registration issued by another jurisdiction with which this state has a reciprocity agreement. The department may make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.221(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 13, eff. September 1, 2005.

Sec. 455.1572. PROVISIONAL LICENSE. (a) The department may issue a provisional license to an applicant for licensing as a massage therapist or massage therapy instructor currently licensed or registered in another jurisdiction who seeks a license in this state and who:

(1) has been licensed or registered in good standing as a massage therapist or massage therapy instructor, as applicable, for at least two years in another jurisdiction, including a foreign country, that has licensing or registration requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the department relating to the practice of massage therapy; and

(3) is sponsored by a person licensed by the department under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The department may waive the requirement of Subsection (a)(3) for an applicant if the department determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the department approves or denies the provisional license holder's application for licensing. The department shall issue a license under this chapter to the provisionally licensed person if the person:

(1) is eligible for a license under Section 455.1571; or

(2) passes the part of the examination under Section 455.101 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of massage therapy in this state and:

(A) the department verifies that the person meets the academic and experience requirements for licensing under this chapter; and

(B) the person satisfies any other licensing requirements under this chapter.

(d) The department must approve or deny a provisionally licensed person's application for a license not later than the 180th day after the date the provisional license is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

(e) The department may establish a fee for a provisional license in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.221(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 13, eff. September 1, 2005.

Sec. 455.158. STUDENT EXEMPTION FROM LICENSING REQUIREMENTS. A student who provides massage therapy as part of an internship program or without compensation is exempt from licensing under this chapter

if the student is enrolled in a state-approved course of instruction that consists of at least 300 hours.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 13, eff. September 1, 2005.

Sec. 455.159. STUDENT INTERNSHIP PROGRAM. (a) An internship program must:

- (1) meet the qualifications established by the department;
- (2) provide a student with a minimum of 40 hours of hands-on massage therapy experience; and
- (3) be conducted on the school grounds or in a clinic or classroom setting provided by the massage school or massage therapy instructor.

(b) A student must complete the first 250 hours of required training at a massage school or with a massage therapy instructor before the student is eligible to enter an internship program.

(c) A student who is participating in an internship program must be under the supervision and direction of a massage therapy instructor during the hours that the student is working in the program.

(d) A student who is participating in an internship program may:

- (1) make an appointment with a client;
- (2) interview a client;
- (3) provide massage therapy, including providing massage therapy for compensation in an amount set by the massage school or massage therapy instructor and paid to the school or instructor;
- (4) collect and review a client evaluation with the student's supervisor; and
- (5) perform other tasks necessary to the business of providing massage therapy to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 14, eff. September 1, 2005.

Sec. 455.160. LICENSE RENEWAL. (a) A person licensed under this chapter must periodically renew the person's license. The license expires unless the license holder submits an application for renewal accompanied by the renewal fee prescribed by the department or by the late fee prescribed by this section.

(b) The department shall adopt a system under which licenses expire on various dates during the year. Fees must be prorated so that a licensed person pays only for that part of the renewal period for which the license is issued until the expiration date of the license.

(c) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(e) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(f) A person whose license has been expired for one year or more may not renew the license. The person may obtain a license by complying with the requirements and procedures, including the examination requirements, for obtaining a new license.

(g) Not later than the 30th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

(h) On receipt of a request for a renewal of a license issued under this chapter, the department may conduct a criminal background check under Section 455.1525.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.222(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 15, eff. September 1, 2005.

Sec. 455.161. RENEWAL OF EXPIRED LICENSE OF OUT-OF-STATE PRACTITIONER. (a) A person who was registered or licensed in this state, moved to another state, and is currently registered or licensed and has been in practice in the other state for the two years preceding the date of application may obtain a license without reexamination.

(b) The person must pay to the department a fee that is equal to two times the normally required license renewal fee.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.222(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 15, eff. September 1, 2005.

#### **SUBCHAPTER E. PRACTICE BY LICENSE HOLDERS**

Sec. 455.201. REFERRAL FROM PHYSICIAN. A person issued a license may receive referrals from a physician to administer massage therapy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 17, eff. September 1, 2005.

Sec. 455.202. PRACTICE BY MASSAGE ESTABLISHMENT. (a) A massage establishment may employ only licensed massage therapists to perform massage therapy or other massage services.

(b) A massage establishment may not:

(1) employ an individual who is not a United States citizen or a legal permanent resident with a valid work permit;

(2) employ a minor unless the minor's parent or legal guardian authorizes in writing the minor's employment by the establishment;

(3) allow a nude or partially nude employee to provide massage therapy or other massage services to a customer;

(4) allow any individual, including a client, student,

license holder, or employee, to engage in sexual contact in the massage establishment; or

(5) allow any individual, including a student, license holder, or employee, to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of any individual.

(c) A massage establishment shall:

(1) properly maintain and secure for each client the initial consultation documents, all session notes, and related billing records; and

(2) make available to the department on request the information kept as provided by Subdivision (1).

(d) For purposes of this section:

(1) "Nude" means a person who is:

(A) entirely unclothed; or

(B) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts or any portion of the genitals or buttocks.

(2) "Sexual contact" includes:

(A) any touching of any part of the genitalia or anus;

(B) any touching of the breasts of a female without the written consent of the female;

(C) any offer or agreement to engage in any activity described in Paragraph (A) or (B);

(D) kissing without the consent of both persons;

(E) deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, and promotions of prostitution as described in Chapters 21, 22, and 43, Penal Code, or any offer or agreement to engage in such activities;

(F) any behavior, gesture, or expression that may reasonably be interpreted as inappropriately seductive or sexual; or

(G) inappropriate sexual comments about or to a client, including sexual comments about a person's body.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. [2696](#)), Sec. 17, eff. September 1, 2005.

Sec. 455.203. PRACTICE BY MASSAGE SCHOOL OR INSTRUCTOR AT SCHOOL. (a) A massage school must meet the minimum standards of operation established by executive commissioner rule.

(b) An instructor must meet the minimum requirements established by executive commissioner rule.

(c) A massage school or massage therapy instructor licensed under this chapter shall give each prospective student a notice that clearly states the number of course hours that the student must successfully complete before the student is eligible to hold a massage therapist license under this chapter.

(d) The notice under Subsection (c) must be given to the prospective student at a time and in a manner that provides the student with a sufficient opportunity to read the notice and, if necessary for understanding and clarity, discuss the notice with massage school officials or with the massage therapy instructor before:

(1) the student signs an enrollment contract; and

(2) the massage school or the massage therapy instructor accepts the student in a course of study.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 18, eff. September 1, 2005.

Sec. 455.204. DISPLAY OF LICENSE. (a) A person who holds a license shall publicly display the license as specified by the department.

(b) Each massage establishment must post in plain sight the license for each massage therapist who practices in the massage establishment.

(c) Each massage school, massage establishment, massage therapy instructor, or massage therapist shall present the person's license on the request of the department, an authorized representative of the department, or a peace officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 19, eff. September 1, 2005.

Sec. 455.205. PROHIBITED PRACTICES. (a) A massage therapist may not perform massage therapy for compensation or without compensation at or for a sexually oriented business.

(b) A massage school or a massage therapy instructor may not require the successful completion of more course hours than the number of hours required for licensing as a massage therapist under this chapter.

(c) A person who is not licensed under this chapter may not use the word "massage" on any form of advertising unless the person is expressly exempt from the licensing requirements of this chapter.

(d) A sexually oriented business may not use the word "massage" or "bath" on a sign or any form of advertising.

(e) A person advertising massage therapy or other massage services is presumed to be engaging in conduct regulated by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 20, eff. September 1, 2005.

Sec. 455.206. ESTABLISHMENT CHANGE OF LOCATION PROHIBITED. A massage establishment may not change the location of the establishment without obtaining a new massage establishment license under this chapter.

Added by Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 21, eff. September 1, 2005.

#### **SUBCHAPTER F. LICENSE DENIAL OR DISCIPLINARY PROCEDURES**

Sec. 455.251. GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY ACTION. (a) The department may refuse to issue a license to a person and shall suspend, revoke, or refuse to renew the license of a person or shall reprimand a person licensed under this chapter if the person:

(1) obtains a license by fraud, misrepresentation, or concealment of material facts;



- (2) sells, barter, or offers to sell or barter a license;
- (3) violates a rule adopted by the executive commissioner;
- (4) engages in unprofessional conduct as defined by executive commissioner rule that endangers or is likely to endanger the health, welfare, or safety of the public;
- (5) violates an order or ordinance adopted by a political subdivision under Chapter 243, Local Government Code; or
- (6) violates this chapter.

(b) The department shall revoke the license of a person licensed as a massage therapist or massage therapy instructor if:

- (1) the person is convicted of, enters a plea of nolo contendere or guilty to, or receives deferred adjudication for an offense involving prostitution or another sexual offense; or
- (2) the department determines the person has practiced or administered massage therapy at or for a sexually oriented business.

(c) The department shall revoke the license of a person licensed as a massage school or massage establishment if the department determines that:

- (1) the school or establishment is a sexually oriented business; or
- (2) an offense involving prostitution or another sexual offense that resulted in a conviction for the offense, a plea of nolo contendere or guilty to the offense, or a grant of deferred adjudication for the offense occurred on the premises of the school or establishment.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.222(c), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. [2696](#)), Sec. 23, eff. September 1, 2005.

Sec. 455.252. HEARING ON DENIAL OR DISCIPLINARY ACTION. (a) A person whose application for a license is denied, whose license is suspended or revoked, or who has been reprimanded is entitled to a hearing before the department if the person submits a written request to the department.

(b) A hearing under this subchapter is a contested case under

Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.222(d), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 24, eff. September 1, 2005.

Sec. 455.253. PROBATION. The department may place on probation a person, including a massage school, massage therapy instructor, or massage establishment, whose license is suspended. If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.222(e), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 25, eff. September 1, 2005.

Sec. 455.254. EMERGENCY SUSPENSION. (a) The department shall temporarily suspend the license of a license holder if the department determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 9, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 26, eff. September 1, 2005.

#### **SUBCHAPTER G. ADMINISTRATIVE PENALTY**

Sec. 455.301. IMPOSITION OF ADMINISTRATIVE PENALTY. The department may impose an administrative penalty on a person who violates this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 455.302. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$1,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts made to correct the violation; and
- (5) any other matter that justice may require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 455.303. NOTICE OF VIOLATION AND PENALTY. If, after investigation of a possible violation and the facts surrounding the possible violation, the department determines that a violation occurred, the department shall give written notice of the violation to the person on whom the administrative penalty may be imposed. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 455.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice under Section 455.303, the person may:

- (1) accept the department's determination and recommended administrative penalty; or
- (2) make a written request for a hearing on that determination.

(b) If the person accepts the department's determination, the executive commissioner or the commissioner's designee by order shall approve the determination and require the person to pay the recommended penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 27, eff. September 1, 2005.

Sec. 455.305. HEARING ON DEPARTMENT DETERMINATION. (a) If the person makes a timely request for a hearing, the department shall:

- (1) set a hearing;
- (2) give written notice of the hearing to the person; and
- (3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall:

- (1) make findings of fact and conclusions of law; and
- (2) promptly issue to the executive commissioner or the commissioner's designee a proposal for decision as to the occurrence of the violation, and, if the examiner determines a penalty is warranted, the amount of the proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 28, eff.

September 1, 2005.

Sec. 455.306. DECISION BY EXECUTIVE COMMISSIONER. (a) Based on the findings of fact, conclusions of law, and recommendations of the hearings examiner, the executive commissioner or the commissioner's designee by order may determine that:

(1) a violation occurred and may impose an administrative penalty; or

(2) a violation did not occur.

(b) The department shall give notice of the order to the person. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty imposed; and

(3) a statement of the right of the person to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 29, eff. September 1, 2005.

Sec. 455.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the order issued under Section 455.306 becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is

approved by the court and that is:

- (i) for the amount of the penalty; and
- (ii) effective until judicial review of the order

is final; or

(2) request the court to stay the enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and stay the enforcement of the penalty on finding that the alleged facts are true. The person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 455.308. DETERMINATION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 455.309. REMITTANCE OF PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order the appropriate amount, plus accrued interest, be remitted to the person by the department if the person paid the penalty under Section 455.307(a)(2); or

(2) if the person paid the penalty under Section 455.307(b)(1)(A) or posted a supersedeas bond, order the department to:

(A) execute a complete release of the escrow account or bond, as appropriate, if the penalty is not imposed; or

(B) release the escrow account or bond, as appropriate, after the reduced penalty has been paid from the account or by the person.

(b) The interest paid under Subsection (a)(1) is accrued at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 455.310. COLLECTION OF PENALTY. (a) In this section, "reasonable expenses and costs" includes expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

(b) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of the executive commissioner or the commissioner's designee requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of expenses and costs.

(c) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(d) If the attorney general brings an action against a person to enforce an administrative penalty assessed under this chapter and the person is found liable for an administrative penalty, the attorney general may recover, on behalf of the attorney general and

the department, reasonable expenses and costs.

(e) Expenses and costs collected under this section shall be deposited in the state treasury to the credit of a special account the amounts in which may be appropriated only to the department. Section 403.095, Government Code, does not apply to the account.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 30, eff. September 1, 2005.

Sec. 455.311. ADMINISTRATIVE PROCEDURE. A proceeding to assess an administrative penalty under this chapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER H. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 455.351. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The attorney general, a district or county attorney, a municipal attorney, or the department may institute an action for injunctive relief to restrain a violation by a person who:

(1) appears to be in violation of or threatening to violate this chapter or a rule adopted under this chapter; or

(2) is the owner or operator of an establishment that offers massage therapy or other massage services regulated by this chapter and is not licensed under this chapter.

(b) The attorney general, a district or county attorney, a municipal attorney, or the department may institute an action to collect a civil penalty from a person who appears to be in violation of this chapter or a rule adopted under this chapter. The amount of a civil penalty shall be not less than \$1,000 or more than \$10,000 for each violation.

(c) Each day a violation occurs or continues to occur is a separate violation.

(d) An action filed under this section by the attorney general or the department must be filed in a district court in Travis County or the county in which the violation occurred.

(e) The attorney general, district and county attorney,



municipal attorney, and the department may recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

(f) A civil penalty recovered in an action by the attorney general or the department under this section shall be deposited in the state treasury.

(g) In an injunction issued under this section, a court may include reasonable requirements to prevent further violations of this chapter.

(h) Notwithstanding Section 22.004, Government Code:

(1) a person may not continue the enjoined activity pending appeal or trial on the merits of an injunctive order entered in a suit brought under this subchapter;

(2) not later than the 90th day after the date of the injunctive order, the appropriate court of appeals shall hear and decide an appeal taken by a party enjoined under this subchapter; and

(3) if an appeal is not taken by a party temporarily enjoined under this article, the parties are entitled to a full trial on the merits not later than the 90th day after the date of the temporary injunctive order.

(i) In this section:

(1) "Operator" means a person who is supervising a massage establishment or massage school at the time a violation occurs or the establishment or school is inspected. If no person is supervising, then any employee, contractor, or agent of the owner who is present at the establishment or school is the operator.

(2) "Owner" includes a person:

(A) in whose name a certificate of occupancy has been issued for a massage establishment or massage school and any person having control over that person; or

(B) who operates a massage establishment or massage school under a lease, operating agreement, or other arrangement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 31, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1399 (H.B. 2644), Sec. 5, eff. September 1, 2007.

Sec. 455.352. CRIMINAL PENALTY. (a) A person commits an offense if the person is required to be licensed under this chapter and the person:

(1) knowingly violates Section 455.151, 455.159, 455.202(b), 455.203(a) or (c), 455.204(b) or (c), or 455.205(b), (c), or (d); or

(2) collects a fee or any other form of compensation for massage therapy without being licensed under this chapter.

(a-1) A person commits an offense if the person is required to be licensed under this chapter and the person knowingly violates Section 455.205(a). An offense under this subsection is a Class B misdemeanor, unless the actor has previously been convicted one or two times of an offense under this subsection, in which event it is a Class A misdemeanor. If the actor has previously been convicted three or more times of an offense under this subsection, the offense is a state jail felony.

(b) An owner or operator of a massage establishment commits an offense if the person knowingly violates Section 455.151(a), 455.155(d), 455.202(a), 455.204(b) or (c), or 455.205(d). An offense under this subsection is a Class B misdemeanor, unless the actor has previously been convicted one or two times of an offense under this subsection, in which event it is a Class A misdemeanor. If the actor has previously been convicted three or more times of an offense under this subsection, the offense is a state jail felony.

(c) An owner or operator of a massage school commits an offense if the person knowingly violates Section 455.151(a), 455.159, 455.203(a) or (c), 455.204(b) or (c), or 455.205(b), (c), or (d).

(d) Except as provided by Subsections (a-1), (b), and (e), an offense under this section is a Class C misdemeanor.

(e) If it is shown at the trial of an offense under this section that the defendant has been previously convicted of an offense under this section, the offense is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. [2696](#)), Sec. 32, eff. September 1, 2005.

Sec. 455.353. ENFORCEMENT BY PEACE OFFICERS. A peace officer of this state, including a peace officer employed by a political subdivision of the state, may enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBTITLE I. REGULATION OF PSYCHOLOGY AND COUNSELING**

**CHAPTER 501. PSYCHOLOGISTS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 501.001. SHORT TITLE. This chapter may be cited as the Psychologists' Licensing Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Examiners of Psychologists.

(2) "Licensed specialist in school psychology" means a person who holds a license to engage in the practice of psychology under Section 501.260.

(3) "Provisional license holder" means a person who holds a license to engage in the practice of psychology under Section 501.253.

(4) "Psychological associate" means a person who holds a license to engage in the practice of psychology issued under Section 501.259.

(5) "Psychologist" means a person who holds a license to engage in the practice of psychology issued under Section 501.252.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.003. PRACTICE OF PSYCHOLOGY. (a) In this section, "psychological services" means acts or behaviors that are included within the purview of the practice of psychology.

(b) A person is engaged in the practice of psychology within the meaning of this chapter if the person:

(1) represents the person to the public by a title or description of services that includes the word "psychological,"

"psychologist," or "psychology";

(2) provides or offers to provide psychological services to individuals, groups, organizations, or the public;

(3) is a psychologist or psychological associate employed as described by Section 501.004(a)(1) who offers or provides psychological services, other than lecture services, to the public for consideration separate from the salary that person receives for performing the person's regular duties; or

(4) is employed as a psychologist or psychological associate by an organization that sells psychological services, other than lecture services, to the public for consideration.

(c) The practice of psychology:

(1) includes providing or offering to provide services to an individual or group, including providing computerized procedures, that include the application of established principles, methods, and procedures of describing, explaining, and ameliorating behavior;

(2) addresses normal behavior and involves evaluating, preventing, and remediating psychological, emotional, mental, interpersonal, learning, and behavioral disorders of individuals or groups, as well as the psychological disorders that accompany medical problems, organizational structures, stress, and health;

(3) includes:

(A) using projective techniques, neuropsychological testing, counseling, career counseling, psychotherapy, hypnosis for health care purposes, hypnotherapy, and biofeedback; and

(B) evaluating and treating mental or emotional disorders and disabilities by psychological techniques and procedures; and

(4) is based on:

(A) a systematic body of knowledge and principles acquired in an organized program of graduate study; and

(B) the standards of ethics established by the profession.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.004. APPLICABILITY. (a) This chapter does not apply to:

(1) the activity or service of a person, or the use of an

official title by the person, who is employed as a psychologist or psychological associate by a regionally accredited institution of higher education if the person performs duties the person is employed by the institution to perform within the confines of the institution;

(2) the activity or service of a student, intern, or resident in psychology if:

(A) the person is pursuing a course of study to prepare for the profession of psychology under qualified supervision in a recognized training institution or facility;

(B) the activity or service is part of the person's supervised course of study; and

(C) the person is designated as a "psychological intern," as a "psychological trainee," or by another title that clearly indicates the person's training status;

(3) the activity or service of a licensed professional, other than a person licensed under this chapter, if:

(A) the activity or service is permitted under the person's license; and

(B) the person does not represent that the person is a psychologist or describe the service provided by using the term "psychological";

(4) the activity or service of a recognized member of the clergy who is acting within the person's ministerial capabilities if the person does not:

(A) represent that the person is a psychologist; or

(B) describe the service provided by using the term "psychological";

(5) the voluntary activity or service of a person employed by or working on behalf of a charitable nonprofit organization if the person does not:

(A) represent that the person is a psychologist; or

(B) describe the service provided by using the term "psychological"; or

(6) the activity or service of a person who is employed by a governmental agency if the person:

(A) performs duties the person is employed by the agency to perform within the confines of the agency; and

(B) does not represent that the person is a psychologist.

(b) For purposes of Subsection (a)(3), a licensed professional

includes:

- (1) a physician;
- (2) an attorney;
- (3) a registered nurse;
- (4) a licensed vocational nurse;
- (5) an occupational therapist;
- (6) a licensed social worker;
- (7) a licensed professional counselor;
- (8) a career counselor;
- (9) a licensed marriage and family therapist; and
- (10) a licensed chemical dependency counselor.

(c) This chapter does not authorize the practice of medicine as defined by the laws of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 883 (H.B. 807), Sec. 2, eff. June 14, 2013.

Sec. 501.005. APPLICATION OF SUNSET ACT. The Texas State Board of Examiners of Psychologists is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 1, eff. September 1, 2005.

#### **SUBCHAPTER B. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS**

Sec. 501.051. BOARD MEMBERSHIP. (a) The Texas State Board of Examiners of Psychologists consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) four psychologist members who have engaged in independent practice, teaching, or research in psychology for at least five years;

(2) two psychological associate members who have been licensed as psychological associates under this chapter for at least

five years; and

(3) three members who represent the public.

(a-1) One of the members appointed under Subsection (a)(1) or (a)(2) must practice as a licensed specialist in school psychology under Section 501.260.

(b) To ensure adequate representation on the board of the diverse fields of psychology, the governor in making appointments under Subsection (a)(1) shall appoint:

(1) at least two members who provide psychological services;

(2) at least one member who conducts research in the field of psychology; and

(3) at least one member who teaches as a member of the faculty of a psychological training institution.

(c) Each member of the board must be a citizen of the United States.

(d) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 869 (H.B. 646), Sec. 1, eff. June 14, 2013.

Sec. 501.052. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the board if:

(1) the person is registered, certified, or licensed by an occupational regulatory agency in the field of health services;

(2) the person's spouse is registered, certified, or licensed by an occupational regulatory agency in the field of mental health; or

(3) the person or the person's spouse:

(A) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 2, eff. September 1, 2005.

Sec. 501.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health services; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of mental health.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 3, eff. September 1, 2005.

Sec. 501.054. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms, with the terms of three members expiring



October 31 of each odd-numbered year.

(b) A member who is appointed for a term of less than six years may be reappointed to one successive full six-year term. A member who is appointed for a full six-year term may not be reappointed for the six years following the expiration of the member's term.

(c) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.055. GROUND FOR REMOVAL. (a) It is a ground for removal from the board that a member:

- (1) does not have at the time of taking office the qualifications required by Sections 501.051 and 501.052;
- (2) does not maintain during service on the board the qualifications required by Sections 501.051 and 501.052;
- (3) is ineligible for membership under Section 501.053;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. [1015](#)), Sec. 4, eff. September 1, 2005.

Sec. 501.056. PER DIEM; REIMBURSEMENT. (a) Each board member is entitled to a per diem set by legislative appropriation for each day the member engages in board business.

(b) A member may not receive reimbursement for travel expenses, including expenses for meals and lodging. A member is entitled to reimbursement for transportation expenses as provided by the General Appropriations Act.

(c) All per diem and reimbursement for expenses authorized by this section shall be paid only from fees collected under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.057. OFFICERS; MEETINGS. (a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor. The board shall hold an annual meeting during which the board shall select from its members an assistant presiding officer.

(b) The board may hold other regular meetings as provided by board rule. The board shall hold meetings at least twice each year. Special meetings may be called as necessary or by a majority of the board members.

(c) The board shall give reasonable notice of all meetings in the manner provided by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. [1015](#)), Sec. 5, eff. September 1, 2005.

Sec. 501.058. OATH OF OFFICE. Before entering office, a board member must file with the secretary of state the constitutional oath taken by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.059. TRAINING PROGRAM FOR MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) this chapter and the programs, functions, rules, and budget of the board;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 6, eff. September 1, 2005.

#### **SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL**

Sec. 501.101. EXECUTIVE DIRECTOR. The board shall employ an executive director, who holds that position at the pleasure of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.102. PERSONNEL. The board may employ persons, including investigators, attorneys, consultants, and administrative staff, as necessary or desirable to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.103. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 7, eff. September 1, 2005.

Sec. 501.104. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.105. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

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

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel, that are in compliance with Chapter 21, Labor Code;

(2) a comprehensive analysis of the board workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom

federal or state guidelines encourage a more equitable balance; and  
 (4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. BOARD POWERS AND DUTIES**

Sec. 501.151. GENERAL POWERS AND DUTIES. (a) The board may adopt rules necessary to perform its duties and regulate its proceedings.

(b) The board shall adopt an official seal.

(c) The board shall adopt and publish a code of ethics.

(d) The board may certify the specialty of health service providers.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.152. FEES. (a) The board by rule shall set fees in amounts reasonable and necessary to cover the costs of administering this chapter.

(b) The board may not set a fee that existed on September 1, 1993, for an amount less than the amount of that fee on that date.

(c) Funds to administer this chapter may be paid only from fees collected under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.153. FEE INCREASE. (a) The amount of the following

fees is the amount set by the board under Section 501.152 and an additional charge of \$200:

- (1) the fee for renewing a license;
- (2) the fee for applying to take the provisional license examination; and
- (3) the fee for renewing a provisional license.

(b) Of each additional \$200 collected, \$50 shall be deposited to the credit of the foundation school fund and \$150 shall be deposited to the credit of the general revenue fund.

(c) A psychologist is exempt from this section if the psychological services provided and the psychologist's use of an official title are within the scope of the psychologist's employment as described by Section 501.004(a)(1) or (6).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 883 (H.B. 807), Sec. 3, eff. June 14, 2013.

Sec. 501.154. ANNUAL LISTING. (a) The board shall publish annually a list of all psychologists licensed under this chapter. The list shall be provided in both alphabetical and geographical arrangements.

(b) The list must contain the name and address of each psychologist and other information that the board requires.

(c) The board shall:

- (1) mail a copy of the list to each person licensed under this chapter; and
- (2) furnish copies to the public on request.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.251(a), eff. Sept. 1, 2001.

Sec. 501.155. VOLUNTARY GUIDELINES. (a) The board may cooperate with an agency that is not subject to this chapter to formulate voluntary guidelines to be observed in the training, activities, and supervision of persons who perform psychological services.

(b) Except as provided by Subsection (a), the board may not adopt a rule that relates to the administration of an agency that is not subject to this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.156. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the person's use of any advertising medium;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the use of a trade name in advertising by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.157. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

- (1) adopt a standardized form for filing complaints with the board; and
- (2) prescribe information to be provided when a person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.158. COMPETENCY REQUIREMENTS. (a) This section applies to a person who is:

- (1) applying to take the provisional license examination;
- (2) applying for a license or license renewal;

(3) currently licensed by the board; or

(4) otherwise providing psychological services under a license approved by the board.

(b) On a determination by the board based on the board's reasonable belief that a person is not physically and mentally competent to provide psychological services with reasonable skill and safety to patients or has a physical or mental disease or condition that would impair the person's competency to provide psychological services, the board may request the person to submit to:

(1) a physical examination by a physician approved by the board; or

(2) a mental examination by a physician or psychologist approved by the board.

(c) The board shall issue an order requiring an applicant or person seeking renewal of a provisional license who refuses to submit to an examination under this section to show cause for the person's refusal at a hearing on the order scheduled for not later than the 30th day after the date notice is served on the person. The board shall provide notice under this section by personal service or by registered mail, return receipt requested.

(d) At the hearing, the person may appear in person and by counsel and present evidence to justify the person's refusal to submit to examination. After the hearing, the board shall issue an order requiring the person to submit to examination under this section or withdrawing the request for the examination.

(e) Unless the request is withdrawn, a person who refuses to submit to the physical or mental examination may not take the provisional license examination or renew the person's license, as appropriate.

(f) An appeal from the board's order under this section is governed by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.160. USE OF TECHNOLOGY. The board shall implement a policy requiring the use of appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.



Added by Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 8, eff. September 1, 2005.

Sec. 501.161. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 9, eff. September 1, 2005.

Sec. 501.162. DEVELOPMENT OF PROPOSED RULES. (a) This section applies to the process by which the board develops proposed rules before the proposed rules are published in the Texas Register and before the board complies with the rulemaking requirements of the administrative procedure law, Chapter 2001, Government Code. This section does not affect the duty of the board to comply with the rulemaking requirements of that law.

(b) The board shall establish methods under which the board, to the extent appropriate, will seek input early in the rule development process from the public and from persons who will be most affected by a proposed rule. Methods shall include identifying persons who will

be most affected and soliciting, at a minimum, the advice and opinions of those persons.

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

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

Added by Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 10, eff. September 1, 2005.

#### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 501.201. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 11, eff. September 1, 2005.

Sec. 501.202. COMPLAINTS. (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated by the board;

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

(3) in a bill for services provided by a person regulated by the board.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may

be called to present a complaint about a health professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.203. INFORMATION ABOUT COMPLAINT ACTIONS. (a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about parties to a complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and the disposition of the complaint.

(b) The board shall make information available describing its procedures for complaint investigation and resolution.

(c) The board shall periodically notify the complaint parties of the status of the complaint until final disposition.

(d) The board shall analyze complaints filed with the board to identify any trends or issues related to certain violations, including:

(1) the reason for each complaint;

(2) how each complaint was resolved; and

(3) the subject matter of each complaint that was not within the jurisdiction of the board and how the board responded to the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. [1015](#)), Sec. 12, eff. September 1, 2005.

Sec. 501.204. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection must:

(1) distinguish between categories of complaints;

(2) ensure that a complaint is not dismissed without appropriate consideration;

(3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an

opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(b) The board shall:

(1) dispose of each complaint in a timely manner; and

(2) establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the complaint is received by the board.

(c) Each party to the complaint shall be notified of the projected time requirements for pursuing the complaint and notified of any change in the schedule established under Subsection (b)(2) not later than the seventh day after the date the change is made.

(d) The executive director shall notify the board of a complaint that is not resolved within the time prescribed by the board for resolving complaints so that the board may take necessary action on the complaint.

(e) The board shall assign priorities and investigate complaints based on:

(1) the severity of the conduct alleged in the complaint; and

(2) the degree of harm to public health and safety.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 13, eff. September 1, 2005.

Sec. 501.205. CONFIDENTIALITY OF COMPLAINT INFORMATION. (a) Except as provided by Subsection (b), a complaint and investigation concerning a license holder and all information and materials compiled by the board in connection with the complaint and investigation are not subject to:

(1) disclosure under Chapter 552, Government Code; or

(2) disclosure, discovery, subpoena, or other means of legal compulsion for release of information to any person.

(b) A complaint or investigation subject to Subsection (a) and all information and materials compiled by the board in connection

with the complaint may be disclosed to:

- (1) the board and board employees or agents involved in license holder discipline;
- (2) a party to a disciplinary action against the license holder or that party's designated representative;
- (3) a law enforcement agency if required by law;
- (4) a governmental agency, if:
  - (A) the disclosure is required or permitted by law;

and

- (B) the agency obtaining the disclosure protects the identity of any patient whose records are examined; or
- (5) a legislative committee or committee staff directed to make an inquiry regarding state hospitals or schools, by either house of the legislature, the presiding officer of either house of the legislature, or the chairman of the legislative committee if the information or records that identify a patient or client are not released for any purpose unless the patient consents and the records are created by the state hospital or school or its employees.

(c) Unless good cause for delay is shown to the presiding officer at the hearing, the board shall provide the license holder with access to all information that the board intends to offer into evidence at the hearing not later than the 30th day after the date the board receives a written request from a license holder who is entitled to a hearing under this chapter or from the license holder's attorney of record.

(d) The board shall protect the identity of any patient whose records are examined in connection with a disciplinary investigation or proceeding against a license holder, except:

- (1) a patient who initiates the disciplinary action; or
- (2) a patient who has submitted a written consent to release the records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.206. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that

describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.207. SUBPOENAS. (a) In an investigation of a complaint filed with the board, the executive director or presiding officer of the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The board shall pay for photocopies subpoenaed under this section a reasonable fee in an amount not to exceed the amount the board may charge for copies of its records.

(f) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

(g) Information and materials subpoenaed or compiled by the board in connection with the investigation of a complaint may be disclosed only as provided by Section 501.205.

Added by Acts 2003, 78th Leg., ch. 648, Sec. 1, eff. June 20, 2003.

#### **SUBCHAPTER F. GENERAL LICENSE REQUIREMENTS**

Sec. 501.251. LICENSE REQUIRED. A person may not engage in or represent that the person is engaged in the practice of psychology unless the person is licensed under this chapter or exempt under Section 501.004.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.252. PSYCHOLOGIST LICENSE APPLICATION. (a) To be licensed under this chapter, a person must apply to the board for a license. The board shall issue a license to an applicant who:

- (1) complies with this section; and
- (2) pays the fee set by the board.

(b) A person may not be licensed as a psychologist unless the person:

- (1) is provisionally licensed as a psychologist under this chapter; and
- (2) has had at least two years of supervised experience in the field of psychological services, one year of which may be as part of the doctoral program and at least one year of which began after the date the person's doctoral degree was conferred by an institution of higher education.

(c) For purposes of Subsection (b)(2), experience is supervised only if the experience is supervised by a psychologist in the manner provided by the board's supervision guidelines.

(d) To determine the acceptability of an applicant's professional experience, the board may require documentary evidence of the quality, scope, and nature of the applicant's experience.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.253. PROVISIONAL LICENSE. (a) The board shall issue a provisional license to an applicant who has:

- (1) passed the examinations prescribed by the board;
- (2) satisfied the preliminary requirements of Sections 501.254 and 501.255; and
- (3) paid the fee for a provisional license.

(b) A provisional license holder is entitled to practice psychology under the supervision of a psychologist to meet the requirements for issuance of a license under Section 501.252. A provisional license holder who is licensed in another state to independently practice psychology and is in good standing in that state and who seeks a license in this state is entitled to practice psychology without the supervision of a psychologist during the time that the board is processing the person's application for a license.

(c) The board shall adopt rules that apply to provisional license holders identifying:

- (1) the activities that holders may engage in; and
- (2) services that may be provided by holders.

(d) The board may refuse to renew the provisional license of a person who does not meet the requirements prescribed by Section 501.255.

(e) The board may not restrict the issuance of a license or provisional license to an applicant who is licensed in another state to independently practice psychology and is in good standing in that state based on the number of years the applicant has been licensed in good standing in that state.

(f) If an applicant who is licensed in another state to independently practice psychology and is in good standing in that state presents credentials from a national accreditation organization to the board and the board determines that the requirements for obtaining those credentials from that organization are sufficient to protect the public, the board may issue a provisional license to the applicant. An applicant who obtains a provisional license under this subsection must have passed the examination described by Section 501.256(b)(2).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 14, eff. September 1, 2005.

Sec. 501.254. PROVISIONAL LICENSE APPLICATION. (a) An applicant for examination for a provisional license must:

- (1) apply on forms prescribed by the board; and
- (2) submit the required fee with the application.

(b) The board may require that the applicant verify the application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.255. PROVISIONAL LICENSE EXAMINATION QUALIFICATIONS.

(a) An applicant may take an examination for a provisional license if the applicant:

- (1) has received:
  - (A) a doctoral degree in psychology from a regionally



accredited educational institution conferred on or after January 1, 1979; or

(B) a doctoral degree in psychology, or the substantial equivalent of a doctoral degree in psychology in both subject matter and extent of training, from a regionally accredited educational institution conferred before January 1, 1979;

(2) has attained the age of majority;

(3) has good moral character;

(4) is physically and mentally competent to provide psychological services with reasonable skill and safety, as determined by the board;

(5) is not afflicted with a mental or physical disease or condition that would impair the applicant's competency to provide psychological services;

(6) has not been convicted of a crime involving moral turpitude or a felony;

(7) does not use drugs or alcohol to an extent that affects the applicant's professional competency;

(8) has not engaged in fraud or deceit in making the application; and

(9) except as provided by Section 501.263, has not:

(A) aided or abetted the practice of psychology by a person not licensed under this chapter in representing that the person is licensed under this chapter;

(B) represented that the applicant is licensed under this chapter to practice psychology when the applicant is not licensed; or

(C) practiced psychology in this state without a license under this chapter or without being exempt under this chapter.

(b) In determining under Subsection (a)(1)(B) whether a degree is substantially equivalent to a doctoral degree in psychology, the board shall consider whether, at the time the degree was conferred, the doctoral program met the prevailing standards for training in the area of psychology, including standards for training in clinical, school, and industrial counseling.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.256. EXAMINATIONS. (a) The board shall administer to qualified applicants at least annually the oral and written examination required by board rules. The board shall have the written portion of the examination, if any, validated by an independent testing professional.

(b) The board shall determine the subject and scope of the examinations and establish appropriate fees for examinations administered. The examination must test the applicant's knowledge of:

- (1) the discipline and profession of psychology; and
- (2) the laws and rules governing the profession of psychology in this state.

(c) The board may waive the discipline and professional segment of the examination requirement for an applicant who:

- (1) is a specialist of the American Board of Professional Psychology; or
- (2) in the board's judgment, has demonstrated competence in the areas covered by the examination.

(d) The contents of the examination described by Subsection (b)(2) are the jurisprudence examination. The board shall administer and each applicant must pass the jurisprudence examination before the board may issue a provisional license.

(e) If requested in writing by a person who fails an examination administered under this chapter, the board shall provide to the person an analysis of the person's performance on the examination.

(f) On the oral examination administered under this section the board may only assess knowledge of psychological principles and techniques, applicable laws and regulations, and ethical principles. The board may not assess personal characteristics through the oral examination.

(g) For purposes of the oral examination, the board shall by rule clearly define the standards used by the board to determine whether a person has demonstrated sufficient entry-level knowledge of the practice of psychology to have passed the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. [1015](#)), Sec. 15, eff. September 1, 2005.

Sec. 501.2561. EVALUATION OF ORAL EXAMINATION. (a) The board by rule shall establish a work group to evaluate the oral examination for the purpose of improving the consistency of the administration and the objectivity of the examination. The work group must include persons interested in or affected by the regulation of the practice of psychology under this chapter, including faculty members of college or university psychology departments and licensees with varying levels of experience. The work group shall:

- (1) review audiotapes of passed and failed examinations;
- (2) review analyses of the performance of persons who failed the examination provided under Section 501.256(e);
- (3) assess scoring criteria and clinical scenarios used in the administration of the examination;
- (4) recommend improvements to standardize the administration of the examination; and
- (5) conduct other appropriate tasks.

(b) Members of the board may not participate in the evaluation of the oral examination but may otherwise participate in the work group.

(c) The work group shall report biennially to the board the group's recommendations for improving the consistency of the administration and the objectivity of the oral examination. The board shall modify the oral examination, as necessary, based on the work group's recommendations before the next administration of the oral examination.

Added by Acts 2005, 79th Leg., Ch. 143 (H.B. [1015](#)), Sec. 16, eff. September 1, 2005.

Sec. 501.257. REEXAMINATION. An applicant who fails an examination may be reexamined at intervals specified by the board on payment by the applicant of an examination fee that is equal to the amount of the fee charged to take the examination the applicant failed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.258. NOTIFICATION OF EXAMINATION RESULTS. (a) Not later than the 30th day after the date an examination is administered, the board shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the board shall notify examinees of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of the examination results will be delayed for longer than the 90th day after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.259. LICENSING OF PSYCHOLOGICAL ASSOCIATE. (a) The board shall set standards for the issuance of licenses to psychological personnel who hold a master's degree from an accredited university or college in a program that is primarily psychological in nature.

(b) The board shall designate a person who holds a license authorized by this section by a title that includes the adjective "psychological" followed by a noun such as "associate," "assistant," "examiner," or "technician."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. [1015](#)), Sec. 17, eff. September 1, 2005.

Sec. 501.260. LICENSED SPECIALIST IN SCHOOL PSYCHOLOGY. (a) The board by rule shall issue a license to a licensed specialist in school psychology. A license issued under this section constitutes the appropriate credential for a person who provides psychological services as required by Section 21.003(b), Education Code.

(b) The board shall set the standards to qualify for a license under this section. The standards must include:

(1) satisfaction of minimum recognized graduate degree requirements;

(2) completion of graduate course work at a regionally

accredited institution of higher education in:

- (A) psychological foundations;
- (B) educational foundations;
- (C) interventions;
- (D) assessments; and
- (E) professional issues and ethics;

(3) completion of at least 1,200 hours of supervised experience;

(4) receipt of a passing score on a nationally recognized qualifying examination determined to be appropriate by the board and on any other examination required by the board; and

(5) satisfaction of the requirements, other than the degree requirements, for an applicant to take an examination for a provisional license.

(c) The rules of practice for a licensed specialist in school psychology must comply with nationally recognized standards for the practice of school psychology.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.261. FORM OF LICENSE. (a) A license issued under this chapter must include the full name of the license holder and a unique number assigned to that license.

(b) The presiding officer and executive director of the board shall sign the license under the seal of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.262. RECIPROCAL LICENSE. The board may enter into and implement agreements with other jurisdictions for the issuance of a license by reciprocity if the other jurisdiction's requirements for licensing, certification, or registration are substantially equal to the requirements of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.263. TEMPORARY LICENSE. (a) The board may issue a temporary license to an applicant seeking to practice in this state

for a limited time and limited purpose if the applicant:

- (1) pays the required application fee;
- (2) submits an application to the board in the form prescribed by the board;
- (3) is licensed, certified, or registered as a psychologist or psychological associate by another state having requirements substantially equal to those prescribed by this chapter;
- (4) is in good standing with the regulatory agency of the jurisdiction in which the person is licensed, certified, or registered;
- (5) is supervised by a person licensed by the board under this chapter with whom the temporary license holder may consult during the time the person holds a temporary license; and
- (6) has passed an examination recognized by the board as equivalent to the examination required by the board for a permanent license under this chapter.

(b) A temporary license is valid only for the period specified by the board and for the limited purpose approved by the board.

(c) The board may adopt rules to issue a temporary license to a person who holds a license or the equivalent from another country.

(d) A temporary license issued under this section is not a vested property right.

(e) A person holding a temporary license issued under this chapter shall display a sign indicating that the license is temporary. The sign must be approved by the board and displayed in every room in which the person provides psychological services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. [1015](#)), Sec. 18, eff. September 1, 2005.

Sec. 501.264. INACTIVE STATUS. (a) A psychologist may place the psychologist's license on inactive status by applying to the board and paying a fee established by the board.

(b) A psychologist whose license is on inactive status does not accrue a penalty for late payment of the renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER G. LICENSE RENEWAL**

Sec. 501.301. LICENSE EXPIRATION. (a) A license issued under this chapter expires on December 31 of the year following the date the license is issued or renewed. A license of a psychological associate expires on May 31 of the year following the date the license is issued or renewed.

(b) The board by rule may adopt a system under which licenses expire on various dates during the year. For a year in which the expiration date is changed, the board shall prorate the licensing fee so that each license holder pays only the portion of the fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the entire licensing fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.302. LICENSE RENEWAL. (a) A person may renew an unexpired license by paying to the board the required renewal fee before the expiration date of the license.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board the required renewal fee and a fee that is equal to half of the amount of the examination fee for the license. A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the amount of the examination fee for the license.

(c) Except as provided by Section 501.303, a person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(d) Not later than the 30th day before the expiration date of a person's license, the board shall send written notice of the impending expiration to the person at the person's last known address according to the board's records.

(e) The renewal procedures prescribed by this section apply to renewal of a specialty certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.303. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date the person applied for renewal.

(b) The person must pay to the board a fee that is equal to the amount of the examination fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.304. CONTINUING EDUCATION. (a) The board shall establish a mandatory continuing education program for persons licensed by the board. The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this chapter.

(b) The board shall identify the key factors for the competent performance by a license holder of the holder's professional duties.

(c) The board shall:

(1) by rule develop a process to evaluate and approve continuing education courses; and

(2) adopt a procedure to assess a license holder's participation in continuing education programs.

(d) The board may assess the continuing education needs of license holders and require license holders to attend continuing education courses specified by the board.

(e) The process developed under Subsection (c)(1) may include a process under which the board evaluates and approves appropriate courses for the continuing education program that are developed or approved for license holders by national and state associations that represent license holders, by other mental health professional associations, and by institutions of higher education.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 19, eff. September 1, 2005.

#### **SUBCHAPTER H. PRACTICE BY PSYCHOLOGIST**



Sec. 501.351. GENERAL AUTHORITY TO DELEGATE. (a) A psychologist licensed under this chapter may delegate to a provisionally licensed psychologist, a newly licensed psychologist who is not eligible for managed care panels, a person who holds a temporary license issued under Section 501.263, and a person who satisfies Section 501.255(a) and is in the process of acquiring the supervised experience required by Section 501.252(b)(2) any psychological test or service that a reasonable and prudent psychologist could delegate within the scope of sound psychological judgment if the psychologist determines that:

- (1) the test or service can be properly and safely performed by the person;
- (2) the person does not represent to the public that the person is authorized to practice psychology; and
- (3) the test or service will be performed in the customary manner and in compliance with any other law.

(b) The delegating psychologist remains responsible for the psychological test or service performed by the person to whom the test or service is delegated, and the test or service is considered to be delivered by the delegating psychologist for billing purposes, including bills submitted to third-party payors. The person must inform each patient on whom the test or service is performed that the person is being supervised by a licensed psychologist.

(c) The board may determine whether:

- (1) a psychological test or service may be properly and safely delegated under this section; and
- (2) a delegated act constitutes the practice of psychology under this chapter.

(d) A person who is a licensed psychologist and to whom another psychologist delegates a psychological test or service under this section may represent that the person is engaged in the practice of psychology.

Added by Acts 2013, 83rd Leg., R.S., Ch. 276 (H.B. 808), Sec. 1, eff. September 1, 2013.

Sec. 501.352. PERFORMANCE OF DELEGATED ACT DOES NOT CONSTITUTE PRACTICE OF PSYCHOLOGY. A person to whom a psychologist delegates a psychological test or service under Section 501.351(a) is not

considered to be engaged in the independent practice of psychology without a license issued under this chapter unless the person acts with the knowledge that the delegation and the action taken under the delegation violate this subtitle.

Added by Acts 2013, 83rd Leg., R.S., Ch. 276 (H.B. 808), Sec. 1, eff. September 1, 2013.

#### **SUBCHAPTER I. DISCIPLINARY PROCEDURES**

Sec. 501.401. GROUND FOR DISCIPLINARY ACTION. The board shall revoke or suspend a holder's license, place on probation a person whose license has been suspended, or reprimand a license holder who:

- (1) violates this chapter or a rule adopted by the board;
- (2) is convicted of a felony or of any offense that would be a felony under the laws of this state, or of a violation of a law involving moral turpitude;
- (3) uses drugs or alcohol to an extent that affects the person's professional competency;
- (4) engages in fraud or deceit in connection with services provided as a psychologist;
- (5) except as provided by Section 501.263:
  - (A) aids or abets the practice of psychology by a person not licensed under this chapter in representing that the person is licensed under this chapter;
  - (B) represents that the person is licensed under this chapter to practice psychology when the person is not licensed; or
  - (C) practices psychology in this state without a license under this chapter or without being qualified for an exemption under Section 501.004; or
- (6) commits an act for which liability exists under Chapter 81, Civil Practice and Remedies Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.402. TEMPORARY LICENSE SUSPENSION. (a) The board by rule shall adopt procedures for the temporary suspension of a license.

(b) An executive committee of the board consisting of the presiding officer and two other board members appointed by the

presiding officer may temporarily suspend a license if it determines from the evidence or information presented that the continued practice by the license holder constitutes a continuing or imminent threat to the public welfare.

(c) The board may temporarily suspend a license without notice or hearing if, at the time the suspension is ordered, a hearing on whether disciplinary proceedings should be initiated against the license holder is scheduled for a date not later than the 14th day after the date of the suspension.

(d) A second hearing on the suspended license shall be held not later than the 60th day after the date the suspension is ordered. If the second hearing is not held in the time provided by this subsection, the suspended license is automatically reinstated.

(e) The board may also temporarily suspend a license on a majority vote.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.403. HEARING. A person is entitled to a hearing before the State Office of Administrative Hearings if the board proposes to:

- (1) refuse the person's application for a license;
- (2) suspend or revoke the person's license; or
- (3) reprimand the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.404. SCHEDULE OF SANCTIONS. (a) The board by rule shall adopt a schedule of the disciplinary sanctions that the board may impose under this chapter. In adopting the schedule of sanctions, the board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

(b) In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the board shall consider whether the person:

- (1) is being disciplined for multiple violations of either this chapter or a rule or order adopted under this chapter; or
- (2) has previously been the subject of disciplinary action

by the board.

(c) In the case of a person described by:

(1) Subsection (b)(1), the board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and

(2) Subsection (b)(2), the board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the board.

(d) The State Office of Administrative Hearings shall use the schedule for any sanction imposed as the result of a hearing conducted by that office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. [1015](#)), Sec. 20, eff. September 1, 2005.

Sec. 501.405. APPEAL. An appeal of an action of the board is governed by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.406. PROBATION. If the board probates a license suspension, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit the person's practice to the areas prescribed by the board; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.407. REMEDIAL CONTINUING EDUCATION. The board may

require a license holder who violates this chapter to participate in a continuing education program. The board shall specify the continuing education program that the person may attend and the number of hours that the person must complete to fulfill the requirements of this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.408. CORRECTIVE ADVERTISING. The board may order corrective advertising if a psychologist, individually or under an assumed name, engages in false, misleading, or deceptive advertising.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.409. ADMINISTRATIVE PROCEDURE. A proceeding to refuse, revoke, or suspend a license or to reprimand a person is governed by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.410. RULES GOVERNING INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held to comply with Section 2001.054, Government Code.

(b) Rules adopted under Subsection (a) must:

(1) provide the complainant and the license holder an opportunity to be heard;

(2) require the presence of a member of the board's legal staff, if the board has a legal staff, or, if the board does not have a legal staff, a representative of the attorney general's office to advise the board or board employees; and

(3) require the presence of at least one public member of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 21, eff. September 1, 2005.

**SUBCHAPTER J. ADMINISTRATIVE PENALTY**

Sec. 501.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on a person licensed or regulated under this chapter if the person violates this chapter or a rule or order adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.452. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$1,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts made to correct the violation; and

(6) any other matter that justice may require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.453. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the executive director determines that a violation may have occurred, the executive director shall issue to the board a report stating the facts on which the determination is based. The board shall determine whether a violation occurred. If the board determines that a violation occurred, the board shall make a recommendation on the imposition of an administrative penalty, including a recommendation on the amount of any penalty.

(b) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the report to the person on whom the penalty may be imposed. The notice may be given by certified mail. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.454. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person may in writing:

- (1) accept the board's determination and recommended administrative penalty; or
- (2) request a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the board's determination and recommended penalty, the board shall issue an order and impose the recommended penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.455. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the executive director shall set a hearing and give notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.456. DECISION BY BOARD. (a) Based on the findings of

fact, conclusions of law, and proposal for a decision, the board by order may determine that:

- (1) a violation occurred and impose an administrative penalty; or
- (2) a violation did not occur.

(b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.457. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

- (1) pay the administrative penalty;
- (2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or
- (3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account; or
  - (B) giving to the court a supersedeas bond that is approved by the court and that is:
    - (i) for the amount of the penalty; and
    - (ii) effective until judicial review of the board's order is final; or
- (2) request the court to stay enforcement of the penalty by:
  - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and
  - (B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit



under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.458. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.459. DETERMINATION BY COURT. (a) If the court finds that a violation has occurred after the court reviews the board's order imposing an administrative penalty, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.460. REMITTANCE OF PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond if the penalty is not imposed or order the release of the bond after the person pays the penalty if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.461. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.462. DEPOSIT OF PENALTY. An administrative penalty collected under this subchapter shall be deposited in the general revenue fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.2515, eff. Sept. 1, 2001.

#### **SUBCHAPTER K. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 501.501. INJUNCTIVE RELIEF. (a) The board may commence an action in its own name for an injunction to restrain a violation of this chapter.

(b) The attorney general or a county or district attorney shall represent the board in an action under this section.

(c) An action for injunctive relief under this section is in addition to another action authorized by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.502. CIVIL PENALTY. (a) A person who violates this chapter or a rule or order adopted under this chapter is liable to the state for a civil penalty of \$1,000 for each day of violation.

(b) On the board's request, the attorney general shall bring an action to recover a civil penalty under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.503. CRIMINAL PENALTY. (a) A person commits an offense if the person engages in the practice of psychology or represents that the person is a psychologist in violation of this chapter.

(b) An offense under this section is a Class A misdemeanor.

(c) Each day a violation occurs is a separate offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.504. MONITORING OF LICENSE HOLDER. The board by rule shall develop a system to monitor a license holder's compliance under this chapter. Rules adopted under this section must include procedures to:

(1) monitor for compliance a license holder who is ordered by the board to perform certain acts; and

(2) identify and monitor each license holder who represents a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.505. OPTION TO ORDER REFUND. (a) Under an agreement resulting from an informal settlement conference, the board may order a license holder to refund to the person who paid for the psychological services at issue an amount not to exceed the amount the person paid to the license holder for a service regulated by this chapter instead of or in addition to imposing an administrative penalty under this chapter.

(b) The board may not include an estimation of other damages or harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 143 (H.B. [1015](#)), Sec. 22, eff. September 1, 2005.

**CHAPTER 502. MARRIAGE AND FAMILY THERAPISTS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 502.001. SHORT TITLE. This chapter may be cited as the Licensed Marriage and Family Therapist Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Examiners of Marriage and Family Therapists.

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health Services.

(4) "Licensed marriage and family therapist" means a person who offers marriage and family therapy for compensation.

(5) "Licensed marriage and family therapist associate" means an individual who offers to provide marriage and family therapy for compensation under the supervision of a board-approved supervisor.

(6) "Marriage and family therapy" means providing professional therapy services to individuals, families, or married couples, alone or in groups, that involve applying family systems theories and techniques. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction in the context of marriage or family systems.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.252(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. [1413](#)), Sec. 1, eff. September 1, 2005.

Sec. 502.003. APPLICATION OF SUNSET ACT. The Texas State Board of Examiners of Marriage and Family Therapists is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 502.004. APPLICATION OF CHAPTER. This chapter does not apply to:

(1) the activities, within the scope of a person's employment, of a person employed to perform marriage and family therapy by a federal, state, county, or municipal agency or, except as provided by Section 21.003(b), Education Code, by a public or private educational institution;

(2) the activities of a student, intern, or trainee in marriage and family therapy in a recognized course of study in marriage and family therapy at an accredited institution of higher education or other training institution, if:

(A) the activities constitute a part of the course of study; and

(B) the person is called a "marriage and family therapist intern" or similar title;

(3) the activities and services of a person licensed to practice another profession, including a physician, attorney, registered nurse, occupational therapist, psychologist, social worker, or licensed professional counselor; or

(4) the activities and services of a recognized religious practitioner, including a pastoral counselor or Christian Science practitioner recognized by the Church of Christ Scientist as registered and published in the Christian Science Journal, if the practitioner practices marriage and family therapy in a manner consistent with the laws of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 34, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 3, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1134 (H.B. 1386), Sec. 6, eff. June 17, 2011.

**SUBCHAPTER B. BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS**

Sec. 502.051. BOARD; MEMBERSHIP. (a) The Texas State Board of Examiners of Marriage and Family Therapists consists of nine members appointed by the governor with the advice and consent of the senate as follows:

- (1) five marriage and family therapist members; and
- (2) four members who represent the public.

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

(c) In making appointments under Subsection (a)(1), the governor shall consider recommendations made by recognized professional associations of marriage and family therapists in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.052. MEMBERSHIP; RESTRICTIONS. (a) A board member appointed under Section 502.051(a)(1) must:

- (1) be eligible for a license under this chapter; and
- (2) have been engaged in the practice or education of marriage and family therapy for at least five years or have 5,000 hours of clinical experience in the practice of marriage and family therapy.

(b) One member appointed under Section 502.051(a)(1) must be a professional educator in marriage and family therapy.

(c) A person is not eligible for appointment as a public member of the board under Section 502.051(a)(2) if:

- (1) the person is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

- (2) the person's spouse is registered, certified, or licensed by an occupational regulatory agency in the field of mental health; or

- (3) the person or the person's spouse:

- (A) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;

- (B) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization

regulated by or receiving funds from the board; or

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 4, eff. September 1, 2005.

Sec. 502.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health services; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of mental health.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 5, eff. September 1, 2005.

Sec. 502.054. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms. The terms of three members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.055. OFFICERS. (a) The governor shall designate a board member as the presiding officer. The presiding officer serves in that capacity at the will of the governor.

(b) At the meeting of the board held closest to August 31 of each year, the board shall elect one of its members as the assistant presiding officer. The assistant presiding officer serves as provided by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 502.052;

(2) does not maintain during service on the board the qualifications required by Section 502.052;

(3) is ineligible for membership under Section 502.052(c) or 502.053;

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

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board; or

(6) violates a prohibition established by Section 502.159.

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

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The



presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 6, eff. September 1, 2005.

Sec. 502.057. COMPENSATION; REIMBURSEMENT. (a) A board member may not receive compensation for service on the board.

(b) A board member is entitled to reimbursement for expenses as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 7, eff. September 1, 2005.

Sec. 502.058. MEETINGS. (a) The board shall meet at least twice during each year.

(b) The board may meet at other times at the call of the presiding officer or as provided by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.059. TRAINING REQUIREMENTS. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

- (1) this chapter;
- (2) the programs operated by the board;

- (3) the role and functions of the board;
- (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the board;
- (6) the results of the most recent formal audit of the board;
- (7) the requirements of laws relating to open meetings, public information, administrative procedure, and conflict of interest; and
- (8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 8, eff. September 1, 2005.

#### **SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL**

Sec. 502.101. EXECUTIVE DIRECTOR. After consulting with the board's members, the commissioner shall appoint an executive director for the board. The executive director must be an employee of the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.102. POWERS AND DUTIES OF EXECUTIVE DIRECTOR. The executive director shall administer the licensing activities under this chapter as directed by the board or the commissioner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.103. PERSONNEL. (a) The commissioner shall designate and make available to the board personnel and facilities necessary

for the efficient administration of the board's duties.

(b) The department shall:

(1) enter into agreements to obtain necessary services;  
and

(2) provide compensation for the services provided.

(c) The department may employ and compensate professional consultants, technical assistants, and employees on a full-time or part-time basis as necessary to administer this chapter.

(d) Salaries and reimbursements paid by the department under this chapter shall be comparable to the salaries and reimbursements provided for in the General Appropriations Act for persons holding comparable positions.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.104. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. [1413](#)), Sec. 9, eff. September 1, 2005.

Sec. 502.105. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide, as often as necessary, to its members and employees information regarding their:

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. BOARD POWERS AND DUTIES**

Sec. 502.151. GENERAL POWERS AND DUTIES OF BOARD. The board

shall:

- (1) determine the qualifications and fitness of a license applicant under this chapter; and
- (2) adopt a code of professional ethics for license holders.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.152. RULES REGARDING BOARD PROCEDURES. The board may adopt rules establishing the board's procedures.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.153. FEES. (a) The board by rule shall set fees in amounts reasonable and necessary to cover the costs of administering this chapter.

(b) The board may not set a fee that existed on September 1, 1993, in an amount that is less than the amount of the fee on that date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.154. EXPENDITURE OF FUNDS. The general rules of the General Appropriations Act apply to the expenditure of funds under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.155. POWERS AND DUTIES REGARDING EXAMINATION. The board shall:

- (1) determine the times and places for licensing examinations;
- (2) offer examinations at least semiannually; and
- (3) give reasonable public notice of the examinations in the manner provided by board rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.156. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the person's use of any advertising medium;
- (2) restricts the person's personal appearance or the use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement used by the person; or
- (4) restricts the use of a trade name in advertising by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.1565. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.

(a) The board shall adopt rules necessary to comply with Chapter 53.

(b) In its rules under this section, the board shall list the specific offenses for which a conviction would constitute grounds for the board to take action under Section 53.021.

Added by Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 10, eff. September 1, 2005.

Sec. 502.157. ANNUAL REGISTRY. (a) The board shall annually prepare a registry of all license holders.

(b) The board shall make the registry available to the public, license holders, and other state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.158. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

- (1) adopt a form to standardize information concerning

complaints made to the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.159. EX PARTE COMMUNICATION PROHIBITED. A board member or department employee who performs functions for the board and who is assigned to make a decision, a finding of fact, or a conclusion of law in a proceeding pending before the board may not directly or indirectly communicate with a party to the proceeding or the party's representative unless notice and an opportunity to participate are given to each party to the proceeding.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.161. BOARD COMMITTEES. (a) The board may appoint committees to assist the board with its functions under this chapter.

(b) Only a member of the board may serve as a member of a board committee.

Added by Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 10, eff. September 1, 2005.

Sec. 502.162. USE OF TECHNOLOGY. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 10, eff. September 1, 2005.

Sec. 502.163. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a

policy to encourage the use of:

- (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and
  - (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.
- (b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.
- (c) The board shall designate a trained person to:
- (1) coordinate the implementation of the policy adopted under Subsection (a);
  - (2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and
  - (3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2005, 79th Leg., Ch. 1061 (H.B. [1413](#)), Sec. 10, eff. September 1, 2005.

#### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 502.201. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and to appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.202. COMPLAINTS. (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

- (1) on each registration form, application, or written contract for services of a person regulated by the board;

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

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

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.203. RECORDS OF COMPLAINTS. (a) The board shall keep an information file about each complaint filed with the board. The information file shall be kept current and must contain a record for each complaint of:

(1) each person contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed;

(4) the schedule required under Section 502.204 and a notation of any change in the schedule; and

(5) other relevant information.

(b) If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.204. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection must:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the



complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(b) The board shall:

(1) dispose of all complaints in a timely manner; and

(2) establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) Each party shall be notified of the projected schedule for the complaint.

(d) Each party to the complaint must be notified of a change in the schedule for the complaint not later than the seventh day after the date the change is made.

(e) The executive director of the board shall notify the board of a complaint that is unresolved after the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

(f) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(g) The board shall make information available describing its procedures for complaint investigation and resolution.

(h) The board shall periodically notify the complaint parties of the status of the complaint until final disposition.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. [1413](#)), Sec. 11, eff. September 1, 2005.

Sec. 502.2041. COMPLAINT COMMITTEE. The board shall appoint at least one public member to any board committee established to review a complaint filed with the board or review an enforcement action

against a license holder related to a complaint filed with the board.

Added by Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 12, eff. September 1, 2005.

Sec. 502.2045. SUBPOENAS. (a) In an investigation of a complaint filed with the board, the board may request that the commissioner or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The board may delegate the authority granted under Subsection (a) to the executive director of the board.

(f) The board shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the board may charge for copies of its records.

(g) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

(h) All information and materials subpoenaed or compiled by the board in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in discipline of the holder of a license, except that this information may be disclosed to:

(1) persons involved with the board in a disciplinary action against the holder of a license;

(2) marriage and family therapist licensing or disciplinary boards in other jurisdictions;

(3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges by the board against a holder of a license, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.253(a), eff. Sept. 1, 2001.

Sec. 502.205. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. LICENSE REQUIREMENTS AND EXEMPTIONS**

Sec. 502.251. LICENSE REQUIRED. (a) A person may not practice as a marriage and family therapist unless the person holds a license under this chapter or is exempt under Section 502.004.

(b) A person may not use the title "licensed marriage and family therapist" or "licensed marriage and family therapist associate," as appropriate, unless the person is licensed under this chapter.

(c) A person may not use a title that implies that the person is licensed or certified in marriage and family therapy unless the person is:

(1) licensed under this chapter; or

(2) authorized to perform marriage and family therapy in the course and scope of another license issued under a law of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.254(a), eff. Sept. 1, 2001.

Sec. 502.252. LICENSE APPLICATION. (a) An applicant for a license must:

(1) file a written application with the board on a form prescribed by the board; and

(2) pay the appropriate application fee.

(b) To qualify for a license as a licensed marriage and family therapist associate, a person must:

(1) be at least 18 years of age;

(2) have completed a graduate internship in marriage and family therapy, or an equivalent internship, as approved by the board;

(3) pass the license examination and jurisprudence examination determined by the board;

(4) hold a master's or doctoral degree in marriage and family therapy or in a related mental health field with coursework and training determined by the board to be substantially equivalent to a graduate degree in marriage and family therapy from a regionally accredited institution of higher education or an institution of higher education approved by the board;

(5) be of good moral character;

(6) have not been convicted of a felony or a crime involving moral turpitude;

(7) not use drugs or alcohol to an extent that affects the applicant's professional competency;

(8) not have had a license or certification revoked by a licensing agency or by a certifying professional organization; and

(9) not have engaged in fraud or deceit in applying for a license under this chapter.

(c) An applicant is eligible to apply for a license as a licensed marriage and family therapist if the person:

(1) meets the requirements of Subsection (b);

(2) after receipt of a degree described by Subsection (b)(4), has completed two years of work experience in marriage and family therapist services that includes at least 3,000 hours of clinical practice of which:

(A) at least 1,500 hours consist of direct clinical services; and

(B) at least 750 hours consist of direct clinical services to couples or families; and

(3) has completed, in a manner acceptable to the board, at least 200 hours of supervised provision of direct clinical services by the applicant, 100 hours of which must be supervised on an individual basis.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.255(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 13, eff. September 1, 2005.

Sec. 502.253. APPLICATION REVIEW; ELIGIBILITY EXAMINATION.

(a) The board shall investigate each application and any other information submitted by the applicant.

(b) Not later than the 90th day after the date the board receives the completed application from a person seeking a license as a licensed marriage and family therapist associate, the board shall notify the applicant whether the application has been accepted or rejected.

(c) An applicant for a license as a licensed marriage and family therapist associate is eligible to take the examination if the applicant:

(1) is enrolled in a graduate internship described by Section 502.252(b)(2) and provides proof to the board that the applicant is a student in good standing in an educational program described by Section 502.252(b)(4); or

(2) has completed the internship described by Subdivision (1).

(d) A notice that an application is rejected must state the reason for the rejection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.255(a), eff. Sept. 1, 2001.

Sec. 502.254. LICENSE EXAMINATION. (a) Each applicant for a license under this chapter must pass an examination described by Section 502.252(b)(3).

(b) An applicant for a license as a licensed marriage and family therapist associate under Section 502.252(b) must:

(1) file an application on a form prescribed by the board not later than the 90th day before the date of the examination; and

(2) pay the examination fee set by the Texas Board of Health.

(c) The examination consists of a written examination.

(d) The board shall have any written portion of an examination validated by an independent testing professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.255(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 14, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 15, eff. September 1, 2005.

Sec. 502.2541. JURISPRUDENCE EXAMINATION. (a) The board shall develop and administer at least twice each calendar year a jurisprudence examination to determine an applicant's knowledge of this chapter, board rules, and any other applicable laws of this state affecting the applicant's practice of marriage and family therapy.

(b) The board shall adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results.

Added by Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 16, eff. September 1, 2005.

Sec. 502.2545. WAIVER OF EXAMINATION FOR CERTAIN APPLICANTS.

(a) The board may waive the requirement that an applicant for a license as a licensed marriage and family therapist pass the

examination required by Section 502.254 if the applicant:

(1) is a provisional license holder under Section 502.259 and the board determines that the applicant possesses sufficient education and professional experience to receive a license without further examination; or

(2) holds a license issued by another licensing agency in a profession related to the practice of marriage and family therapy and the board determines that the applicant possesses sufficient education and professional experience to receive a license without satisfying the examination requirements of this chapter.

(b) The board may adopt rules necessary to administer this section, including rules under Subsection (a)(2) prescribing the professions that are related to the practice of marriage and family therapy.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.256(a), eff. Sept. 1, 2001.

Sec. 502.255. EXAMINATION RESULTS. (a) The board shall notify each examinee of the results of the examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.256. REEXAMINATION. (a) If an applicant fails an examination, the applicant may retake the examination by:

- (1) paying an additional examination fee; and
- (2) retaking the examination not later than the first

anniversary of the date of the unsuccessful examination.

(b) If an applicant fails the examination two or more times, the board may require the applicant to:

(1) complete additional courses of study designated by the board; and

(2) present satisfactory evidence of completion of the required courses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.257. ISSUANCE OF LICENSE. The board shall issue a license as a licensed marriage and family therapist associate or licensed marriage and family therapist, as appropriate, to an applicant who:

(1) complies with the requirements of this chapter;

(2) passes the licensing examination, unless the board exempts the person from the examination requirement; and

(3) pays the required fees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.257(a), eff. Sept. 1, 2001.

Sec. 502.258. TEMPORARY LICENSE. (a) The board by rule may provide for the issuance of a temporary license.

(b) Rules adopted under this section must include a time limit for temporary licenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.259. PROVISIONAL LICENSE. (a) The board may grant a provisional license to practice as a marriage and family therapist in this state without examination to an applicant who is licensed or otherwise registered as a marriage and family therapist by another state or jurisdiction if the requirements to be licensed or registered in the other state or jurisdiction were, on the date the person was licensed or registered, substantially equal to the requirements of this chapter.



(b) An applicant for a provisional license must:

(1) be licensed in good standing as a marriage and family therapist in another state or jurisdiction that has licensing requirements that are substantially equal to the requirements of this chapter;

(2) have passed a national or other examination that:

(A) is recognized by the board; and

(B) relates to marriage and family therapy; and

(3) be sponsored by a person licensed by the board with whom the provisional license holder may practice under this section.

(c) An applicant may be excused from the requirement of Subsection (b)(3) if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(d) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license under Section 502.257. The board shall complete processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend this period to allow for the receipt and tabulation of pending examination results.

(e) The board shall issue a license under Section 502.257 to a provisional license holder if:

(1) the provisional license holder passes the examination required by Section 502.254;

(2) the board verifies that the provisional license holder satisfies the academic and experience requirements of this chapter; and

(3) the provisional license holder satisfies any other license requirements under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.260. INACTIVE STATUS. (a) The board may place a license holder's license under this chapter on inactive status if the holder is not actively engaged in the practice of marriage and family therapy and the holder submits a written request to the board before the expiration of the holder's license.

(b) The board shall maintain a list of each license holder whose license is on inactive status.

- (c) A license holder whose license is on inactive status:
- (1) is not required to pay an annual renewal fee; and
  - (2) may not perform an activity regulated under this

chapter.

(d) The board shall remove the license holder's license from inactive status if the person:

- (1) notifies the board in writing that the person intends to return to active practice;
- (2) pays an administrative fee; and
- (3) complies with educational or other requirements the board adopts by rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.261. DUTIES OF LICENSE HOLDER. (a) A license holder shall display the license holder's license in a conspicuous manner in the person's principal place of practice.

(b) Each license holder shall notify the board of the license holder's current address.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. LICENSE RENEWAL**

Sec. 502.301. RENEWAL OF LICENSE. (a) A license issued under this chapter is subject to biennial renewal. The board shall adopt a system under which licenses expire on various dates during the year.

(b) The board shall notify each license holder in writing of the pending license expiration not later than the 30th day before the date on which the license expires.

(c) A license holder may renew an unexpired license by paying to the board the required renewal fee before the date the license expires.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the board a fee that is equal to 1-1/4 times the amount of the renewal fee. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a fee that is equal to 1-1/2 times the amount of the renewal fee for the license.

(e) A person whose license has been expired for one year or

more may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 17, eff. September 1, 2005.

Sec. 502.302. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the application.

(b) The person must pay to the board a fee that is equal to the amount of the renewal fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 18, eff. September 1, 2005.

Sec. 502.303. CONTINUING EDUCATION. (a) The board shall establish a mandatory continuing education program for license holders.

(b) The board by rule shall establish:

(1) the minimum number of hours of continuing education required to renew a license under this chapter; and

(2) a process to evaluate and approve continuing education courses.

(c) The board may assess the continuing education needs of license holders and require license holders to attend continuing education courses specified by the board.

(d) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The board shall implement a procedure to assess a license holder's participation in continuing education programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER H. DISCIPLINARY ACTIONS AND PROCEDURES**

Sec. 502.351. GROUND FOR DISCIPLINARY ACTIONS. The board shall reprimand a license holder, place on probation a person whose license has been suspended, refuse to renew a person's license, or suspend or revoke a holder's license if the person:

- (1) is convicted of a misdemeanor involving moral turpitude or a felony;
- (2) obtains or attempts to obtain a license by fraud or deception;
- (3) uses drugs or alcohol to an extent that affects the license holder's professional competence;
- (4) performs professional duties in a grossly negligent manner;
- (5) is adjudicated as mentally incompetent by a court;
- (6) practices in a manner that is detrimental to the public health or welfare;
- (7) advertises in a manner that tends to deceive or defraud the public;
- (8) has a license or certification revoked by a licensing agency or a certifying professional organization;
- (9) violates this chapter or a rule or code of ethics adopted under this chapter; or
- (10) commits an act for which liability exists under Chapter 81, Civil Practice and Remedies Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. [1413](#)), Sec. 19, eff. September 1, 2005.

Sec. 502.352. PROBATION. If a license suspension is probated, the board may require the license holder to:

- (1) report regularly to the board on matters that are the basis of the probation;
  - (2) limit practice to the areas prescribed by the board;
- or
- (3) continue or review continuing professional education

until the license holder attains a degree of skill satisfactory to the board in the areas that are the basis for probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.353. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must:

(1) provide the complainant and the license holder with an opportunity to be heard; and

(2) require the presence of a member of the board's legal staff, if the board has a legal staff, or, if the board does not have a legal staff, an attorney employed by the attorney general to advise the board or the board's employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.354. HEARING. A license holder is entitled to a hearing before the State Office of Administrative Hearings before a sanction is imposed under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.355. SANCTIONS. (a) The board by rule shall adopt a broad schedule of sanctions for violations under this chapter.

(b) The State Office of Administrative Hearings shall use the schedule for a sanction imposed as the result of a hearing conducted by that office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.356. EMERGENCY SUSPENSION. (a) The board or a three-member committee of board members designated by the board shall

temporarily suspend the license of a license holder if the board or committee determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 10, eff. Sept. 1, 2003.

Sec. 502.357. GROUND FOR REFUSING RENEWAL. The board may refuse to renew the license of a person who fails to pay an administrative penalty imposed under Subchapter I unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 20, eff. September 1, 2005.

Sec. 502.358. REFUND. (a) Subject to Subsection (b), the board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 20, eff. September 1, 2005.

**SUBCHAPTER I. ADMINISTRATIVE PENALTY**

Sec. 502.401. IMPOSITION OF PENALTY. The commissioner may impose an administrative penalty on a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.402. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the prohibited acts; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts made to correct the violation; and

(6) any other matter that justice may require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 21, eff. September 1, 2005.

Sec. 502.403. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the commissioner determines that a violation has occurred, the commissioner may issue to the board a report stating:

(1) the facts on which the determination is based; and

(2) the commissioner's recommendation on the imposition of

the administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the commissioner shall give written notice of the report to the person on whom the penalty may be imposed. The notice may be given by certified mail. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice under Section 502.403, the person, in writing, may:

- (1) accept the commissioner's determination and recommended administrative penalty; or
- (2) request a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the commissioner's determination and recommended administrative penalty, the board by order shall approve the determination and impose the recommended penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.405. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the department shall set a hearing and give notice of the hearing to the person.

(b) A hearing examiner designated by the department shall hold the hearing.

(c) The hearing examiner shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision as to the occurrence of the violation and the amount of a proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



Sec. 502.406. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the board by order may determine that:

- (1) a violation occurred and impose a penalty; or
- (2) a violation did not occur.

(b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.407. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

- (1) pay the penalty;
- (2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or
- (3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account; or
  - (B) giving to the court a supersedeas bond approved by the court for the amount of the penalty that is effective until all judicial review of the board's order is final; or
- (2) request the court to stay enforcement of the penalty by:
  - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and
  - (B) giving a copy of the affidavit to the commissioner by certified mail.

(c) If the commissioner receives a copy of an affidavit under Subsection (b)(2), the commissioner may file with the court a contest to the affidavit not later than the fifth day after the date the copy

is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is unable to pay the penalty or give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.408. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.409. DETERMINATION BY COURT. (a) If a court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If a court does not sustain the determination that a violation occurred, the court shall order that an administrative penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.410. REMITTANCE OF PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on

the date the penalty is paid to the court and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.411. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 502.451. INJUNCTION. (a) In addition to any other action authorized by law, the board or department may institute an action to enjoin a violation of this chapter.

(b) An action filed under this section must be filed in Travis County, the county of the defendant's residence, or the county in which any part of the violation occurred.

(c) The attorney general or the appropriate county or district attorney shall represent the board or department in an action under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.452. MONITORING OF LICENSE HOLDER. The board by rule shall develop a system to ensure that a license holder complies with this chapter. Rules adopted under this section must include procedures to:

(1) monitor for compliance a license holder who is ordered by the board to perform certain acts; and

(2) identify and monitor each license holder who represents a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.453. CIVIL PENALTY. (a) A person who violates this chapter or a rule or order adopted by the board under this chapter is liable for a civil penalty not to exceed \$1,000 a day.

(b) At the request of the board or department, the attorney general shall bring an action to recover a civil penalty authorized under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.454. CRIMINAL PENALTY. (a) A person required to hold a license under this chapter commits an offense if the person knowingly acts as a marriage and family therapist without holding a license issued under this chapter.

(b) An offense under Subsection (a) is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.455. CEASE AND DESIST ORDER. (a) If it appears to the board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of marriage and family therapy, the board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

Added by Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 22, eff. September 1, 2005.

## **CHAPTER 503. LICENSED PROFESSIONAL COUNSELORS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 503.001. SHORT TITLE. This chapter may be cited as the Licensed Professional Counselor Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.002. GENERAL DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Examiners of Professional Counselors.

(1-a) "Commissioner" means the commissioner of the department.

(2) "Department" means the Department of State Health Services.

(3) "Graduate semester hour" means a semester hour or the quarter hour equivalent as defined by regional accrediting educational associations when applied only to domestic training programs.

(4) "Licensed professional counselor" means a person who holds a license issued under this chapter and who:

(A) represents the person to the public by any title or description of services incorporating the words "licensed counselor" and offers to provide professional counseling services to any individual, couple, family, group, or other entity for compensation, implying that the person offering the services is licensed and trained, experienced, or expert in counseling; or

(B) engages in any practice of counseling.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 1, eff. September 1, 2005.

Sec. 503.003. DEFINITION: PRACTICE OF PROFESSIONAL COUNSELING.

(a) In this chapter, "practice of professional counseling" means the application of mental health, psychotherapeutic, and human development principles to:

(1) facilitate human development and adjustment throughout life;

(2) prevent, assess, evaluate, and treat mental, emotional, or behavioral disorders and associated distresses that interfere with mental health;

(3) conduct assessments and evaluations to establish treatment goals and objectives; and

(4) plan, implement, and evaluate treatment plans using counseling treatment interventions that include:

(A) counseling;

(B) assessment;

(C) consulting; and

(D) referral.

(b) In this section:

(1) "Assessment" means the selection, administration, scoring, and interpretation of an instrument designed to assess an individual's aptitudes, attitudes, abilities, achievements, interests, personal characteristics, disabilities, and mental, emotional, and behavioral disorders, and the use of methods and techniques for understanding human behavior that may include the evaluation, assessment, and treatment by counseling methods, techniques, and procedures for mental and emotional disorders, alcoholism and substance abuse, and conduct disorders. The term does not include the use of standardized projective techniques or permit the diagnosis of a physical condition or disorder.

(2) "Consulting" means applying scientific principles and procedures in counseling and human development to assist in understanding and solving current or potential problems that the person seeking consultation may have with regard to another person, including an individual, group, or organization.

(3) "Counseling" means assisting a client through a therapeutic relationship, using a combination of mental health and human development principles, methods, and techniques, including the use of psychotherapy, to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

(4) "Counseling treatment intervention" means the application of cognitive, affective, behavioral, psychodynamic, and systemic counseling strategies, including strategies for developmental, wellness, and psychological dysfunction that reflect a pluralistic society. The term does not permit or include the diagnosis or treatment of a physical condition or disorder. The term includes:

(A) an intervention specifically implemented in the context of a professional counseling relationship;

(B) individual, group, or family counseling or psychotherapy;

(C) the assessment, evaluation, and treatment of a person with a mental, emotional, or behavioral disorder;

(D) guidance and consulting to facilitate normal growth and development, including educational and career development;

(E) the use of functional assessment and counseling for

a person requesting assistance in adjustment to a disability or handicapping condition;

(F) research; and

(G) referrals.

(5) "Referral" means:

(A) evaluating and identifying the needs of a person being counseled to determine the advisability of referral to another specialist;

(B) informing the person of that judgment; and

(C) communicating to the person to whom the referral is made as requested by the person being counseled or as appropriate.

(c) The use of specific methods, techniques, or modalities within the practice of professional counseling is limited to professional counselors appropriately trained in the use of those methods, techniques, or modalities.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.004. PRACTICE OF MEDICINE NOT AUTHORIZED. This chapter does not authorize the practice of medicine as defined by the law of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.005. APPLICATION OF SUNSET ACT. The Texas State Board of Examiners of Professional Counselors is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. [1283](#)), Sec. 2, eff. September 1, 2005.

#### **SUBCHAPTER B. APPLICATION OF CHAPTER**

Sec. 503.051. COUNSELING FOR GOVERNMENT OR EDUCATIONAL INSTITUTION. This chapter does not apply to an activity, service, or use of an official title by a person employed as a counselor by a

federal, state, county, or municipal agency or, except as provided by Section 21.003(b), Education Code, by a public or private educational institution if the person is performing counseling or counseling-related activities within the scope of the person's employment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 443 (S.B. 715), Sec. 40, eff. June 14, 2013.

Sec. 503.052. COUNSELOR INTERN. This chapter does not apply to an activity or service of a student, intern, or trainee in counseling pursuing a course of study in counseling in a regionally accredited institution of higher education or training institution if:

- (1) the activity or service is a part of the supervised course of study; and
- (2) the person is designated as a "counselor intern."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.054. COUNSELING BY OTHER LICENSED OR CERTIFIED PROFESSIONAL OR BY RELIGIOUS PRACTITIONER. This chapter does not apply to an activity or service of any of the following persons performing counseling consistent with the law of this state, the person's training, and any code of ethics of the person's profession if the person does not represent the person by any title or description as described by the definition of "licensed professional counselor" in Section 503.002:

- (1) a member of another profession licensed or certified by this state, including:
  - (A) a physician, registered nurse, psychologist, social worker, marriage and family therapist, chemical dependency counselor, physician assistant, or occupational therapist; or
  - (B) an optometrist engaged in the evaluation and remediation of learning or behavioral disabilities associated with or caused by a defective or abnormal condition of vision; or
- (2) a recognized religious practitioner, including a Christian Science practitioner recognized by the Church of Christ Scientist as registered and published in the Christian Science



Journal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.055. PERSON LICENSED TO PRACTICE LAW. This chapter does not apply to an activity, service, title, or description of a person licensed to practice law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.056. COUNSELING FOR NONPROFIT ORGANIZATION OR CHARITY. This chapter does not apply to an activity, service, title, or description of a person who is employed as a professional by or who volunteers in the practice of counseling for a public or private nonprofit organization or charity if the person:

(1) is accountable to the person's sponsoring organization;  
and

(2) does not use the title or hold the person out to be a licensed counselor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.057. COUNSELING UNDER OTHER CERTIFICATION. This chapter does not apply to an activity, service, title, or description of a person certified by the Commission on Rehabilitation Counselor Certification or the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists who:

(1) is performing counseling consistent with state law, the person's training, and any code of ethics of the person's profession;  
and

(2) does not use the title or hold the person out to be a licensed counselor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.059. EXEMPT PERSON VOLUNTARILY LICENSED UNDER CHAPTER. A person otherwise exempt under this subchapter who obtains a license

under this chapter is subject to this chapter to the same extent as any other person licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.060. MUSICAL THERAPY SERVICES. This chapter does not apply to an activity, service, title, or description of a person who:

- (1) is certified by the Certification Board for Music Therapists or listed with the National Music Therapy Registry;
- (2) performs a music therapy service consistent with:
  - (A) state law;
  - (B) the person's training; and
  - (C) the code of ethics of the person's profession; and
- (3) does not engage in the use of psychotherapy or use the title of licensed counselor or represent that the person is a licensed counselor.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.258(a), eff. Sept. 1, 2001.

#### **SUBCHAPTER C. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS**

Sec. 503.101. BOARD MEMBERSHIP. (a) The Texas State Board of Examiners of Professional Counselors consists of nine members appointed by the governor with the advice and consent of the senate as follows:

- (1) five licensed professional counselor members, at least three of whom are in private practice and at least one of whom is a counselor educator; and
  - (2) four members who represent the public.
- (b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. [1283](#)), Sec. 3, eff. September 1, 2005.

Sec. 503.102. MEMBERSHIP QUALIFICATIONS. (a) To be qualified for appointment as a licensed professional counselor member of the board, a person must:

- (1) be a citizen of the United States and a resident of this state for the 30 months preceding appointment;
- (2) have engaged in the field of counseling for at least 24 months or 2,000 hours; and
- (3) be licensed under this chapter.

(b) To be qualified for appointment as a public member of the board, a person must:

- (1) be a citizen of the United States and a resident of this state for the 30 months preceding appointment; and
- (2) be at least 18 years old.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.103. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the board if:

- (1) the person is registered, certified, or licensed by an occupational regulatory agency in the field of health care;
- (2) the person's spouse is registered, certified, or licensed by an occupational regulatory agency in the field of mental health; or
- (3) the person or the person's spouse:
  - (A) is employed by or participates in the management of a business entity or other organization receiving funds from the board;
  - (B) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the board; or
  - (C) uses or receives a substantial amount of funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. [1283](#)), Sec. 4, eff. September 1, 2005.

Sec. 503.104. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, manager, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of mental health.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 5, eff. September 1, 2005.

Sec. 503.105. TERMS. Board members serve staggered six-year terms with the terms of three members expiring on February 1 of each odd-numbered year. In making an appointment to the board, the governor shall specify which member the new appointee succeeds.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.106. OFFICERS. (a) The governor shall designate a member of the board as presiding officer. The presiding officer serves in that capacity at the will of the governor.

(b) The board shall elect an assistant presiding officer to serve as provided by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.107. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

- (1) does not have at the time of taking office the qualifications required by Section 503.102;
- (2) does not maintain during the service on the board the qualifications required by Section 503.102;
- (3) is ineligible for membership under Section 503.103 or 503.104;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.260(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. [1283](#)), Sec. 6, eff. September 1, 2005.

Sec. 503.108. REIMBURSEMENT. A board member may receive reimbursement for expenses as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 7, eff. September 1, 2005.

Sec. 503.109. MEETINGS. The board shall hold at least two regular meetings each year as provided by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.110. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting until the person completes a training program that complies with this section.

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

(1) this chapter and the board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts-of-interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

(d) Repealed by Acts 2005, 79th Leg., Ch. 561, Sec. 25(2), eff. September 1, 2005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 8, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 25(2), eff. September 1, 2005.

Sec. 503.111. OFFICIAL OATH. Before assuming the duties of office, each board member shall file with the secretary of state a copy of the constitutional oath of office taken by the member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER D. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL**

Sec. 503.151. EXECUTIVE DIRECTOR. The commissioner of public health, with the advice and consent of the board, shall appoint an executive director for the board. The executive director must be an employee of the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.261(a), eff. Sept. 1, 2001.

Sec. 503.152. POWERS AND DUTIES OF EXECUTIVE DIRECTOR. (a) The executive director serves as the administrator of professional counselor licensing activities for the board. The executive director shall:

- (1) keep full and accurate minutes of the board's transactions and proceedings;
- (2) serve as custodian of the board's files and records;
- (3) prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this chapter, including rules and proposals on administrative procedures;
- (4) exercise general supervision over persons employed by the department in the administration of this chapter;
- (5) investigate complaints and present formal complaints;
- (6) attend all board meetings;
- (7) handle or arrange for the handling of the board's correspondence;

(8) conduct or arrange for necessary inspections and investigations;

(9) obtain, assemble, or prepare reports and information as directed or authorized by the board; and

(10) perform other duties prescribed by this chapter and by the department.

(b) The executive director is not entitled to vote at board meetings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.261(b), eff. Sept. 1, 2001.

Sec. 503.153. PERSONNEL AND FACILITIES. (a) The department shall provide the basic personnel and facilities required to administer this chapter. The department personnel administering this chapter act as agents of the board.

(b) The department by agreement may secure services that it considers necessary to administer this chapter and may provide for compensation for those services.

(c) The department may employ on a full-time or part-time basis the professional consultants, technical assistants, and employees necessary to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.154. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and staff of the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. [1283](#)), Sec. 9, eff. September 1, 2005.

Sec. 503.155. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide, as often as necessary, to its



members and employees information regarding their:

- (1) qualifications for office or employment under this chapter; and
- (2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER E. BOARD POWERS AND DUTIES**

Sec. 503.201. GENERAL POWERS AND DUTIES. (a) The board shall:

- (1) determine the qualifications and fitness of an applicant for a license, license renewal, or provisional license;
- (2) examine for, deny, approve, issue, revoke, suspend, suspend on an emergency basis, place on probation, and renew the license of an applicant or license holder under this chapter;
- (3) adopt and publish a code of ethics;
- (4) by rule adopt a list of authorized counseling methods or practices that a license holder may undertake or perform; and
- (5) adopt an official seal.

(b) The board may request and shall receive the assistance of a state educational institution or other state agency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.202. FEES. (a) The board by rule shall establish fees for the board's services in amounts reasonable and necessary to cover the costs of administering this chapter without accumulating an unnecessary surplus.

(b) The board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.203. GENERAL RULEMAKING AUTHORITY. (a) The board shall adopt rules necessary to administer this chapter.

(b) The board shall conduct hearings on the rules adopted under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.204. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.

(b) The board may not include in rules to prohibit false, misleading, or deceptive practices by a license holder a rule that:

(1) restricts the license holder's use of any advertising medium;

(2) restricts the license holder's personal appearance or use of the license holder's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder; or

(4) restricts the license holder's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.2045. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.

(a) The board shall adopt rules necessary to comply with Chapter 53.

(b) In its rules under this section, the board shall list the specific offenses for which a conviction would constitute grounds for the board to take action under Section 53.021.

Added by Acts 2005, 79th Leg., Ch. 561 (H.B. [1283](#)), Sec. 10, eff. September 1, 2005.

Sec. 503.205. DELEGATION TO COMMITTEE. The board may delegate a function or activity required by this chapter to a committee of board members on a permanent or temporary basis if the board agrees to the delegation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. [1283](#)), Sec. 11, eff. September 1, 2005.

Sec. 503.206. ANNUAL REPORT OF BOARD ACTIVITIES. As part of the report required by Section 11.017, Health and Safety Code, the Texas Board of Health shall include a report about the activities of the Texas State Board of Examiners of Professional Counselors during the preceding fiscal year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.207. LICENSE HOLDER REGISTRY. (a) Each year the board shall prepare a registry of persons licensed under this chapter. The registry must include listings of any specializations permitted by law or by board rule. The registry shall be made available on request to a license holder, another state agency, or a member of the public.

(b) A person licensed under this chapter shall inform the board of the person's current address at all times.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.208. COMPETENT PERFORMANCE OF PROFESSIONAL DUTIES. The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.209. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

(1) adopt a form to standardize information concerning complaints made to the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.210. USE OF TECHNOLOGY. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 12, eff. September 1, 2005.

Sec. 503.211. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 12, eff. September 1, 2005.

#### **SUBCHAPTER F. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 503.251. PUBLIC INTEREST INFORMATION. (a) The board shall prepare and disseminate consumer information that describes the regulatory functions of the board and the procedures by which consumer complaints are filed with and resolved by the board.

(b) The board shall make the information available to the

public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.252. COMPLAINTS. (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

- (1) on each registration form, application, or written contract for services of a person regulated under this chapter;
- (2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or
- (3) in a bill for service provided by a person regulated under this chapter.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.253. RECORDS OF COMPLAINTS. (a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain:

- (1) information about the parties to the complaint and the subject matter of the complaint;
- (2) a summary of the results of the review or investigation of the complaint; and
- (3) information about the disposition of the complaint.

(b) The board shall make information available describing its procedures for complaint investigation and resolution.

(c) The board shall periodically notify the parties of the status of the complaint until final disposition of the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. [1283](#)), Sec. 13, eff. September 1, 2005.

Sec. 503.254. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules must:

- (1) distinguish between categories of complaints;
- (2) ensure that complaints are not dismissed without appropriate consideration;
- (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
- (4) ensure that the person who files a complaint has an opportunity to explain the allegations made in the complaint; and
- (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.2545. SUBPOENAS. (a) In an investigation of a complaint filed with the board, the board may request that the commissioner of public health or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The board may delegate the authority granted under Subsection (a) to the executive director.

(f) The board shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the board may charge for copies of its records.

(g) The reimbursement of the expenses of a witness whose

attendance is compelled under this section is governed by Section 2001.103, Government Code.

(h) All information and materials subpoenaed or compiled by the board in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in discipline of the holder of a license, except that this information may be disclosed to:

- (1) persons involved with the board in a disciplinary action against the holder of a license;
- (2) professional counselor licensing or disciplinary boards in other jurisdictions;
- (3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges by the board against a holder of a license, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.265(a), eff. Sept. 1, 2001.

Sec. 503.255. DISPOSITION OF COMPLAINT. (a) The board shall:

- (1) dispose of each complaint in a timely manner; and
- (2) establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(b) Each party shall be notified of the projected time requirements for pursuing the complaint. The board shall notify each party to the complaint of any change in the schedule established under Subsection (a)(2) not later than the seventh day after the date the change is made.

(c) The executive director shall notify the board of a

complaint that is not resolved within the time prescribed by the board for resolving the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.262(a), eff. Sept. 1, 2001.

Sec. 503.2555. COMPLAINT COMMITTEE. The board shall appoint at least one public member to any board committee established to review a complaint filed with the board or review an enforcement action against a license holder related to a complaint filed with the board.

Added by Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 14, eff. September 1, 2005.

Sec. 503.256. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. LICENSE REQUIREMENTS**

Sec. 503.301. LICENSE REQUIRED. A person may not engage in the practice of professional counseling unless the person is:

- (1) licensed under this chapter; or
- (2) exempt from this chapter under Subchapter B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.302. QUALIFICATIONS FOR LICENSE. (a) A person qualifies for a license under this chapter if the person:

- (1) is at least 18 years old;
- (2) has a master's or doctoral degree in counseling or a



related field;

(3) has successfully completed a graduate degree at a regionally accredited institution of higher education and the number of graduate semester hours required by board rule, which may not be less than 48 hours and must include 300 clock hours of supervised practicum that:

(A) is primarily counseling in nature; and

(B) meets the specific academic course content and training standards established by the board;

(4) has completed the number of supervised experience hours required by board rule, which may not be less than 3,000 hours working in a counseling setting that meets the requirements established by the board after the completion of the graduate program described by Subdivision (3);

(5) except as provided by Subsection (b), passes the license examination and jurisprudence examination required by this chapter;

(6) submits an application as required by the board, accompanied by the required application fee; and

(7) meets any other requirement prescribed by the board.

(b) Repealed by Acts 2005, 79th Leg., Ch. 561, Sec. 25(3), eff. September 1, 2005.

(c) Repealed by Acts 2005, 79th Leg., Ch. 561, Sec. 25(3), eff. September 1, 2005.

(d) In establishing the standards described by Subsection (a)(3)(B), the board shall review and consider the standards as developed by the appropriate professional association.

(e) The board may require the statements on a license application to be made under oath.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.263(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. [1283](#)), Sec. 15, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 561 (H.B. [1283](#)), Sec. 25(3), eff. September 1, 2005.

Sec. 503.303. SPECIALIZATION IN ART THERAPY. (a) A person qualifies for a license as a professional counselor with a specialization in art therapy if the person:

(1) meets the requirements for a license under Section 503.302;

(2) holds:

(A) a master's or doctoral degree in art therapy that includes at least 700 hours of supervised practicum from an accredited institution; or

(B) a master's degree in a counseling-related field if the person has completed at least:

(i) 21 semester hours of sequential course work in the history, theory, and practice of art therapy; and

(ii) 700 hours of supervised practicum from an accredited institution;

(3) completes the following postgraduate experience in addition to the requirements of Subdivision (2) under the supervision of a licensed professional counselor with a specialization in art therapy:

(A) at least 1,000 client contact hours, if the applicant holds a degree described by Subdivision (2)(A); or

(B) at least 2,000 client contact hours, if the applicant holds a degree described by Subdivision (2)(B); and

(4) demonstrates successful completion of the national Certification Examination in Art Therapy of the Art Therapy Credentials Board.

(b) The board shall accept an individual course from an art therapy program accredited through the American Art Therapy Association as satisfying the education requirements under Section 503.302(a)(3) if at least 75 percent of the course content is substantially equivalent to the content of a course required by board rule.

(c) Repealed by Acts 2005, 79th Leg., Ch. 561, Sec. 25(4), eff. September 1, 2005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. [1283](#)), Sec. 25(4), eff. September 1, 2005.

Sec. 503.304. REVIEW OF APPLICATION. (a) Not later than the 30th day before the examination date, after investigation of a license application and review of other evidence submitted, the board shall notify the applicant that the application and evidence submitted are:

- (1) satisfactory and accepted; or
- (2) unsatisfactory and rejected.

(b) If the board rejects an application, the board shall state in the notice the reasons for the rejection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.305. LICENSE EXAMINATION. (a) The board shall administer examinations to determine the competence of qualified applicants at least twice each calendar year.

(b) The board shall contract with a nationally recognized testing organization to develop and administer a written professional counselor licensing examination to applicants who apply for a license under this chapter.

(c) Repealed by Acts 2005, 79th Leg., Ch. 561, Sec. 25(5), eff. September 1, 2005.

(d) Repealed by Acts 2005, 79th Leg., Ch. 561, Sec. 25(5), eff. September 1, 2005.

(e) Repealed by Acts 2005, 79th Leg., Ch. 561, Sec. 25(5), eff. September 1, 2005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. [1283](#)), Sec. 16, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 561 (H.B. [1283](#)), Sec. 25(5), eff. September 1, 2005.

Sec. 503.3055. JURISPRUDENCE EXAMINATION. (a) The board shall develop and administer at least twice each calendar year a jurisprudence examination to determine an applicant's knowledge of this chapter, board rules, and any other applicable laws of this state affecting the applicant's professional counseling practice.

(b) The board shall adopt rules to implement this section,

including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results.

Added by Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 17, eff. September 1, 2005.

Sec. 503.306. EXAMINATION RESULTS. (a) The board shall notify each examinee of the examination results not later than the 30th day after the date on which the examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the examination results not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of the examination results graded or reviewed by a national testing service will be delayed for more than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the person's performance on the examination.

(d) Notwithstanding the other provisions of this section, the board may notify an applicant of the applicant's examination results in the manner provided in a contract between the board and a testing organization selected by the board under Section 503.305.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 18, eff. September 1, 2005.

Sec. 503.307. REEXAMINATION. (a) An applicant who fails an examination may reapply and take a subsequent examination.

(b) An applicant who has failed three successive examinations may not reapply for another examination before:

(1) the second anniversary of the date of the last examination taken by the applicant; or

(2) the date the applicant has satisfactorily completed nine graduate semester hours in the applicant's weakest portion of

the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 591 (S.B. 913), Sec. 1, eff. June 14, 2013.

Sec. 503.308. TEMPORARY LICENSE. (a) The board by rule may provide for the issuance of a temporary license. Rules adopted under this subsection must provide a time limit for the period a temporary license is valid.

(b) The board by rule may adopt a system under which a temporary license may be issued to a person who:

- (1) meets all of the academic requirements for licensing;
- and
- (2) enters into a supervisory agreement with a supervisor approved by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.310. PROVISIONAL LICENSE. (a) On application and payment of applicable fees, the board may issue a provisional license to a person who holds a license as a counselor or art therapist issued by another state or by a jurisdiction acceptable to the board.

(b) An applicant for a provisional license must:

- (1) be licensed in good standing as a counselor or art therapist in another state, territory, or jurisdiction that has licensing requirements substantially equivalent to the requirements of this chapter;

- (2) have passed the required license examination; and

- (3) be sponsored by a person licensed under this chapter with whom the applicant may practice under a provisional license.

(c) An applicant is not required to comply with Subsection (b)(3) if the board determines that compliance with that subsection is a hardship to the applicant.

(d) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license under Section 503.311.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 19, eff. September 1, 2005.

Sec. 503.311. ISSUANCE OF LICENSE TO PROVISIONAL LICENSE HOLDER. (a) The board shall issue a license to the holder of a provisional license who applies for a license if:

(1) the board verifies that the applicant has the academic and experience requirements for a regular license under this chapter; and

(2) the applicant satisfies any other license requirements under this chapter.

(b) The board must complete the processing of a provisional license holder's application for a license not later than the later of:

(1) the 180th day after the date the provisional license is issued; or

(2) the date licenses are issued following completion of the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.312. INACTIVE STATUS. (a) On request of a person licensed under this chapter, the board shall place the person's license on inactive status.

(b) A person whose license is inactive:

(1) foregoes the licensing rights granted under this chapter; and

(2) is not required to pay a license renewal fee or any penalty fee.

(c) A person whose license is inactive may apply to reactivate the license. The board shall reactivate the license if the applicant:

(1) pays a license fee;

(2) is not in violation of this chapter when the applicant applies to reactivate the license; and

(3) fulfills the requirements provided by board rule for

the holder of an inactive license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.313. RETIREMENT STATUS. The board by rule may adopt a system for placing a person licensed under this chapter on retirement status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.314. DISPLAY AND SURRENDER OF LICENSE CERTIFICATE.

(a) A person licensed under this chapter shall display the person's license certificate in an appropriate and public manner.

(b) A license certificate issued by the board is the property of the board and must be surrendered on demand.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER H. LICENSE RENEWAL**

Sec. 503.351. RENEWAL; ELIGIBILITY. A person licensed under this chapter may renew the license biennially if the person:

(1) is not in violation of this chapter when the person applies for renewal; and

(2) fulfills the continuing education requirements established by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. [1283](#)), Sec. 20, eff. September 1, 2005.

Sec. 503.352. LICENSE EXPIRATION DATE. The board shall adopt a system under which licenses expire on various dates during the year. On renewal of the license on the expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1420, Sec. 14.264(a), eff. Sept. 1, 2001.

Sec. 503.353. NOTICE OF LICENSE EXPIRATION. Not later than the 30th day before the expiration date of a person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address according to the board's records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.354. PROCEDURE FOR RENEWAL. (a) A license holder is responsible for renewing the license before the expiration date of the license.

(b) A person may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license.

(c) A person whose license has been expired for 90 days or less may renew the license by paying to the board a fee that is equal to 1-1/4 times the amount of the renewal fee.

(d) If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a fee that is equal to 1-1/2 times the amount of the renewal fee.

(e) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. [1283](#)), Sec. 21, eff. September 1, 2005.

Sec. 503.355. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. The board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the



other state for the two years preceding the date the person applied for renewal. The person must pay to the board a fee that is equal to the amount of the license examination fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.356. CONTINUING EDUCATION. (a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this chapter.

(b) The board may:

(1) assess the continuing education needs of license holders; and

(2) require license holders to attend continuing education courses specified by the board.

(c) The board by rule shall develop a process to evaluate and approve continuing education courses.

(d) The board shall implement a procedure to assess a license holder's participation in continuing education programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER I. DISCIPLINARY PROCEDURES**

Sec. 503.401. DISCIPLINARY ACTIONS. (a) A person licensed under this chapter is subject to disciplinary action under this section if the person:

(1) violates this chapter or a rule or code of ethics adopted by the board;

(2) commits an act for which the license holder would be liable under Chapter 81, Civil Practice and Remedies Code;

(3) is legally committed to an institution because of mental incompetence from any cause; or

(4) directly or indirectly offers to pay or agrees to accept remuneration to or from any person for securing or soliciting a patient or patronage.

(b) If a person is subject to disciplinary action under this section, the board shall:

(1) revoke or suspend the person's license, including a suspension on an emergency basis;

(2) refuse to renew the person's license;

(3) suspend the person's license and place the person on probation with the license suspension probated; or

(4) reprimand the person.

(c) If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit the license holder's practice to the areas prescribed by the board; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(d) A license holder is entitled to a hearing conducted by the State Office of Administrative Hearings before a sanction is imposed under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.402. SCHEDULE OF SANCTIONS. (a) The board by rule shall adopt a broad schedule of sanctions for violations under this chapter.

(b) The State Office of Administrative Hearings shall use the schedule for any sanction imposed under this chapter as the result of a hearing conducted by that office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.403. TEMPORARY LICENSE SUSPENSION. (a) The board or a three-member committee of board members designated by the board shall temporarily suspend the license of a license holder if the board or committee determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this

chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.404. INFORMAL PROCEDURES. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054(c), Government Code.

(b) Rules adopted under Subsection (a) must:

(1) provide the complainant and the license holder an opportunity to be heard; and

(2) require the presence of a representative of the attorney general or the department's legal staff to advise the board or the board's employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.405. MONITORING OF LICENSE HOLDER. (a) The board by rule shall develop a system for monitoring a license holder's compliance with this chapter.

(b) The rules must include procedures to:

(1) monitor for compliance a license holder who is ordered by the board to perform certain acts; and

(2) identify and monitor license holders who represent a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.406. APPLICATION OF ADMINISTRATIVE PROCEDURE LAW. A proceeding to revoke or suspend a license and an appeal from the

proceeding is governed by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.407. REFUND. (a) Subject to Subsection (b), the board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 22, eff. September 1, 2005.

#### **SUBCHAPTER J. PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 503.451. INJUNCTION. (a) The board or the department may institute in its own name an action to enjoin a violation of this chapter. An action under this section is in addition to any other action authorized by law.

(b) The attorney general or the appropriate county or district attorney shall represent the board in an action under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.452. CRIMINAL OFFENSES. (a) A person commits an offense if the person knowingly:

(1) engages in the practice of professional counseling without holding a license under this chapter;

(2) represents the person by the title "Licensed Professional Counselor" or "Licensed Counselor" without holding a license under this chapter;

(3) represents the person by the title "Licensed Professional Counselor -- Art Therapist," "Art Therapist," or by the initials "L.P.C. -- A.T." or "A.T." without:

(A) holding a license with a specialization in art therapy under Section 503.303; or

(B) holding a license under Section 503.309; or

(4) uses any title, words, letters, or abbreviations that imply that the person is licensed under this chapter if the person is not licensed under this chapter.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.453. REPORT OF ALLEGED OFFENSE. The board shall notify the appropriate prosecuting attorney of an alleged offense committed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.454. CEASE AND DESIST ORDER. (a) If it appears to the board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of professional counseling, the board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

Added by Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 23, eff. September 1, 2005.

#### **SUBCHAPTER K. ADMINISTRATIVE PENALTY**

Sec. 503.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 11, eff. Sept. 1, 2003.

Sec. 503.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the administrative penalty may not be less than \$50 or more than \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

(c) The board by rule shall adopt an administrative penalty schedule based on the criteria listed in Subsection (b) for violations of this chapter or board rules to ensure that the amounts of penalties imposed are appropriate to the violation. The board shall provide the administrative penalty schedule to the public on request.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 11, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 24, eff. September 1, 2005.

Sec. 503.503. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the commissioner of public health or the commissioner's designee determines that a violation occurred, the commissioner or the designee may issue to the board a report stating:

- (1) the facts on which the determination is based; and
- (2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the commissioner of public health or the commissioner's designee shall give written notice of the report to the person. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended administrative penalty; and
- (3) inform the person of the person's right to a hearing on

the occurrence of the violation, the amount of the penalty, or both.  
Added by Acts 2003, 78th Leg., ch. 326, Sec. 11, eff. Sept. 1, 2003.

Sec. 503.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty of the commissioner of public health or the commissioner's designee; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the commissioner of public health or the commissioner's designee, the board by order shall approve the determination and impose the recommended penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 11, eff. Sept. 1, 2003.

Sec. 503.505. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the commissioner of public health or the commissioner's designee shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 11, eff. Sept. 1, 2003.

Sec. 503.506. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the board by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 11, eff. Sept. 1, 2003.

Sec. 503.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Within 30 days after the date the board's order becomes final, the person shall:

- (1) pay the administrative penalty; or
- (2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account; or
  - (B) giving the court a supersedeas bond approved by the court that:
    - (i) is for the amount of the penalty; and
    - (ii) is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

- (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and
- (B) giving a copy of the affidavit to the commissioner of public health or the commissioner's designee by certified mail.

(c) If the commissioner of public health or the commissioner's designee receives a copy of an affidavit under Subsection (b)(2), the commissioner or the designee may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 11, eff. Sept. 1, 2003.



Sec. 503.508. COLLECTION OF PENALTY. (a) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 11, eff. Sept. 1, 2003.

Sec. 503.509. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 11, eff. Sept. 1, 2003.

Sec. 503.510. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 11, eff. Sept. 1, 2003.

Sec. 503.511. ADMINISTRATIVE PROCEDURE. A proceeding under

this subchapter is a contested case under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 11, eff. Sept. 1, 2003.

## CHAPTER 504. CHEMICAL DEPENDENCY COUNSELORS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 504.001. DEFINITIONS. In this chapter:

- (1) "Certified clinical supervisor" means a person certified in accordance with Section 504.1521.
- (2) "Chemical dependency counseling" means assisting an individual or group to:
  - (A) develop an understanding of chemical dependency problems;
  - (B) define goals; and
  - (C) plan action reflecting the individual's or group's interest, abilities, and needs as affected by claimed or indicated chemical dependency problems.
- (3) "Chemical dependency counselor" means a person licensed under this chapter.
- (4) "Clinical training institution" means a person registered with the department in accordance with Section 504.1521 to supervise a counselor intern.
- (5) "Commissioner" means the commissioner of state health services.
- (6) "Counselor intern" means a person registered with the department in accordance with Section 504.1515.
- (7) "Department" means the Department of State Health Services.
- (8) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
- (9) "Peer assistance program" means a program approved by the department under Section 504.057.
- (10) "Person" means an individual, corporation, partnership, association, or other business or professional entity.
- (11) "Practice of chemical dependency counseling" means providing or offering to provide chemical dependency counseling services involving the application of the principles, methods, and procedures of the chemical dependency counseling profession.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1172, Sec. 1, eff. Sept. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 1, eff. September 1, 2007.

Sec. 504.002. EXEMPTIONS; APPLICABILITY. (a) A person is exempt from this chapter if the person does not:

(1) directly or indirectly represent to the public that the person is licensed under this chapter; and

(2) use any name, title, or designation indicating that the person is licensed under this chapter.

(b) This chapter does not apply to an activity or service of a person who:

(1) is employed as a counselor by a federal institution and is providing chemical dependency counseling within the scope of the person's employment;

(2) except as provided by Section 504.1515, is a student, intern, or trainee pursuing a supervised course of study in counseling at a regionally accredited institution of higher education or training institution, if the person:

(A) is designated as a "counselor intern"; and

(B) is engaging in the activity or providing the service as part of the course of study;

(3) is not a resident of this state, if the person:

(A) engages in the activity or provides the service in this state for not more than 30 days during any year; and

(B) is authorized to engage in the activity or provide the service under the law of the state of the person's residence;

(4) is a licensed physician, psychologist, professional counselor, or social worker;

(5) is a religious leader of a congregation providing pastoral chemical dependency counseling within the scope of the person's duties;

(6) is working for or providing counseling with a program exempt under Subchapter C, Chapter 464, Health and Safety Code;

(7) is a school counselor certified by the State Board for Educator Certification; or

(8) provides chemical dependency counseling through a

program or in a facility that receives funding from the Texas Department of Criminal Justice and who is credentialed as:

(A) a certified criminal justice addictions professional by the International Certification and Reciprocity Consortium; or

(B) having certified criminal justice professional applicant status issued by the Texas Certification Board of Addiction Professionals.

(c) A person exempt under this section who obtains a license under this chapter is subject to this chapter to the same extent as any other person who obtains a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1107, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 564 (H.B. 3145), Sec. 2, eff. June 17, 2011.

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

Sec. 504.051. GENERAL POWERS AND DUTIES OF EXECUTIVE COMMISSIONER. The executive commissioner shall:

- (1) adopt rules as necessary for the performance of its duties under this chapter;
- (2) establish standards of conduct and ethics for persons licensed under this chapter; and
- (3) establish any additional criteria for peer assistance programs for chemical dependency counselors that the executive commissioner determines necessary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Sec. 504.0515. GENERAL POWERS AND DUTIES OF DEPARTMENT. The department shall:

- (1) enforce rules as necessary for the performance of its duties under this chapter; and
- (2) ensure strict compliance with and enforcement of this chapter.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Sec. 504.052. DISCRIMINATION PROHIBITED. In taking an action or making a decision under this chapter, the executive commissioner, commissioner, and department shall do so without regard to the sex, race, religion, national origin, color, or political affiliation of the person affected. For purposes of this section, taking an action or making a decision under this chapter includes:

- (1) considering a license application;
- (2) conducting an examination;
- (3) adopting or enforcing a rule; and
- (4) conducting a disciplinary proceeding.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Sec. 504.053. FEES; ACCOUNT. (a) The executive commissioner shall set application, examination, license renewal, and other fees in amounts sufficient to cover the costs of administering this chapter. The amount of the license renewal fee may not exceed \$200.

(b) General revenue taxes may not be used to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Sec. 504.054. COLLECTION ACTION. A district court in Travis

County has exclusive jurisdiction of an action to collect an obligation owed to the department, including an administrative penalty assessed under Subchapter G.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Sec. 504.055. OFFICIAL ROSTER. (a) The department may prepare and publish a roster showing the name and address, as reflected by the department's records, of each chemical dependency counselor.

(b) If the department publishes a roster under this section, the department shall mail a copy of the roster to each person licensed by the department and shall file a copy of the roster with the secretary of state.

(c) A person's name and address may appear in the roster only if each fee assessed against the person under this chapter is current and paid in full at the time the roster is sent to the printer or publisher.

(d) The department may charge a fee for the roster published under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Sec. 504.056. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The executive commissioner may not adopt a rule restricting advertising or competitive bidding by a person regulated by the department under this chapter except to prohibit a false, misleading, or deceptive practice.

(b) The executive commissioner may not include in rules adopted under this chapter a rule that:

- (1) restricts the person's use of any advertising medium;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by

the person; or

(4) restricts the person's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Sec. 504.057. APPROVAL OF PEER ASSISTANCE PROGRAMS. (a) The department shall approve one or more peer assistance programs established by the department or a professional association in accordance with Chapter 467, Health and Safety Code, from which persons licensed under this chapter may seek assistance.

(b) The department shall approve a peer assistance program that:

(1) meets the minimum criteria established by the executive commissioner or department under Chapter 467, Health and Safety Code;

(2) meets any additional criteria established by the executive commissioner or department for chemical dependency counselors licensed under this chapter; and

(3) is designed to assist a chemical dependency counselor whose ability to perform a professional service is impaired by abuse of or dependency on drugs or alcohol.

(c) The department shall maintain a list of approved peer assistance programs for licensed chemical dependency counselors on the department's Internet website.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Sec. 504.058. FUNDING FOR CHEMICAL DEPENDENCY COUNSELOR PROGRAMS. (a) The executive commissioner shall add a surcharge of not more than \$10 to the license or license renewal fee for a license under this chapter to fund approved peer assistance programs for chemical dependency counselors. Money collected from the surcharge shall be remitted to the comptroller for deposit to the credit of the chemical dependency counselor account. The chemical dependency

counselor account is an account in the general revenue fund.

(b) Subject to the General Appropriations Act, the department may use the money from the surcharge collected under this section and deposited in the chemical dependency counselor account only to fund approved peer assistance programs and to pay the administrative costs incurred by the department that are related to the programs.

Added by Acts 2011, 82nd Leg., R.S., Ch. 564 (H.B. 3145), Sec. 3, eff. June 17, 2011.

**SUBCHAPTER C. PUBLIC INTEREST INFORMATION AND  
COMPLAINT PROCEDURES**

Sec. 504.101. CONSUMER INTEREST INFORMATION. (a) The department shall prepare information of consumer interest describing the regulatory functions of the department and the procedures by which consumer complaints are filed with and resolved by the department.

(b) The department shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Sec. 504.102. CONSUMER INFORMATION FOR FILING COMPLAINTS. Each person licensed under this chapter shall display prominently at all times in the person's place of business a sign containing:

(1) the name, mailing address, and telephone number of the department; and

(2) a statement informing a consumer that a complaint against a person licensed under this chapter may be directed to the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.



Sec. 504.103. RECORDS OF COMPLAINTS. (a) The department shall keep information about each complaint filed with the department. The information must include:

- (1) the date the complaint is received;
- (2) the name of the complainant;
- (3) the subject matter of the complaint;
- (4) a record of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) for a complaint for which the department took no action, an explanation of the reason the complaint was closed without action.

(b) The department shall keep an information file about each complaint filed with the department that the department has authority to resolve.

(c) The department, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person or entity that is the subject of the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

#### **SUBCHAPTER D. LICENSE AND REGISTRATION REQUIREMENTS**

Sec. 504.151. LICENSE REQUIRED; USE OF TITLE. (a) A person may not engage in the practice of chemical dependency counseling unless the person is licensed as a chemical dependency counselor under this chapter.

(b) A person, other than a person licensed under this chapter or exempt from the application of this chapter, may not use:

- (1) the term "chemical dependency counselor" or any combination, variation, or abbreviation of that term as a professional, business, or commercial identification, name, title, or representation; or
- (2) any letter, abbreviation, work symbol, slogan, sign, or

any combination or variation likely to create the impression that the person is authorized to practice chemical dependency counseling or is a licensed chemical dependency counselor.

(c) Unless a person is engaged in the practice of chemical dependency counseling in accordance with this chapter, the person may not:

(1) hold the person out to the public as engaged in the practice of chemical dependency counseling;

(2) offer chemical dependency counseling services, including offering those services under an assumed, trade, business, professional, partnership, or corporate name or title; or

(3) use the term "licensed chemical dependency counselor," the abbreviation "LCDC," or any combination or variation of that term or abbreviation in connection with the person's practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 504.1511. OTHER CERTIFICATIONS INCLUDED ON LICENSE. A license issued under this chapter must include an area on which a license holder may apply an adhesive label issued by the Texas Certification Board of Addiction Professionals with the designation and expiration date of any other related certification held by the license holder that is approved by the International Certification Reciprocity Consortium or another entity approved by the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 4, eff. September 1, 2007.

Sec. 504.1515. COUNSELOR INTERNS. (a) A person seeking a license as a chemical dependency counselor shall register with the department as a counselor intern by submitting, in a form acceptable to the department, the following:

(1) an application fee and a background investigation fee;

(2) a completed, signed, dated, and notarized application on a form prescribed by the department;

(3) a recent full-face wallet-sized photograph of the applicant;

(4) two sets of fingerprints completed in accordance with department instructions on cards issued by the department;

(5) documentation verifying the applicant successfully completed:

(A) 270 total hours of approved curricula described by Section 504.152(3)(A); and

(B) 300 hours of approved supervised field work practicum described by Section 504.152(3)(C); and

(6) documentation verifying the applicant received a high school diploma or its equivalent.

(b) The department may obtain criminal history record information relating to a counselor intern or an applicant for registration as a counselor intern from the Department of Public Safety and the Federal Bureau of Investigation.

Acts 2003, 78th Leg., ch. 1172, Sec. 3, eff. Sept. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 5, eff. September 1, 2007.

Sec. 504.152. ELIGIBILITY REQUIREMENTS. (a) To be eligible for a license under this chapter, a person must:

(1) be at least 18 years of age;

(2) hold an associate degree or a more advanced degree;

(3) have completed:

(A) 135 hours, or nine semester hours, specific to substance abuse disorders and treatment and an additional 135 hours, or nine semester hours, specific or related to chemical dependency counseling;

(B) 4,000 hours of approved supervised experience working with chemically dependent persons; and

(C) 300 hours of approved supervised field work practicum;

(4) provide two letters of reference from chemical dependency counselors;

(5) pass a written examination approved by the department;

(6) submit a case presentation to the test administrator;

(7) be determined by the department to be worthy of the public trust and confidence;

(8) successfully complete the chemical dependency counselor examination under Section 504.156;

(9) sign a written agreement to comply with the standards of ethics approved by the department; and

(10) provide to the department written assurance that the applicant has access to a peer assistance program.

(b) The department may waive the requirement under Subsection (a)(10) if the department determines that a peer assistance program is not reasonably available to the license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1172, Sec. 4, eff. Sept. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 5, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 564 (H.B. 3145), Sec. 4, eff. June 17, 2011.

Sec. 504.1521. SUPERVISED WORK EXPERIENCE. (a) A counselor intern shall obtain the supervised work experience required under Section 504.152 that is obtained in this state at a clinical training institution or under the supervision of a certified clinical supervisor.

(b) The executive commissioner shall adopt rules necessary to:

(1) register clinical training institutions that meet the criteria established by the executive commissioner, commissioner, or department to protect the safety and welfare of the people of this state; and

(2) certify clinical supervisors who hold certification credentials approved by the department or by a person designated by the department, such as the International Certification and Reciprocity Consortium or another person that meets the criteria established by the executive commissioner, commissioner, or department to protect the safety and welfare of the people of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 6, eff. September 1, 2008.

Sec. 504.1525. CERTAIN GROUNDS FOR LICENSE, REGISTRATION, OR CERTIFICATION REFUSAL; EXCEPTION. (a) Except as provided by

Subsection (b), the department may not issue a license, registration, or certification under this chapter to an applicant who has been:

(1) convicted or placed on community supervision during the three years preceding the date of application in any jurisdiction for an offense equal to a Class B misdemeanor specified by executive commissioner rule;

(2) convicted or placed on community supervision in any jurisdiction for an offense equal to or greater than a Class A misdemeanor specified by executive commissioner rule; or

(3) found to be incapacitated by a court on the basis of a mental defect or disease.

(b) The department may issue a license, registration, or certification to a person convicted or placed on community supervision in any jurisdiction for a drug or alcohol offense described by Subsection (a)(1) or (2) if the department determines that the applicant has successfully completed participation in an approved peer assistance program.

(c) Subsection (a) does not apply to an applicant who has, with respect to Subsection (a)(1) or (2), received a full pardon based on the person's wrongful conviction or, with respect to Subsection (a)(3), been found by a court to no longer be incapacitated.

Added by Acts 2001, 77th Leg., ch. 1107, Sec. 3, eff. Sept. 1, 2001.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 7, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 564 (H.B. 3145), Sec. 5, eff. June 17, 2011.

Sec. 504.153. ALTERNATIVE QUALIFICATIONS AND EVIDENCE OF LICENSE REQUIREMENT SATISFACTION. (a) An applicant is exempt from the requirements of Sections 504.152(3)(A) and (C) if the applicant holds a baccalaureate degree or a more advanced degree in:

(1) chemical dependency counseling; or

(2) psychology, sociology, or any other related program approved by the department.

(b) On presentation of documentation by an applicant who holds a degree described by Subsection (a), the department may waive any portion of the requirement established by Section 504.152(3)(B) that

the department determines has been satisfied as evidenced by the documentation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1172, Sec. 5, eff. Sept. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 7, eff. September 1, 2007.

Sec. 504.155. LICENSE APPLICATION. (a) An application for a license under this chapter must:

(1) be on a form prescribed and furnished by the department; and

(2) contain a statement made under oath of the applicant's education, experience, and other qualifications established by the department as required for a license under this chapter.

(b) The department may require additional information regarding the quality, scope, and nature of the experience and competence of the applicant if the department determines that a person's application lacks sufficient information for consideration by the department.

(c) The department may obtain criminal history record information relating to an applicant for a license under this chapter from the Department of Public Safety and the Federal Bureau of Investigation. The department may deny an application for a license if the applicant fails to provide two complete sets of fingerprints on a form prescribed by the department.

(d) The issuance of a license by the department is conditioned on the receipt by the department of the applicant's criminal history record information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1107, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 7, eff. September 1, 2007.

Sec. 504.156. LICENSE EXAMINATION. (a) At least twice each year, the department may prepare and administer or contract with an

organization approved by the International Certification Reciprocity Consortium to prepare and administer an examination to determine the qualifications of an applicant for a license under this chapter. The examination shall be conducted as determined by the department and in a manner that is fair and impartial to and takes into consideration each school or system of chemical dependency counseling.

(b) An examiner may know an applicant only by number until after the examination has been graded and the licenses have been granted or denied.

(c) The scope and content of the examination must be sufficient to ensure professional competence in keeping with the highest standards of the chemical dependency counseling profession.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 8, eff. September 1, 2007.

Sec. 504.157. EXAMINATION RESULTS; REEXAMINATION. (a) The department shall notify each examinee of the results of the examination not later than the 45th day after the date the examination is administered.

(b) If requested by an applicant who fails the examination, the department shall furnish the applicant with an analysis of the applicant's performance on the examination.

(c) An applicant who fails the examination may take a subsequent examination on payment of the required examination fee.

(d) The executive commissioner by rule shall establish the criteria under which an applicant may take a subsequent examination under Subsection (c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 949, Sec. 1, eff. June 14, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 9, eff. September 1, 2007.

Sec. 504.158. PROVISIONAL LICENSE. (a) The department may issue a provisional license to an applicant who is licensed in

another state. An applicant for a provisional license under this section must:

(1) be licensed in good standing as a chemical dependency counselor at least two years in another state or country that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) have passed a national or other examination recognized by the department relating to the practice of chemical dependency counseling; and

(3) be sponsored by a person licensed by the department under this chapter with whom the provisional license holder may practice.

(b) The department may waive the requirement of Subsection (a)(3) if the department determines that compliance with that subsection would constitute a hardship to the applicant.

(c) The department may establish a fee for a provisional license in an amount reasonable and necessary to cover the cost of issuing the license.

(d) A provisional license is valid until the date the department approves or denies the provisional license holder's application for a license under Section 504.159.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 9, eff. September 1, 2007.

Sec. 504.159. ISSUANCE OF LICENSE TO PROVISIONAL LICENSE HOLDER. (a) The department shall issue a license under this chapter to a provisional license holder who satisfies the eligibility requirements established by Section 504.152. When issuing a license under this subsection, the department may waive the requirements established by Sections 504.152(6), (7), and (9).

(b) The department shall complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The department may extend the 180-day period if the department has not received information necessary to determine whether the applicant is eligible for a license as provided by Subsection (a).



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 9, eff. September 1, 2007.

Sec. 504.160. ISSUANCE OF LICENSE TO CERTAIN OUT-OF-STATE APPLICANTS. (a) The department may, on application and payment of the appropriate fee, issue a license to a person who is licensed or certified by another state as a chemical dependency counselor if the department determines that the license or certificate requirements of that state are substantially equivalent to the requirements of this chapter.

(b) The department may waive any license requirement for an applicant with a license or certificate issued by another state with which this state has a reciprocity agreement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 9, eff. September 1, 2007.

Sec. 504.161. CRIMINAL HISTORY RECORD INFORMATION. (a) The department may obtain criminal history record information as provided by Section 411.1105, Government Code, and consider that information in determining a person's license, registration, or certification status under this chapter.

(b) The department may charge a person on whom criminal history record information is sought a fee in an amount set by the department as reasonably necessary to cover the costs of administering this section. A fee collected under this subsection may be appropriated only to the department to administer this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 9, eff. September 1, 2007.

#### **SUBCHAPTER E. LICENSE EXPIRATION AND RENEWAL**

Sec. 504.201. LICENSE EXPIRATION. (a) A license issued under this chapter expires on the second anniversary of the date of issuance. The executive commissioner by rule shall adopt a system under which licenses expire on various dates during the year.

(b) A person may not engage in activities that require a license if the person's license has expired and is not renewed as provided by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 10, eff. September 1, 2007.

Sec. 504.202. NOTICE OF LICENSE EXPIRATION AND REQUIREMENTS TO RENEW. Not later than the 31st day before the expiration date of a person's license, the department shall send to the license holder at the license holder's last known address according to department records written notice of:

- (1) the impending license expiration;
- (2) the amount of the renewal fee; and
- (3) any continuing education required to renew the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 11, eff. September 1, 2007.

Sec. 504.2025. CERTAIN GROUNDS FOR REFUSAL TO RENEW LICENSE, REGISTRATION, OR CERTIFICATION. (a) Except as provided by Subsection (b), the department shall refuse to renew a license, registration, or certification under this chapter on receipt of information from the Department of Public Safety or another law enforcement agency that the person has been convicted, placed on community supervision, or found to be incapacitated as described by Section 504.1525.

(b) The department may renew a license under this chapter if the department determines that the person has successfully completed participation in an approved peer assistance program subsequent to the conviction or placement on community supervision for an offense

described by Section 504.1525(b).

Added by Acts 2001, 77th Leg., ch. 1107, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 11, eff. September 1, 2008.

Sec. 504.2026. REFUSAL TO RENEW LICENSE: ACCESS TO PEER ASSISTANCE PROGRAM. (a) Except as provided by Subsection (b), the department may not renew a license under this chapter unless the license holder provides to the department written documentation that the license holder has access to an approved peer assistance program.

(b) The department may waive the requirement of Subsection (a) if the department determines that a peer assistance program is not reasonably available to the license holder.

Added by Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 12, eff. September 1, 2007.

Sec. 504.203. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license.

(b) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the department a fee in an amount equal to one and one-half times the required renewal fee.

(c) If the person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the department a fee in an amount equal to two times the required renewal fee.

(d) If the person's license has been expired for one year or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 13, eff.

September 1, 2007.

Sec. 504.204. RENEWAL OF EXPIRED LICENSE OF OUT-OF-STATE PRACTITIONER. (a) The department may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date the person applies for renewal.

(b) The person must pay to the department a fee in an amount equal to two times the required renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 14, eff. September 1, 2007.

Sec. 504.205. CONTINUING EDUCATION REQUIREMENTS. (a) The department shall recognize, prepare, or administer a continuing education program for chemical dependency counselors. The executive commissioner by rule shall provide for the administration of the continuing education requirements established under this section.

(b) As a prerequisite for renewal of a license issued under this chapter, a license holder, other than a license holder subject to Subsection (c), must participate in the continuing education program and complete continuing education hours in each two-year licensing period as follows:

(1) 40 hours if the license holder holds an associate's or bachelor's degree; and

(2) 24 hours if the license holder holds a master's degree or a more advanced degree.

(c) A license holder must complete at least 24 hours of continuing education in each two-year licensing period as a requirement for renewal of the license if the license holder is also licensed as:

(1) a licensed master social worker under Chapter 505;

(2) a licensed marriage and family therapist under Chapter 502;

(3) a licensed professional counselor under Chapter 503;

- (4) a physician practicing medicine under Subtitle B; or
- (5) a psychologist under Chapter 501.

(d) Except for the number of hours required, the executive commissioner may not adopt a rule under Subsection (a) that distinguishes between the continuing education requirements for a license holder subject to Subsection (b) and a license holder subject to Subsection (c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.266(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 15, eff. September 1, 2007.

Sec. 504.206. CONTINUING EDUCATION RELATING TO HIV, HEPATITIS C, AND SEXUALLY TRANSMITTED DISEASES. (a) The continuing education required under Section 504.205 must include six hours of training during each two-year licensing period relating to HIV, hepatitis C, and sexually transmitted diseases.

(b) The department shall recognize, prepare, or administer a training component that satisfies the requirement of Subsection (a) for use in continuing education for chemical dependency counselors.

(c) The training component must address HIV, hepatitis C, and sexually transmitted diseases in the context of chemical dependency counseling and must provide information relating to the special needs of persons with positive test results, including the importance of prevention, early intervention, and treatment and recognition of psychosocial needs. The training component must prepare a chemical dependency counselor to provide appropriate information to educate clients about HIV, hepatitis C, and sexually transmitted diseases.

(d) In developing the training component, the department may, to the extent appropriate, consider the training course relating to hepatitis C developed by the department under Section 94.002, Health and Safety Code.

Added by Acts 2001, 77th Leg., ch. 194, Sec. 1, eff. May 21, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 16, eff. September 1, 2007.

**SUBCHAPTER F. DISCIPLINARY PROCEEDINGS**

Sec. 504.251. GROUNDS FOR LICENSE, REGISTRATION, OR CERTIFICATION DENIAL OR DISCIPLINARY ACTION. The department shall refuse to issue a license, registration, or certification issued by the department to an applicant, refuse to renew a license, registration, or certification holder's license, registration, or certification issued by the department, or take disciplinary action against the holder of a license, registration, or certification issued by the department if the applicant or license, registration, or certification holder:

- (1) violates or assists another to violate this chapter or a rule adopted under this chapter;
- (2) circumvents or attempts to circumvent this chapter or a rule adopted under this chapter;
- (3) directly or indirectly participates in a plan to evade this chapter or a rule adopted under this chapter;
- (4) has a license to practice chemical dependency counseling in another jurisdiction refused, suspended, or revoked for a reason that the department determines would constitute a violation of this chapter or a rule adopted under this chapter;
- (5) engages in false, misleading, or deceptive conduct as defined by Section 17.46, Business & Commerce Code;
- (6) engages in conduct that discredits or tends to discredit the profession of chemical dependency counseling;
- (7) directly or indirectly reveals a confidential communication made to the person by a client or recipient of services, except as required by law;
- (8) refuses to perform an act or service the person is licensed, registered, or certified to perform under this chapter on the basis of the client's or recipient's age, sex, race, religion, national origin, color, or political affiliation; or
- (9) commits an act for which liability exists under Chapter 81, Civil Practice and Remedies Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 17, eff. September 1, 2007.

Sec. 504.252. DISCIPLINARY POWERS OF DEPARTMENT. (a) On a determination that grounds exist to deny a license, registration, or certification issued by the department or license, registration, or certification renewal issued by the department or to take disciplinary action against the holder of a license, registration, or certification issued by the department, the department may:

(1) refuse to issue or renew a license, registration, or certification;

(2) revoke or suspend a license, registration, or certification;

(3) place on probation a license, registration, or certification holder whose license, registration, or certification is suspended; or

(4) reprimand a license, registration, or certification holder.

(b) If the department places on probation a license, registration, or certification holder whose license, registration, or certification issued by the department is suspended, the department may require the license, registration, or certification holder to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review professional education until the license, registration, or certification holder attains a degree of skill satisfactory to the department in the areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 17, eff. September 1, 2007.

Sec. 504.2525. SUMMARY LICENSE, REGISTRATION, OR CERTIFICATION SUSPENSION. (a) The department shall suspend the license, registration, or certification issued by the department of a license, registration, or certification holder if the department receives

written notice from the Department of Public Safety or another law enforcement agency that the license, registration, or certification holder has been charged, indicted, placed on deferred adjudication, community supervision, or probation, or convicted of an offense described by Section 504.1525.

(b) To initiate a proceeding to take action under Subsection (a), the department must serve notice on the license, registration, or certification holder. The notice must:

(1) state the grounds for summary suspension; and

(2) be personally served on the license, registration, or certification holder or sent to the license, registration, or certification holder by certified or registered mail, return receipt requested, to the license, registration, or certification holder's mailing address as it appears in the department's records.

(c) The suspension is effective at the time notice is served. The license, registration, or certification holder is entitled to appeal the suspension as provided by Section 504.255.

Added by Acts 2001, 77th Leg., ch. 1107, Sec. 6, eff. Sept. 1, 2001.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 17, eff. September 1, 2007.

Sec. 504.253. COMPLAINT AND INVESTIGATION. (a) A person may file a complaint with the department alleging a violation of this chapter. The complaint must be in writing and under oath.

(b) The department shall provide to the person filing the complaint and to each person or entity that is the subject of the complaint the department's policies and procedures pertaining to complaint investigation and resolution.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 17, eff. September 1, 2007.

Sec. 504.254. RIGHT TO ADMINISTRATIVE HEARING. (a) If the department proposes to suspend, revoke, or refuse to renew a person's license, registration, or certification issued by the department, the



person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Procedures for disciplinary action are governed by Chapter 2001, Government Code. Rules of practice adopted by the executive commissioner under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 17, eff. September 1, 2007.

Sec. 504.255. APPEAL OF CERTAIN DENIALS, REFUSALS TO RENEW, AND SUSPENSIONS. (a) A person whose license, registration, or certification application is denied under Section 504.1525, whose license, registration, or certification renewal is refused under Section 504.2025, or whose license, registration, or certification is suspended under Section 504.2525 may appeal the denial, refusal to renew, or suspension on the grounds that:

(1) the sole basis for the department's determination is a conviction or placement on community supervision for an offense described by Section 504.1525; and

(2) sufficient time, as determined by executive commissioner rule, has expired since the date of the conviction or placement.

(b) A proceeding under this section is governed by Chapter 2001, Government Code.

(c) After a hearing under this section, the department may determine that the person is entitled to a license, registration, or certification under this chapter.

Added by Acts 2001, 77th Leg., ch. 1107, Sec. 7, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 17, eff. September 1, 2007.

#### **SUBCHAPTER G. ADMINISTRATIVE PENALTY**

Sec. 504.301. IMPOSITION OF PENALTY. The department may impose

an administrative penalty on a person who violates this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 18, eff. September 1, 2007.

Sec. 504.302. AMOUNT OF PENALTY. (a) The amount of the administrative penalty may not exceed \$1,000 for each violation. Each day of a continuing violation is a separate violation.

(b) The amount of the penalty shall be based on:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts made to correct the violation; and
- (5) any other matter that justice requires.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 504.303. NOTICE OF VIOLATION AND PENALTY. If, after investigation of a possible violation and the facts surrounding the possible violation, the department determines that a violation occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the proposed administrative penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 18, eff. September 1, 2007.

Sec. 504.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a)

Not later than the 20th day after the date the person receives the notice under Section 504.303, the person may:

(1) accept the department's determination and proposed administrative penalty; or

(2) make a written request for a hearing on that determination.

(b) If the person accepts the department's determination, the commissioner or the commissioner's designee by order shall approve the determination and assess the proposed penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 18, eff. September 1, 2007.

Sec. 504.305. HEARING. (a) If the person requests a hearing in a timely manner, the department shall set a hearing and give written notice of the hearing to the person.

(b) The department may employ a hearings examiner for this purpose.

(c) The hearings examiner shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the commissioner or the commissioner's designee a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 18, eff. September 1, 2007.

Sec. 504.306. DECISION BY DEPARTMENT. (a) Based on the findings of fact, conclusions of law, and recommendations of the hearings examiner, the commissioner or the commissioner's designee by order may determine that:

(1) a violation occurred and assess an administrative penalty; or

(2) a violation did not occur.

(b) The department shall give notice of the order to the person. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the amount of any penalty assessed; and
- (3) a statement of the person's right to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 18, eff. September 1, 2007.

Sec. 504.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the department's order becomes final, the person shall:

- (1) pay the administrative penalty;
- (2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or
- (3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account; or
  - (B) giving to the court a supersedeas bond approved by the court that:
    - (i) is for the amount of the penalty; and
    - (ii) is effective until judicial review of the order is final; or
- (2) request the court to stay enforcement of the penalty by:
  - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and
  - (B) giving a copy of the affidavit to the department by

certified mail.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 18, eff. September 1, 2007.

Sec. 504.308. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 504.309. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount be remitted to the person if the person paid the penalty, plus accrued interest if the person paid the penalty under Section 504.307(a)(2); or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is

remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 504.310. COLLECTION OF PENALTY. (a) In this section, "reasonable expenses and costs" includes expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

(b) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed under Section 504.307, the department may refer the matter to the attorney general for collection of the penalty.

(c) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of the commissioner or the commissioner's designee requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of expenses and costs.

(d) If the attorney general brings an action against a person to enforce an administrative penalty assessed under this chapter and the person is found liable for the administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 19, eff. September 1, 2007.

Sec. 504.311. ADMINISTRATIVE PROCEDURE. A proceeding to assess an administrative penalty under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER H. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 504.351. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted under this chapter, the department or the attorney general at the request of the department may institute an action in district court for an injunction, a civil penalty, or both.

(b) On application for injunctive relief and a finding that a person is violating or threatening to violate this chapter or a rule adopted under this chapter, the district court may grant injunctive relief as the facts warrant. The department is not required to give an appeal bond in an appeal of an action seeking injunctive relief under this section.

(c) The amount of a civil penalty imposed under this section may not be less than \$50 or more than \$500 for each day of the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 20, eff. September 1, 2007.

**CHAPTER 505. SOCIAL WORKERS****SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 505.001. SHORT TITLE. This chapter may be cited as the Social Work Practice Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 1, eff. Sept. 1, 2003.

Sec. 505.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2003, 78th Leg., ch. 892, Sec. 37.

(2) "Board" means the Texas State Board of Social Worker Examiners.

(2-a) "Commissioner" means the commissioner of state health services.

(3) "Council on Social Work Education" means the national organization that is primarily responsible for the accreditation of schools of social work in the United States or its successor approved

by the board.

(4) "Department" means the Department of State Health Services.

(4-a) "Licensed baccalaureate social worker" means a person who holds a baccalaureate social worker license issued by the board under this chapter.

(4-b) "Licensed clinical social worker" means a person who holds a clinical social worker license issued by the board under this chapter.

(5) "Licensed master social worker" means a person who holds a master social worker license issued by the board under this chapter.

(6) "Licensed social worker" means a person who holds a social worker license issued by the board under this chapter.

(7) Repealed by Acts 2003, 78th Leg., ch. 892, Sec. 37.

(8) Repealed by Acts 2003, 78th Leg., ch. 892, Sec. 37.

(9) "Social worker" means a person who holds any license issued by the board under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 2, 37, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. [415](#)), Sec. 1, eff. September 1, 2005.

Sec. 505.0025. PRACTICE OF SOCIAL WORK. (a) The practice of social work is the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, or communities.

(b) The practice of social work may include the provision of individual, conjoint, family, and group psychotherapy using the Diagnostic and Statistical Manual of Mental Disorders, the International Classification of Diseases, and other diagnostic classification systems in assessment, diagnosis, treatment, and other activities by a person licensed under this chapter.

Added by Acts 2003, 78th Leg., ch. 892, Sec. 3, eff. Sept. 1, 2003.



Sec. 505.003. APPLICATIONS AND EXEMPTIONS. (a) This chapter does not apply to:

(1) an activity conducted or a service performed by a person who is licensed, certified, or registered in a profession other than social work, including a physician, attorney, registered nurse, licensed vocational nurse, psychologist, occupational therapist, licensed marriage and family therapist, licensed chemical dependency counselor, or licensed professional counselor, if:

(A) the activity or service is conducted or performed within the scope of the person's license, certificate, or registration;

(B) the person does not use a title listed in Section 505.351; and

(C) the person does not:

(i) represent the service as social work;

(ii) represent that the person is a social worker;

or

(iii) use a title that implies that the person is licensed in social work;

(2) a service performed by a person as a volunteer or staff member if the person does not:

(A) represent the service as social work;

(B) represent the person as a social worker; or

(C) use a title that implies that the person is licensed in social work;

(3) an activity conducted by a social work student, intern, or trainee in connection with an institution of higher education accredited by the Council on Social Work Education; or

(4) an activity conducted or a service performed by a pastoral care counselor who is acting within the person's ministerial capabilities and who does not use a title that implies that the counselor is licensed in social work, including:

(A) a Christian Science practitioner who is recognized by the Church of Christ Scientist as registered and published in the Christian Science Journal; and

(B) any other recognized religious practitioner.

(b) This chapter does not require a public agency or private employer, including a nonprofit corporation, to employ a person licensed under this chapter.

(c) A person who teaches social work at an institution of

higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, is not required to hold a license under this chapter to the extent the person confines the person's activities to teaching and does not otherwise engage in the practice of social work.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1141 (H.B. 1797), Sec. 1, eff. June 17, 2011.

Sec. 505.004. NONDISCRIMINATORY ACTIONS AND DECISIONS. An action taken or a decision made under this chapter, including an action or a decision relating to a license application, examination, regulation, or disciplinary proceeding, shall be taken or made without regard to sex, race, religion, national origin, color, or political affiliation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.005. APPLICATION OF SUNSET ACT. The Texas State Board of Social Worker Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and Section 505.101 expires September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 3, eff. September 1, 2005.

#### **SUBCHAPTER B. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS**

Sec. 505.101. BOARD; MEMBERSHIP. (a) The Texas State Board of Social Worker Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

- (1) two members who are licensed master social workers;
  - (2) two members who are licensed baccalaureate social workers;
  - (3) two members who are licensed clinical social workers;
- and
- (4) three members who represent the public.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 4, eff. September 1, 2005.

Sec. 505.102. PUBLIC MEMBERSHIP ELIGIBILITY. (a) A public member of the board may not:

- (1) be licensed under this chapter; or
- (2) have an interest in the practice of social work other than as a consumer.

(b) A person is not eligible for appointment as a public member of the board if:

- (1) the person is registered, certified, or licensed by an occupational regulatory agency in the field of health care;
- (2) the person's spouse is registered, certified, or licensed by an occupational regulatory agency in the field of mental health; or
- (3) the person or the person's spouse:
  - (A) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the board or department;
  - (B) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the board or department; or
  - (C) uses or receives a substantial amount of tangible goods, services, or funds from the board or department, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 5, eff. September 1, 2005.

Sec. 505.103. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be an employee of the department employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

- (1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or
- (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of mental health.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 6, eff. September 1, 2005.

Sec. 505.104. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms. The terms of one-third of the members expire February 1 of each odd-numbered year.

(b) A person who is appointed to fill a vacancy on the board shall serve as a board member for the remainder of the unexpired

term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.105. GROUND FOR REMOVAL. (a) It is a ground for removal from the board that a member:

- (1) does not have at the time of taking office the qualifications required by Sections 505.101 and 505.102(a);
- (2) does not maintain during service on the board the qualifications required by Sections 505.101 and 505.102(a);
- (3) is ineligible for membership under Section 505.103;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 7, eff. September 1, 2005.

Sec. 505.106. EXPENSE REIMBURSEMENT. Each board member is entitled to reimbursement for expenses incurred in traveling to and from the business of the board at the rates provided in the General Appropriations Act for state employees. A member may not receive

actual or necessary expenses except for travel to and from meetings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.107. OFFICERS. (a) The governor shall designate one board member as presiding officer. The presiding officer serves in that capacity at the will of the governor.

(b) The board shall elect other officers at the first regular meeting of the board each year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.108. MEETINGS. (a) The board shall hold a meeting at least once a year.

(b) The board may hold other regular meetings as provided by board rule and special meetings as determined by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.109. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) the legislation that created the board and the board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless

of whether the attendance at the program occurs before or after the person qualifies for office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 8, eff. September 1, 2005.

Sec. 505.110. BOARD COMMITTEES. (a) The board may appoint committees to assist the board with its functions under this chapter.

(b) Only a member of the board may serve as a member of a board committee.

Added by Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 9, eff. September 1, 2005.

#### **SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL**

Sec. 505.151. EXECUTIVE DIRECTOR. (a) The commissioner shall designate an employee of the department to serve as executive director of the board. The executive director serves at the will of the board.

(b) The executive director is the administrator of the licensing and regulatory activities of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 10, eff. September 1, 2005.

Sec. 505.152. EXECUTIVE DIRECTOR POWERS AND DUTIES. In addition to other duties provided by this chapter or by the department, the executive director shall:

(1) keep full and accurate minutes of board transactions and proceedings;

(2) serve as custodian of board files and records;

(3) prepare and recommend to the board plans and procedures necessary to implement the purposes of this chapter, including rules and proposals on administrative procedures consistent with this

chapter;

- (4) exercise general supervision of department employees involved in the administration of this chapter;
- (5) investigate complaints and present formal complaints;
- (6) attend each board meeting as a nonvoting participant;
- (7) manage board correspondence; and
- (8) obtain, assemble, or prepare reports and other information as directed or authorized by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.153. PERSONNEL AND FACILITIES. (a) The board is administratively attached to the department. Department personnel shall administer this chapter as agents of the board. The department shall provide the necessary staff to assist the board in performing its duties.

(b) If necessary to administer this chapter, the department by agreement may:

- (1) obtain and provide for the compensation for services; and
- (2) employ professional consultants, technical assistants, and employees on a full-time or part-time basis.

(c) Department facilities shall be used as necessary to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.154. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide, as often as necessary, to its members and employees information regarding their:

- (1) qualifications for office or employment under this chapter; and
- (2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.155. DIVISION OF RESPONSIBILITIES. The board shall



develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department.

Added by Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 11, eff. September 1, 2005.

#### **SUBCHAPTER D. POWERS AND DUTIES**

##### **Sec. 505.201. GENERAL RULEMAKING AND ENFORCEMENT AUTHORITY.**

(a) The board may:

- (1) adopt and enforce rules necessary to perform the board's duties under this chapter;
- (2) establish standards of conduct and ethics for license holders; and
- (3) ensure strict compliance with and enforcement of this chapter.

(b) In adopting rules under this section, the board shall consider the rules and procedures of the Texas Board of Health and the department. The board shall adopt procedural rules, which may not be inconsistent with similar rules and procedures of the Texas Board of Health or the department.

(c) The board by rule may define a term not defined under Section 505.002 if a definition is necessary to administer or enforce this chapter.

(d) Expired.

(e) For each type of license issued under this chapter, the board shall establish:

- (1) the minimum eligibility requirements;
- (2) educational requirements;
- (3) professional experience criteria;
- (4) supervision requirements; and
- (5) independent practice criteria.

(f) The board shall establish procedures for recognition of independent practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 431, Sec. 1, eff. May 28, 2001; Acts 2003, 78th Leg., ch. 892, Sec. 6, eff. Sept. 1, 2003.

Sec. 505.202. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by that person.

(b) The board may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts the person's personal appearance or the use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the use of a trade name in advertising by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.203. FEES. (a) The board by rule shall set fees in amounts reasonable and necessary to cover the costs of administering this chapter.

(b) The board may not set a fee that existed on September 1, 1993, in an amount that is less than the amount of that fee on that date.

(c) Unless the board determines that the fees would not cover the costs associated with administering the renewal of licenses and orders of recognition of specialty under this chapter, the board shall set:

(1) the renewal fee for a license or order of recognition of specialty expired for 90 days or less in an amount that is 1-1/4 times the amount of the renewal fee for an unexpired license or order; and

(2) the renewal fee for a license or order of recognition of specialty expired for more than 90 days but less than one year in an amount that is 1-1/2 times the amount of the renewal fee for an unexpired license or order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 12, eff. September 1, 2005.

Sec. 505.204. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

(1) adopt a form to standardize information concerning complaints made to the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.205. ROSTER OF LICENSE HOLDERS. (a) The board shall prepare and publish at its discretion a roster that contains the name and address of each person licensed under this chapter.

(b) The board shall mail a copy of the roster to each license holder.

(c) The board may not include in the roster the name and address of a person who is delinquent in the payment of a fee required under this chapter on the date the roster is sent for printing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.267(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 892, Sec. 7, eff. Sept. 1, 2003.

Sec. 505.206. ROSTER OF INDEPENDENT SOCIAL WORKERS. The board shall publish a roster of persons recognized under Section 505.307 as qualified for the independent practice of social work.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 8, eff. Sept. 1, 2003.

Sec. 505.209. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.

(a) The board shall adopt rules necessary to comply with Chapter 53.

(b) In its rules under this section, the board shall list the specific offenses for which a conviction would constitute grounds for

the board to take action under Section 53.021.

Added by Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 14, eff. September 1, 2005.

Sec. 505.210. USE OF TECHNOLOGY. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 14, eff. September 1, 2005.

Sec. 505.211. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The department shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 14, eff. September 1, 2005.

**SUBCHAPTER E. PUBLIC ACCESS INFORMATION AND COMPLAINT PROCEDURES**

Sec. 505.251. CONSUMER INTEREST INFORMATION. (a) The board shall prepare information of consumer interest describing the regulatory functions of the board and the procedures by which consumer complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.252. COMPLAINTS. (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

- (1) on each registration form, application, or written contract for services of a person regulated by the board;
- (2) on a sign prominently displayed in the place of business of each person regulated by the board; or
- (3) in a bill for services provided by a person regulated by the board.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.253. RECORDS OF COMPLAINTS. (a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain:

- (1) information about the parties to the complaint and the subject matter of the complaint;
- (2) a summary of the results of the review or investigation of the complaint; and
- (3) information about the disposition of the complaint.

(b) The board shall make information available describing its procedures for complaint investigation and resolution.

(c) The board shall periodically notify the parties of the status of the complaint until final disposition of the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 15, eff. September 1, 2005.

Sec. 505.254. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules concerning the investigation of a complaint filed with the department and referred to the board. The rules adopted under this subsection must:

- (1) distinguish among categories of complaints;
- (2) ensure that a complaint is not dismissed without appropriate consideration;
- (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
- (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;
- (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator; and
- (6) prescribe the time after an act or omission during which a person may file a complaint with the board regarding the act or omission in order for the board to consider the complaint.

(b) The board shall:

- (1) dispose of each complaint in a timely manner; and
- (2) establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) Each party to the complaint shall be notified of the projected time requirements for the complaint. Each party to the complaint shall be notified of any change in the schedule established under Subsection (b)(2) not later than the seventh day after the date the change is made.

(d) The executive director shall notify the board of a complaint that is not resolved within the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

(e) The board may conduct an investigation of a complaint and

determine the validity of the complaint regardless of the status of the license or order of recognition of specialty of the person against whom the complaint is made.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 9, eff. Sept. 1, 2003.

Sec. 505.2545. SUBPOENAS. (a) In an investigation of a complaint filed with the department and referred to the board, the board may request that the commissioner or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The board may delegate the authority granted under Subsection (a) to the executive director or the secretary-treasurer of the board.

(f) The board shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the board may charge for copies of its records.

(g) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

(h) All information and materials subpoenaed or compiled by the board in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in discipline of the holder of a license or order of recognition, except that this information may be disclosed to:

- (1) persons involved with the board in a disciplinary action against the holder of a license or order of recognition;
- (2) social work licensing or disciplinary boards in other jurisdictions;
- (3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges against a holder of a license or order of recognition, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.268(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 10, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 16, eff. September 1, 2005.

Sec. 505.2547. COMPLAINT COMMITTEE. The board shall appoint at least one public member of the board to any board committee established to review a complaint filed with the board or review an enforcement action against a license holder related to a complaint filed with the board.

Added by Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 17, eff. September 1, 2005.

Sec. 505.255. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER F. SPECIALTY AREAS OF SOCIAL WORK**

Sec. 505.301. ESTABLISHMENT OF SPECIALTY AREA. (a) The board may establish within the scope of social work practice and this chapter specialty areas of social work for license holders under this chapter who are licensed in good standing if establishment of the specialty areas:

(1) is necessary to promote the public interest; and

(2) assists the public in identifying qualified persons in a social work practice specialty.

(b) The board may not authorize a specialty area within the practice of social work unless the board sets the minimum qualifications for social work practice with appropriate supervision and examination, as determined by the board.

(c) The board may not establish a specialty area of social work or a specialty area identification that conflicts with a state licensing law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 11, eff. Sept. 1, 2003.

Sec. 505.302. REGULATION OF SPECIALTY AREAS. (a) In establishing a specialty area of social work, the board shall:

(1) define the scope of the specialty;

(2) establish qualifications for specialty area practitioners that describe, in accordance with Subdivision (1), the scope of the specialty area;

(3) adopt rules of conduct to ensure strict compliance with and enforcement of this chapter; and

(4) adopt rules for the suspension or revocation of an order of recognition of specialty.

(b) A person who is not recognized as satisfying the qualifications for a specialty area may not practice in the specialty area.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.303. CLINICAL SOCIAL WORK SPECIALTY. (a) The board shall establish a specialty area for the practice of clinical social work that is available only to a licensed master social worker who satisfies the minimum number of years of active social work practice with appropriate supervision and clinical examination, as determined by the board.

(b) A person may not use the title "Licensed Clinical Social Worker" or the initials "LCSW" unless the person is recognized as qualified for the independent practice of clinical social work.

(c) For purposes of Subchapter C, Chapter 1451, Insurance Code:

(1) a person recognized as qualified for the independent practice of clinical social work may use the title "Licensed Clinical Social Worker" or another title approved by the board; and

(2) a board-approved title under this subsection has the same meaning and effect as the title "Licensed Clinical Social Worker."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 12, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.148, eff. September 1, 2005.

Sec. 505.304. ORDER OF RECOGNITION OF SPECIALTY. (a) The board shall prescribe the name, design, and content of an order of recognition of specialty.

(b) An order of recognition of specialty must:

(1) state the full name of the person recognized in the order;

(2) state the official specialty serial number;

(3) include the presiding officer's signature; and

(4) include the board's official seal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.305. RECOGNITION OF SPECIALTY; ISSUANCE OF ORDER.

(a) The board shall recognize a social worker as qualified for the practice of a specialty area of social work if the social worker satisfies the recognition requirements established by the board and

the board determines that the person is worthy of the public trust in performing services within the scope of the specialty area.

(b) The board shall issue an order of recognition of specialty to a social worker who is recognized as qualified for the practice of a specialty area of social work. The order of recognition of specialty evidences the state's recognition of the social worker as a specialty social work practitioner under the identification or title designated by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 13, eff. Sept. 1, 2003.

Sec. 505.306. PROHIBITED USE OF SPECIALTY AREA IDENTIFICATION OR TITLE. If the board establishes a specialty area of social work, a social worker may not use the specialty area identification or title designated by the board unless the person is recognized as qualified for the practice of the specialty area under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 13, eff. Sept. 1, 2003.

Sec. 505.307. INDEPENDENT PRACTICE RECOGNITION; MINIMUM QUALIFICATIONS. (a) The board shall establish procedures for recognizing a social worker qualified for the independent practice of social work.

(b) A social worker may not be recognized as qualified for the independent practice of social work unless the person satisfies the requirements of social work education, experience, and supervision as determined by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 13, eff. Sept. 1, 2003.

#### **SUBCHAPTER G. LICENSE REQUIREMENTS**

Sec. 505.351. LICENSE REQUIRED. (a) A person may not use or cause to be used the title "social worker," "licensed baccalaureate social worker," "licensed master social worker," "licensed clinical social worker," or "licensed social worker," or any combination,

variation, or abbreviation of those titles, as a professional or business identification, representation, asset, or means of obtaining a benefit unless the person holds an appropriate license issued under this chapter.

(b) A person may not use a title that implies that the person holds a license in social work unless the person holds an appropriate license issued under this chapter.

(c) A person who engages in or attempts to engage in conduct described by this section is considered to be engaged in the practice of social work.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 13, eff. Sept. 1, 2003.

Sec. 505.352. LICENSE APPLICATION. A person may apply for a license under this chapter by submitting an application to the board. The application must:

- (1) be on a form prescribed by the board; and
- (2) contain statements made under oath regarding the applicant's education and experience and any other information required by the board that qualifies the applicant for a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.353. ELIGIBILITY. (a) To be eligible for a license under this chapter, an applicant must:

- (1) be at least 18 years of age;
- (2) be worthy of the public trust and confidence;
- (3) satisfy the education and experience requirements under this section; and
- (4) pass the licensing examination conducted by the board under Section 505.354 and the jurisprudence examination conducted by the board under Section 505.3545.

(b) An applicant may take the licensing examination conducted by the board under Section 505.354 for:

- (1) a master social worker license if the applicant possesses a doctoral or master's degree in social work from a graduate program that is accredited by or is in candidacy for accreditation by the Council on Social Work Education;

(2) a baccalaureate social worker license if the applicant possesses a baccalaureate degree in social work from an educational program that is accredited by or is in candidacy for accreditation by the Council on Social Work Education; or

(3) a clinical social worker license if the applicant possesses a doctoral or master's degree in social work from an accredited graduate program approved by the board and meets the qualifications for clinical social work practice as determined by the board under this chapter.

(c) The board may require an applicant to submit documentary evidence of the quality, scope, and nature of the applicant's experience and competence to:

- (1) determine the credibility and acceptability of the applicant's professional or technical experience or competence; and
- (2) ensure the public safety, health, and welfare.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.269(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 892, Sec. 14, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 18, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1141 (H.B. 1797), Sec. 2, eff. June 17, 2011.

Sec. 505.354. EXAMINATION. (a) The board, at least once each calendar year, shall prepare and administer an examination to assess an applicant's qualifications for a license under this chapter.

(b) Each license examination shall be conducted in a manner that is determined by the board and is fair and impartial to each applicant and school or system of social work.

(c) Applicants may be known to the examiners only by numbers until after the general averages of the applicants' numbers in the class are determined and licenses are issued or denied.

(d) To maintain the highest standards in the social work profession, the scope and content of each examination must be sufficient to ensure professional efficacy and competence.

(e) The board shall have the written portion of the examination, if any, validated by an independent testing entity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.3545. JURISPRUDENCE EXAMINATION. (a) The board shall develop and administer at least twice each calendar year a jurisprudence examination to determine an applicant's knowledge of this chapter, board rules, and any other applicable laws of this state affecting the applicant's social work practice.

(b) The board shall adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results.

Added by Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 19, eff. September 1, 2005.

Sec. 505.355. EXAMINATION RESULTS. (a) The board shall notify each examinee of the examination results not later than the 30th day after the date the licensing examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of the results of an examination graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested by a person who fails an examination, the board shall provide to the person an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.356. REEXAMINATION. The board by rule shall establish:

- (1) a limit on the number of times an applicant who fails an examination may retake the examination;
- (2) the requirements for retaking an examination; and
- (3) alternative methods of examining applicants'

competency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.357. TEMPORARY LICENSE. (a) The board shall issue a temporary license to an applicant who:

- (1) has not taken the licensing examination under Section 505.354 or the jurisprudence examination under Section 505.3545; and
- (2) satisfies the requirements for obtaining a license under this chapter other than passing the licensing and jurisprudence examinations.

(b) A temporary license is valid until the results of the first appropriate licensing and jurisprudence examinations given after the date the license is issued are available.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 20, eff. September 1, 2005.

Sec. 505.3575. ISSUANCE OF LICENSES TO CERTAIN OUT-OF-STATE APPLICANTS. (a) Notwithstanding any other licensing requirement of this subchapter:

(1) the board may not require an applicant who is licensed in good standing in another state to pass a licensing examination conducted by the board under Section 505.354 if an applicant with substantially equivalent experience who resides in this state would not be required to take the licensing examination; and

(2) the board may issue a license to an applicant who is currently licensed in another state to independently practice social work if:

(A) after an assessment, the board determines that the applicant:

(i) demonstrates sufficient experience and competence;

(ii) has passed the jurisprudence examination conducted by the board under Section 505.3545; and

(iii) at the time of the application, is in good standing with the regulatory agency of the state in which the

applicant is licensed; and

(B) the applicant presents to the board credentials that the applicant obtained from a national accreditation organization and the board determines that the requirements to obtain the credentials are sufficient to minimize any risk to public safety.

(b) When assessing the experience and competence of an applicant for the purposes of this section, the board may take into consideration any supervision received by the applicant in another state or jurisdiction if the board determines that the supervision would be taken into consideration for the purpose of licensing or certification in the state or jurisdiction in which the applicant received the supervision.

Added by Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 21, eff. September 1, 2005.

Sec. 505.358. PROVISIONAL LICENSE. (a) A person may apply for a provisional license as a social worker by paying the appropriate fee and filing an application with the board. The board may issue a provisional license to a person who meets the requirements of this section.

(b) An applicant for a provisional license must:

(1) be licensed or certified in good standing as a social worker in another state that has licensing or certification requirements determined by the board to be substantially equivalent to the requirements of this chapter;

(2) have passed a national or other examination recognized by the board relating to the practice of social work; and

(3) be sponsored by a person licensed under this chapter with whom the provisional license holder may practice social work.

(c) An applicant is not required to comply with Subsection (b)(3) if the board determines that compliance constitutes a hardship to the applicant.

(d) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license under Section 505.359.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 15, eff. Sept. 1, 2003.



Sec. 505.359. ISSUANCE OF LICENSE TO PROVISIONAL LICENSE HOLDER. (a) The board shall issue an appropriate license to a provisional license holder:

- (1) who passes the licensing examination under Section 505.354 and the jurisprudence examination under Section 505.3545;
- (2) for whom the board verifies that the person satisfies the academic and experience requirements under Section 505.353; and
- (3) who satisfies any other license requirements under this chapter.

(b) The board shall complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued or the date licenses are issued after successful completion of the next licensing and jurisprudence examinations, whichever date is later.

(c) The board may waive a license requirement for an applicant who is licensed or certified in another state if this state has entered into a reciprocity agreement with that state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 22, eff. September 1, 2005.

Sec. 505.360. PROFESSIONAL IDENTIFICATION. (a) A license holder shall use an identification provided by this section:

(1) in the professional use of the license holder's name; and

(2) in connection with any sign, directory, contract, document, pamphlet, stationery, advertisement, signature, or other means of written professional identification.

(b) A licensed master social worker shall use the identification "licensed master social worker" or the initials "LMSW."

(c) A licensed baccalaureate social worker shall use the identification "licensed baccalaureate social worker" or the initials "LBSW."

(d) Repealed by Acts 2003, 78th Leg., ch. 892, Sec. 37.

(e) A licensed clinical social worker shall use the identification "licensed clinical social worker" or the initials

"LCSW."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 16, 37, eff. Sept. 1, 2003.

**SUBCHAPTER H. RENEWAL OF LICENSE AND ORDER OF RECOGNITION OF SPECIALTY**

Sec. 505.401. STAGGERED EXPIRATION DATES. (a) The board by rule shall adopt a system under which licenses and orders of recognition of specialty expire on various dates during the year.

(b) In the year in which the expiration date of an order of recognition of specialty is changed, the total renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.402. RENEWAL OF LICENSE AND ORDER OF RECOGNITION OF SPECIALTY. (a) A person may renew an unexpired license or order of recognition of specialty by paying the appropriate renewal fee required by the board to the department before the expiration date of the license or order.

(b) Not later than the 30th day before the expiration date of a person's license or order of recognition of specialty, the board shall send written notice of the impending license or order expiration to the person at the person's last known address according to the board's records.

(c) A person whose license or order of recognition of specialty has been expired for less than one year may renew the license or order by paying to the department the appropriate renewal fee required by the board for the expired license or order.

(d) Except as provided by Section 505.403, a person whose license or order of recognition of specialty has been expired for one year or more may not renew the license or order. The person may obtain a new license or order by submitting to reexamination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.270(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 23, eff. September 1, 2005.

Sec. 505.403. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The board may renew without reexamination an expired license or order of recognition of specialty of a person who was licensed in this state, moved to another state, and is currently licensed or certified and has been in practice in the other state for the two years preceding the date the person applied for a renewal license or order.

(b) The person must pay to the department a fee that is equal to the amount of the appropriate renewal fee for the license or order, as required by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 24, eff. September 1, 2005.

Sec. 505.404. CONTINUING EDUCATION. (a) The board by rule shall:

(1) establish mandatory continuing education requirements for license holders under this chapter; and

(2) establish a minimum number of hours of continuing education required to renew a license or an order of recognition of specialty.

(b) In establishing continuing education requirements, the board shall:

(1) assess the continuing education needs of persons who hold licenses or orders of recognition of specialty;

(2) adopt procedures to assess the participation of a person who holds a license or order of recognition of specialty in continuing education programs; and

(3) identify the key factors for the competent performance of professional duties by a person who holds a license or order of recognition of specialty.

(c) The board by rule shall develop a process to evaluate and approve continuing education courses. The board may require persons

who hold licenses or orders of recognition of specialty to attend continuing education courses specified by the board.

(d) For the purpose of establishing and maintaining continuing education programs, the board or department may take any action necessary to qualify for, accept, and receive funds and grants from any source, including the United States, this state, or a private foundation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 17, eff. Sept. 1, 2003.

Sec. 505.405. GROUND FOR REFUSING RENEWAL. The board may refuse to renew the license of a person who fails to pay an administrative penalty imposed under Subchapter K unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 25, eff. September 1, 2005.

#### **SUBCHAPTER I. DENIAL OF LICENSE OR ORDER AND DISCIPLINARY PROCEDURES**

Sec. 505.451. GROUND FOR DENIAL OF LICENSE OR ORDER OF RECOGNITION OF SPECIALTY; DISCIPLINARY ACTION. The board shall deny an application for a license or order of recognition of specialty and shall revoke or suspend, including a suspension on an emergency basis, a license or order, place a holder of a license or order that has been suspended on probation, refuse to renew a person's license, or reprimand a holder of a license or order for:

- (1) violating this chapter or a rule adopted by the board under this chapter;
- (2) circumventing or attempting to circumvent the requirements of this chapter or a rule adopted by the board under this chapter;
- (3) directly or indirectly participating in a scheme to evade the requirements of this chapter or a rule adopted by the board under this chapter;
- (4) engaging in unethical conduct;
- (5) engaging in conduct that discredits or tends to discredit the social work profession;

(6) performing an act, allowing an omission, or making an assertion or representation that is fraudulent, deceitful, or misleading or that tends to create a misleading impression;

(7) knowingly associating with or permitting the use of a license holder's professional services or identification in connection with an enterprise that the person knows or should have known in the exercise of reasonable diligence violates this chapter or a rule adopted by the board under this chapter;

(8) knowingly associating with or permitting the use of a license holder's name, professional services or identification, or endorsement in connection with an enterprise that the person knows or should have known in the exercise of reasonable diligence is a trade, business, or professional practice of a fraudulent, deceitful, or misleading nature;

(9) directly or indirectly revealing or causing to be revealed a confidential communication transmitted to the license holder by a client or other recipient of the license holder's services unless revealing the communication is required by law;

(10) having been denied an application for a license or certificate to practice social work in another jurisdiction for a reason that the board determines would be a violation of this chapter or a rule adopted by the board under this chapter;

(11) holding a license or certificate in another jurisdiction that is suspended or revoked for a reason that the board determines would be a violation of this chapter or a rule adopted by the board under this chapter;

(12) having been convicted of a felony in this state, another state, or the United States;

(13) refusing to perform an act or service within the scope of the license holder's license solely because of the recipient's age, sex, race, religion, national origin, color, or political affiliation; or

(14) committing an act for which liability exists under Chapter 81, Civil Practice and Remedies Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 26, eff. September 1, 2005.

Sec. 505.452. CONDITIONS OF PROBATION. The board may require a person for whom a suspension of a license or order of recognition of specialty is probated to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board;  
or

(3) continue or review continuing professional education until the person attains a degree of skill satisfactory to the board in each area that is a basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.453. EMERGENCY SUSPENSION. The suspension by the board of a license or order of recognition of specialty on an emergency basis is effective immediately. The board shall provide an opportunity for a hearing to be held not later than the 20th day after the date of the emergency suspension.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.454. SANCTIONS FOR HOLDER OF EXPIRED LICENSE OR ORDER OF RECOGNITION OF SPECIALTY. (a) A person who holds an expired license or order of recognition of specialty under this chapter is subject to a sanction under this chapter if the board determines that the person violated this chapter or a rule adopted by the board under this chapter during the period in which the license or order was valid.

(b) Sections 505.455(b) and (c) and 505.456 apply to a disciplinary proceeding against a person under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.455. PROCEDURE; HEARING. (a) A proceeding under Section 505.451 is initiated when a person files a written charge under oath with the department that is referred to the board. A charge may be filed by any person.

(b) A person subject to a sanction under Section 505.451 is

entitled to notice and hearing before the State Office of Administrative Hearings before the sanction is imposed.

(c) Disciplinary proceedings and appeals from disciplinary proceedings of the board are governed by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.456. SCHEDULE OF SANCTIONS. (a) The board by rule shall adopt a broad schedule of sanctions for violations of this chapter.

(b) The State Office of Administrative Hearings shall use the schedule of sanctions for any sanction imposed as a result of a hearing conducted by that office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.457. INFORMAL PROCEDURES. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under Subsection (a) must:

(1) provide the complainant and the holder of a license or order of recognition of specialty an opportunity to be heard; and

(2) require the presence of a representative of the attorney general or the department's legal staff to advise the board or the board's employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.458. REFUND. (a) Subject to Subsection (b), the board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) The amount of a refund ordered as provided in an agreement

resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 27, eff. September 1, 2005.

#### **SUBCHAPTER J. PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 505.501. MONITORING OF LICENSE HOLDER. The board by rule shall develop a system for monitoring compliance with this chapter by a person who holds a license or order of recognition of specialty. The rules under this section must include procedures to:

- (1) monitor for compliance a person who holds a license or order who is ordered by the board to perform certain acts; and
- (2) identify and monitor persons who hold licenses or orders of recognition of specialty who represent a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.502. PROHIBITED CONDUCT BY BUSINESS OR PROFESSIONAL ENTITY. (a) Except as provided by Subsection (b), a business or professional entity may not:

- (1) represent itself or another to the public as being engaged in the practice of social work or as offering social work services under an assumed, trade, business, professional, partnership, or corporate name or title;
- (2) directly or indirectly use or cause to be used the term "social work," "social work services," "social work, inc.," "social workers," "licensed social workers," "licensed baccalaureate social workers," "licensed master social workers," "licensed clinical social workers," "LMSW," "LSW," "LBSW," or "LCSW," or any combination, abbreviation, or variation of those terms; or
- (3) directly or indirectly use or cause to be used a term listed in Subdivision (2) in combination with any other word, letter, initial, sign, legend, or symbol on, in, or directly or indirectly as a part of:
  - (A) any sign, directory, contract, pamphlet,



stationery, advertisement, or other document;

(B) a signature; or

(C) a trade, assumed, corporate, or other business or professional name.

(b) A business or professional entity may engage in conduct described by Subsection (a) if:

(1) the entity is actively engaged in the practice of social work; and

(2) the social work services that constitute the entity's practice are:

(A) personally performed by a social worker who is practicing in accordance with this chapter; or

(B) performed under the supervision of a licensed baccalaureate social worker, licensed master social worker, or licensed clinical social worker.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 18, eff. Sept. 1, 2003.

Sec. 505.503. INJUNCTION. (a) In addition to any other action authorized by law, an action may be initiated in a district court to restrain a violation or threatened violation of this chapter, a rule adopted by the board under this chapter, or an order issued by the board or department under this chapter.

(b) Venue for an action brought under this section is in:

(1) Travis County;

(2) the county in which the defendant resides; or

(3) the county in which any part of the alleged violation occurred.

(c) At the request of the board or department, the attorney general shall initiate and conduct an action in a district court in the state's name to obtain an injunction under this section.

(d) To obtain an injunction under this section, it is not necessary to allege or prove that:

(1) an adequate remedy at law does not exist; or

(2) substantial or irreparable damage would result from the continued violation.

(e) Any party in an action brought under this section may appeal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.504. CIVIL PENALTY. (a) A person who violates or threatens to violate this chapter, a rule adopted by the board under this chapter, or an order issued by the board or department under this chapter is liable to the state for a civil penalty of not less than \$50 or more than \$500 for each day of violation.

(b) At the request of the board or department, the attorney general shall initiate and conduct an action in a district court in the state's name to obtain a civil penalty under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.505. APPEAL BOND NOT REQUIRED. The board or department is not required to post an appeal bond in any action arising under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.506. REPRESENTATION BY ATTORNEY GENERAL. The attorney general shall represent the board or department in an action brought to enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Text of section as added by Acts 2003, 78th Leg., ch. 326, Sec. 12

For Text of section as added by Acts 2003, 78th Leg., ch. 892, Sec. 19, see other Sec. 505.507.

Sec. 505.507. CRIMINAL PENALTY. (a) A person required to hold a license under this chapter commits an offense if the person knowingly acts as a social worker without holding a license issued under this chapter.

(b) An offense under Subsection (a) is a Class A misdemeanor.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 12, eff. Sept. 1, 2003.

Text of section as added by Acts 2003, 78th Leg., ch. 892, Sec. 19  
 For text of section as added by Acts 2003, 78th Leg., ch. 326, Sec.  
 12, see other Sec. 505.507.

Sec. 505.507. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly acts as a social worker without holding a license required under this chapter.

(b) An offense under Subsection (a) is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 892, Sec. 19, eff. Sept. 1, 2003.

Sec. 505.508. CEASE AND DESIST ORDER. If it appears to the board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of social work, the board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

Added by Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 28, eff. September 1, 2005.

#### **SUBCHAPTER K. ADMINISTRATIVE PENALTY**

Sec. 505.551. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on:

- (1) a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter; and
- (2) a person who violates a cease and desist order issued by the board under Section 505.508.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.271(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 29, eff. September 1, 2005.

Sec. 505.552. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the administrative penalty may not be less than \$50 or more than \$5,000 for each violation. Each day a violation continues or

occurs is a separate violation for the purpose of imposing a penalty.

(b) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

(c) The board by rule shall adopt an administrative penalty schedule based on the criteria listed in Subsection (b) for violations of this chapter or board rules to ensure that the amounts of penalties imposed are appropriate to the violation. The board shall provide the administrative penalty schedule to the public on request.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.271(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. [415](#)), Sec. 30, eff. September 1, 2005.

Sec. 505.553. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the executive director determines that a violation occurred, the director may issue to the board a report stating:

- (1) the facts on which the determination is based; and
- (2) the director's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the executive director shall give written notice of the report to the person. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended administrative penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.271(a), eff. Sept. 1, 2001.

Sec. 505.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty of the executive director; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the executive director, the board by order shall approve the determination and impose the recommended penalty.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.271(a), eff. Sept. 1, 2001.

Sec. 505.555. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the executive director shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.271(a), eff. Sept. 1, 2001.

Sec. 505.556. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the board by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.271(a), eff. Sept. 1, 2001.

Sec. 505.557. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Within 30 days after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the director may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.271(a), eff. Sept. 1, 2001.

Sec. 505.558. COLLECTION OF PENALTY. (a) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.271(a), eff. Sept. 1, 2001.

Sec. 505.559. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.271(a), eff. Sept. 1, 2001.

Sec. 505.560. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.271(a), eff. Sept. 1, 2001.

Sec. 505.561. ADMINISTRATIVE PROCEDURE. A proceeding under this section is a contested case under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.271(a), eff. Sept. 1, 2001.

#### **SUBCHAPTER L. REPORTS OF CERTAIN VIOLATIONS**

Sec. 505.601. REPORT OF VIOLATION. In a written, signed report to the appropriate licensing board, agency, or facility, a person licensed under this chapter may report an incident that the person has reasonable cause to believe has exposed a client to substantial risk of harm, including:

- (1) a failure to provide care that conforms to the minimum standards of acceptable and prevailing professional practice;
- (2) illegal billing practices; or
- (3) falsification of records.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.272(a), eff. Sept. 1, 2001.

Sec. 505.602. REPORTING IMMUNITY. A person who, without malice, makes a report authorized, or reasonably believed to be authorized, under this subchapter:

- (1) is immune from civil liability; and
- (2) may not be subjected by the person's employer to other retaliatory action as a result of making the report.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.272(a), eff. Sept. 1, 2001.

Sec. 505.603. CAUSE OF ACTION FOR RETALIATION. (a) A person named as a defendant in a civil action or subjected by the person's employer to other retaliatory action as a result of filing a report authorized, or reasonably believed to be authorized, under this subchapter may file a counterclaim in the pending action or prove a cause of action in a subsequent suit to recover defense costs, including reasonable attorney's fees and actual and punitive damages, if the suit or retaliatory action is determined to be frivolous,



unreasonable, or taken in bad faith.

(b) A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a person who makes a report, without malice, under this subchapter.

(c) A person who makes a report under this subchapter has a cause of action against a person who violates Subsection (b) and may recover:

(1) the greater of:

(A) actual damages, including damages for mental anguish even if no other injury is shown; or

(B) \$1,000;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(d) In addition to the amount recovered under Subsection (c), a person whose employment is suspended or terminated in violation of this section is entitled to:

(1) reinstatement in the employee's former position or severance pay in an amount equal to three months of the employee's most recent salary; and

(2) compensation for wages lost during the period of suspension or termination.

(e) A person who brings an action under this section has the burden of proof. It is a rebuttable presumption that the person's employment was suspended or terminated for making a report under this subchapter if:

(1) the person was suspended or terminated within 60 days after the date the report was made; and

(2) the person to whom the report that is the subject of the cause of action was made or the court determines that the report was:

(A) authorized under this subchapter; and

(B) made without malice.

(f) An action under this section may be brought in a district court of the county in which:

(1) the plaintiff resides;

(2) the plaintiff was employed by the defendant; or

(3) the defendant conducts business.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.272(a), eff. Sept.

1, 2001.

**SUBTITLE J. PHARMACY AND PHARMACISTS**

**CHAPTER 551. GENERAL PROVISIONS**

Sec. 551.001. SHORT TITLE. This subtitle may be cited as the Texas Pharmacy Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 2, eff. June 14, 2013.

Sec. 551.002. LEGISLATIVE DECLARATION; PURPOSE. (a) This subtitle shall be liberally construed to regulate in the public interest the practice of pharmacy in this state as a professional practice that affects the public health, safety, and welfare.

(b) It is a matter of public interest and concern that the practice of pharmacy merits and receives the confidence of the public and that only qualified persons be permitted to engage in the practice of pharmacy in this state.

(c) The purpose of this subtitle is to promote, preserve, and protect the public health, safety, and welfare through:

(1) effectively controlling and regulating the practice of pharmacy; and

(2) licensing pharmacies engaged in the sale, delivery, or distribution of prescription drugs and devices used in diagnosing and treating injury, illness, and disease.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 551.003. DEFINITIONS. In Chapters 551-566:

(1) "Administer" means to directly apply a prescription drug to the body of a patient by any means, including injection, inhalation, or ingestion, by:

(A) a person authorized by law to administer the drug, including a practitioner or an authorized agent under a practitioner's supervision; or

(B) the patient at the direction of a practitioner.

(2) "Board" means the Texas State Board of Pharmacy.

(3) "Class A pharmacy license" or "community pharmacy license" means a license described by Section 560.051.

(4) "Class B pharmacy license" or "nuclear pharmacy license" means a license described by Section 560.051.

(5) "Class C pharmacy license" or "institutional pharmacy license" means a license described by Section 560.051.

(6) "Class D pharmacy license" or "clinic pharmacy license" means a license described by Section 560.051.

(7) "Class E pharmacy license" or "nonresident pharmacy license" means a license described by Section 560.051.

(8) "College of pharmacy" means a school, university, or college of pharmacy that:

(A) satisfies the accreditation standards of the American Council on Pharmaceutical Education as adopted by the board; or

(B) has degree requirements that meet the standards of accreditation set by the board.

(9) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug order based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of a prescription drug order based on a routine, regularly observed prescribing pattern; or

(D) for or as an incident to research, teaching, or chemical analysis and not for selling or dispensing, except as allowed under Section 562.154 or Chapter 563.

(10) "Confidential record" means a health-related record, including a patient medication record, prescription drug order, or medication order, that:

(A) contains information that identifies an individual; and

(B) is maintained by a pharmacy or pharmacist.

(11) "Controlled substance" means a substance, including a drug:

(A) listed in Schedule I, II, III, IV, or V, as established by the commissioner of public health under Chapter 481, Health and Safety Code, or in Penalty Group 1, 1-A, 2, 3, or 4, Chapter 481; or

(B) included in Schedule I, II, III, IV, or V of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(12) "Dangerous drug" means a drug or device that:

(A) is not included in Penalty Group 1, 2, 3, or 4, Chapter 481, Health and Safety Code, and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(13) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, with or without consideration.

(14) "Designated agent" means:

(A) an individual, including a licensed nurse, physician assistant, or pharmacist:

(i) who is designated by a practitioner and authorized to communicate a prescription drug order to a pharmacist; and

(ii) for whom the practitioner assumes legal responsibility;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom a practitioner communicates a prescription drug order; or

(C) a registered nurse or physician assistant authorized by a practitioner to administer a prescription drug order for a dangerous drug under Subchapter B, Chapter 157.

(15) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(16) "Dispense" means to prepare, package, compound, or label, in the course of professional practice, a prescription drug or device for delivery to an ultimate user or the user's agent under a practitioner's lawful order.

(17) "Distribute" means to deliver a prescription drug or device other than by administering or dispensing.

(18) "Drug" means:

(A) a substance recognized as a drug in a drug compendium, including the current official United States Pharmacopoeia, official National Formulary, or official Homeopathic Pharmacopoeia, or in a supplement to a drug compendium;

(B) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in a human or another animal;

(C) a substance, other than food, intended to affect the structure or a function of the body of a human or another animal;

(D) a substance intended for use as a component of a substance specified in Paragraph (A), (B), or (C);

(E) a dangerous drug; or

(F) a controlled substance.

(19) "Drug regimen review" includes evaluation of prescription drug or medication orders and a patient medication record for:

(A) a known allergy;

(B) a rational therapy-contraindication;

(C) a reasonable dose and route of administration;

(D) reasonable directions for use;

(E) duplication of therapy;

(F) a drug-drug interaction;

(G) drug-food interaction;

(H) drug-disease interaction;

(I) adverse drug reaction; and

(J) proper use, including overuse or underuse.

(20) "Internship" means a practical experience program that is approved by the board.

(21) "Label" means written, printed, or graphic matter on the immediate container of a drug or device.

(22) "Labeling" means the process of affixing a label, including all information required by federal and state statute or regulation, to a drug or device container. The term does not

include:

(A) the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged prescription drug or device; or

(B) unit dose packaging.

(23) "Manufacturing" means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from a substance of natural origin or independently by a chemical or biological synthesis. The term includes packaging or repackaging a substance or labeling or relabeling a container and promoting and marketing the drug or device and preparing and promoting a commercially available product from a bulk compound for resale by a person, including a pharmacy or practitioner. The term does not include compounding.

(24) "Medication order" means an order from a practitioner or a practitioner's designated agent for administration of a drug or device.

(25) "Nonprescription drug" means a nonnarcotic drug or device that may be sold without a prescription and that is labeled and packaged in compliance with state or federal law.

(26) "Patient counseling" means communication by a pharmacist of information, as specified by board rule, to a patient or caregiver to improve therapy by ensuring proper use of a drug or device.

(27) "Pharmaceutical care" means providing drug therapy and other pharmaceutical services defined by board rule and intended to assist in curing or preventing a disease, eliminating or reducing a patient's symptom, or arresting or slowing a disease process.

(28) "Pharmacist" means a person licensed by the board to practice pharmacy.

(29) "Pharmacist-in-charge" means the pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for the pharmacy's compliance with statutes and rules relating to the practice of pharmacy.

(30) "Pharmacist-intern" means:

(A) an undergraduate student who is enrolled in the professional sequence of a college of pharmacy approved by the board and who is participating in a board-approved internship program; or

(B) a graduate of a college of pharmacy who is participating in a board-approved internship.

(31) "Pharmacy" means a facility at which a prescription drug or medication order is received, processed, or dispensed under this subtitle, Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.). The term does not include a narcotic drug treatment program that is regulated under Chapter 466, Health and Safety Code.

(32) "Pharmacy technician" means an individual employed by a pharmacy whose responsibility is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist. The term does not include a pharmacy technician trainee.

(32-a) "Pharmacy technician trainee" means an individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy technician training program.

(33) "Practice of pharmacy" means:

(A) providing an act or service necessary to provide pharmaceutical care;

(B) interpreting or evaluating a prescription drug order or medication order;

(C) participating in drug or device selection as authorized by law, and participating in drug administration, drug regimen review, or drug or drug-related research;

(D) providing patient counseling;

(E) being responsible for:

(i) dispensing a prescription drug order or distributing a medication order;

(ii) compounding or labeling a drug or device, other than labeling by a manufacturer, repackager, or distributor of a nonprescription drug or commercially packaged prescription drug or device;

(iii) properly and safely storing a drug or device;

or

(iv) maintaining proper records for a drug or device;

(F) performing for a patient a specific act of drug therapy management delegated to a pharmacist by a written protocol from a physician licensed in this state in compliance with Subtitle

B; or

(G) administering an immunization or vaccination under a physician's written protocol.

(34) "Practitioner" means:

(A) a person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state, including a physician, dentist, podiatrist, or veterinarian but excluding a person licensed under this subtitle;

(B) a person licensed by another state, Canada, or the United Mexican States in a health field in which, under the law of this state, a license holder in this state may legally prescribe a dangerous drug;

(C) a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number and who may legally prescribe a Schedule II, III, IV, or V controlled substance, as specified under Chapter 481, Health and Safety Code, in that other state; or

(D) an advanced practice registered nurse or physician assistant to whom a physician has delegated the authority to prescribe or order a drug or device under Section 157.0511, 157.0512, or 157.054.

(35) "Preceptor" has the meaning assigned by Section 558.057.

(36) "Prescription drug" means:

(A) a substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(B) a drug or device that under federal law is required, before being dispensed or delivered, to be labeled with the statement:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(C) a drug or device that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a practitioner only.



(37) "Prescription drug order" means:

(A) an order from a practitioner or a practitioner's designated agent to a pharmacist for a drug or device to be dispensed; or

(B) an order under Subchapter B, Chapter 157.

(38) "Prospective drug use review" means the review of a patient's drug therapy and prescription drug order or medication order, as defined by board rule, before dispensing or distributing a drug to the patient.

(39) "Provide" means to supply one or more unit doses of a nonprescription drug or dangerous drug to a patient.

(40) "Radioactive drug" means a drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons, including a nonradioactive reagent kit or nuclide generator that is intended to be used in the preparation of the substance.

(41) "Substitution" means the dispensing of a drug or a brand of drug other than the drug or brand of drug ordered or prescribed.

(42) "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(42-a) "Therapeutic contact lens" means a contact lens that contains one or more drugs and that delivers the drugs into the wearer's eye.

(43) "Ultimate user" means a person who obtains or possesses a prescription drug or device for the person's own use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household.

(44) "Unit dose packaging" means the ordered amount of drug in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with the name, strength, and expiration date of the drug.

(45) "Written protocol" means a physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas Medical Board under Subtitle B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 112, Sec. 5, eff. May 11, 2001; Acts 2001, 77th Leg., ch. 1188, Sec. 10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1254, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 88, Sec. 8, eff. May 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 2, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 396 (H.B. 1740), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 19, eff. November 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 3, eff. June 14, 2013.

Sec. 551.004. APPLICABILITY OF SUBTITLE. (a) This subtitle does not apply to:

(1) a practitioner licensed by the appropriate state board who supplies a patient of the practitioner with a drug in a manner authorized by state or federal law and who does not operate a pharmacy for the retailing of prescription drugs;

(2) a member of the faculty of a college of pharmacy recognized by the board who is a pharmacist and who performs the pharmacist's services only for the benefit of the college;

(3) a person who procures prescription drugs for lawful research, teaching, or testing and not for resale; or

(4) a home and community support services agency that possesses a dangerous drug as authorized by Section 142.0061, 142.0062, or 142.0063, Health and Safety Code.

(b) This subtitle does not prevent a practitioner from administering a drug to a patient of the practitioner.

(c) This subtitle does not prevent the sale by a person, other than a pharmacist, firm, joint stock company, partnership, or corporation, of:

(1) a nonprescription drug that is harmless if used according to instructions on a printed label on the drug's container and that does not contain a narcotic;

(2) an insecticide, a fungicide, or a chemical used in the arts if the insecticide, fungicide, or chemical is properly labeled; or

(3) an insecticide or fungicide that is mixed or compounded only for an agricultural purpose.

(d) A wholesaler or manufacturer may distribute a prescription drug as provided by state or federal law.

(e) This subtitle does not prevent a physician or therapeutic optometrist from dispensing and charging for therapeutic contact lenses. This subsection does not authorize a therapeutic optometrist to prescribe, administer, or dispense a drug that is otherwise outside the therapeutic optometrist's scope of practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 396 (H.B. 1740), Sec. 2, eff. June 19, 2009.

Sec. 551.005. APPLICATION OF SUNSET ACT. The Texas State Board of Pharmacy is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subtitle expires September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 1, eff. September 1, 2005.

#### **CHAPTER 552. TEXAS STATE BOARD OF PHARMACY**

Sec. 552.001. MEMBERSHIP. (a) The Texas State Board of Pharmacy consists of 11 members appointed by the governor with the advice and consent of the senate as follows:

- (1) seven members who are pharmacists;
- (2) one member who is a pharmacy technician; and
- (3) three members who represent the public.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 26 (S.B. 500), Sec. 1, eff. September 1, 2013.

Sec. 552.002. QUALIFICATIONS. (a) The board must include representation for pharmacists who are primarily employed in Class A pharmacies and Class C pharmacies.

(b) A pharmacist board member must, at the time of appointment:

(1) be a resident of this state;

(2) have been licensed for the five years preceding appointment;

(3) be in good standing to practice pharmacy in this state;

and

(4) be practicing pharmacy in this state.

(b-1) A pharmacy technician board member must, at the time of appointment:

(1) be a resident of this state;

(2) have been registered as a pharmacy technician for the five years preceding appointment;

(3) be in good standing to act as a pharmacy technician in this state; and

(4) be acting as a pharmacy technician in this state.

(c) Each person appointed to the board shall, not later than the 15th day after the date of appointment, qualify by taking the constitutional oath of office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 26 (S.B. 500), Sec. 2, eff. September 1, 2013.

Sec. 552.003. PUBLIC MEMBERSHIP ELIGIBILITY. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

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

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

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 552.004. MEMBERSHIP RESTRICTIONS. (a) A person may not be a member of the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

(b) A person may not be a member of the board if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 3, eff. September 1, 2005.

Sec. 552.005. TERMS; VACANCY. (a) Members of the board are appointed for staggered six-year terms, with either three or four members' terms, as applicable, expiring every other year at midnight on the last day of the state fiscal year in the last year of the member's term.

(b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

(c) A board member may not serve more than two consecutive full terms. The completion of the unexpired portion of a full term is not service for a full term for purposes of this subsection.

(d) A person appointed by the governor to a full term before

the expiration of the term of the member being succeeded becomes a member of the board on the first day of the next state fiscal year following the appointment.

(e) A person appointed to an unexpired portion of a full term becomes a member of the board on the day after the date of appointment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 26 (S.B. 500), Sec. 3, eff. September 1, 2013.

Sec. 552.006. BOARD MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) this subtitle and the programs, functions, rules, and budget of the board;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 4, eff. September 1, 2005.

Sec. 552.007. OFFICERS. (a) The governor shall designate a member of the board as the president of the board to serve in that capacity at the pleasure of the governor. The board shall elect from its members for one-year terms a vice president, treasurer, and other officers the board considers appropriate and necessary to conduct board business.

(b) The board's president shall preside at each board meeting and is responsible for the performance of the board's duties and functions under this subtitle.

(c) An officer, other than the president, shall perform the duties normally associated with the officer's position and other duties assigned to the officer by the board.

(d) The term of an officer begins on the first day of the state fiscal year following the officer's election and ends on election of a successor.

(e) A member elected as an officer may not serve more than two consecutive full terms in each office to which the member is elected.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 5, eff. September 1, 2005.

Sec. 552.008. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of appointment the qualifications required for appointment to the board;

(2) does not maintain during service on the board the qualifications required for appointment to the board;

(3) violates a prohibition established by Section 552.004;

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

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

(b) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the ground. The president shall then

notify the governor that a potential ground for removal exists.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 552.009. PER DIEM; REIMBURSEMENT. (a) Each member of the board is entitled to a per diem set by legislative appropriation for each day the member engages in board business.

(b) A member is entitled to reimbursement for travel expenses as prescribed by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 6, eff. September 1, 2005.

Sec. 552.010. MEETINGS. (a) The board shall meet at least once every four months to transact board business.

(b) The board may meet at other times at the call of the board's president or two-thirds of the board's members.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 26 (S.B. 500), Sec. 4, eff. September 1, 2013.

Sec. 552.011. EXECUTIVE SESSION. (a) The board may, in accordance with Chapter 551, Government Code, conduct a portion of a board meeting in executive session.

(b) The board may conduct in executive session a deliberation relating to discipline of a license holder. At the conclusion of the deliberation, in open session the board shall vote and announce the board's decision relating to the license holder.

(c) The board may conduct in executive session a disciplinary hearing relating to a pharmacist or pharmacy student who is impaired because of chemical abuse or mental or physical illness.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 552.012. QUORUM; VALIDITY OF BOARD ACTION. Except when a greater number is required by this subtitle or by board rule, an action of the board must be by a majority of a quorum.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**CHAPTER 553. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL**

Sec. 553.001. EXECUTIVE DIRECTOR. The board shall employ an executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 553.002. QUALIFICATIONS OF EXECUTIVE DIRECTOR. The executive director must be a pharmacist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 553.003. GENERAL DUTIES OF EXECUTIVE DIRECTOR. (a) The executive director is an ex officio member of the board without vote.

(b) The executive director is a full-time employee of the board and shall:

(1) serve as secretary to the board; and

(2) perform the regular administrative functions of the board and any other duty as the board directs.

(c) The executive director may not perform a discretionary or decision-making function for which the board is solely responsible.

(d) The executive director shall keep the seal of the board. The executive director may affix the seal only in the manner prescribed by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 553.004. PERSONNEL. The board may employ persons in positions or capacities the board considers necessary to properly

conduct the board's business and fulfill the board's responsibilities under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 553.005. EMPLOYEE RESTRICTIONS. (a) A person may not be an employee of the board employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 7, eff. September 1, 2005.

Sec. 553.006. POSSESSION BY EMPLOYEE OF REGULATED SUBSTANCE. A board employee may possess a dangerous drug or controlled substance when acting in the employee's official capacity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 553.007. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly define the responsibilities of the board and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 553.008. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide, as often as necessary, to its members and employees information regarding their:

(1) qualifications for office or employment under this subtitle; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 553.009. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 553.010. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

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

(1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with Chapter 21, Labor Code;

(2) a comprehensive analysis of the board workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas

of significant underuse.

(b) A policy statement prepared under Subsection (a) must:

- (1) cover an annual period;
- (2) be updated annually;
- (3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and
- (4) be filed with the governor.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**CHAPTER 554. BOARD POWERS AND DUTIES; RULEMAKING AUTHORITY**  
**SUBCHAPTER A. POWERS AND DUTIES**

Sec. 554.001. GENERAL POWERS AND DUTIES OF BOARD. (a) The board shall:

- (1) administer and enforce this subtitle and rules adopted under this subtitle and enforce other laws relating to the practice of pharmacy and other powers and duties granted under other law;
  - (2) cooperate with other state and federal agencies in the enforcement of any law relating to the practice of pharmacy or any drug or drug-related law;
  - (3) maintain an office in which permanent records are kept;
- and
- (4) preserve a record of the board's proceedings.

(b) The board may:

- (1) join a professional organization or association organized to promote the improvement of the standards of the practice of pharmacy for protecting the health and welfare of the public; and
- (2) appoint committees from the board's membership, an advisory committee from the pharmacy profession, and any other group to assist in administering this subtitle.

(c) The board may:

- (1) issue a duplicate copy of a license to practice pharmacy or a license renewal certificate on a request from the holder and on payment of a fee determined by the board; and
- (2) inspect a facility licensed under this subtitle for

compliance with this subtitle.

(d) The board may be represented by counsel, including the attorney general, district attorney, or county attorney, if necessary in a legal action taken under this subtitle.

(e) The board shall develop formal policies outlining the structure, role, and responsibilities of each committee established under Subsection (b)(2) that contains board members. The board may adopt rules to implement this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 8, eff. September 1, 2005.

Sec. 554.002. REGULATION OF PRACTICE OF PHARMACY. The board shall regulate the practice of pharmacy in this state by:

(1) issuing a license after examination or by reciprocity to an applicant qualified to practice pharmacy and issuing a license to a pharmacy under this subtitle;

(2) renewing a license to practice pharmacy and a license to operate a pharmacy;

(3) determining and issuing standards for recognizing and approving degree requirements of colleges of pharmacy whose graduates are eligible for a license in this state;

(4) specifying and enforcing requirements for practical training, including an internship;

(5) enforcing the provisions of this subtitle relating to:  
 (A) the conduct or competence of a pharmacist practicing in this state and the conduct of a pharmacy operating in this state; and

(B) the suspension, revocation, retirement, or restriction of a license to practice pharmacy or to operate a pharmacy or the imposition of an administrative penalty or reprimand on a license holder;

(6) regulating the training, qualifications, and employment of a pharmacist-intern, pharmacy technician, and pharmacy technician trainee; and

(7) determining and issuing standards for recognizing and approving a pharmacy residency program for purposes of Subchapter W,

Chapter 61, Education Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.301(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 4, eff. June 14, 2013.

Sec. 554.0021. RECOGNITION AND APPROVAL OF PHARMACIST CERTIFICATION PROGRAMS. (a) The board shall determine and issue standards for recognizing and approving pharmacist certification programs.

(b) In adopting standards under Subsection (a), the board shall include a requirement that a pharmacist may not use the designation "board certified" unless the pharmacist has successfully completed a certification program that meets the board's standards.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.301(c), eff. Sept. 1, 2001.

Sec. 554.003. PROCEDURES. The board by rule shall specify:

(1) the licensing procedures to be followed, including specification of forms to be used, in applying for a pharmacy license; and

(2) fees for filing an application for a pharmacy license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 554.004. ADMINISTRATION OF MEDICATION. (a) The board shall specify conditions under which a pharmacist may administer medication, including an immunization and vaccination. The conditions must ensure that:

(1) a licensed health care provider authorized to administer the medication is not reasonably available to administer the medication;

(2) failure to administer the medication, other than an immunization or vaccination, might result in a significant delay or

interruption of a critical phase of drug therapy;

(3) the pharmacist possesses the necessary skill, education, and certification as specified by the board to administer the medication;

(4) within a reasonable time after administering medication, the pharmacist notifies the licensed health care provider responsible for the patient's care that the medication was administered;

(5) the pharmacist may not administer medication to a patient at the patient's residence, except at a licensed nursing home or hospital;

(6) the pharmacist administers an immunization or vaccination under a physician's written protocol and meets the standards established by the board; and

(7) the authority of a pharmacist to administer medication may not be delegated.

(b) This section does not prohibit a pharmacist from preparing or manipulating a biotechnological agent or device.

(c) This section does not prohibit a pharmacist from performing an act delegated by a physician in accordance with Chapter 157. The pharmacist performing a delegated medical act under that chapter is considered to be performing a medical act and not to be engaging in the practice of pharmacy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 554.005. PRESCRIPTION DRUGS AND DEVICES. (a) In regulating the practice of pharmacy and the use in this state of prescription drugs and devices in the diagnosis, mitigation, or treatment or prevention of injury, illness, or disease, the board shall:

(1) regulate the delivery or distribution of a prescription drug or device;

(2) specify minimum standards for the professional environment, technical equipment, and security in a prescription dispensing area;

(3) specify minimum standards for:

(A) drug storage;

(B) maintenance of prescription drug records; and

(C) procedures for the:

- (i) delivering and dispensing in a suitable, appropriately labeled container;
  - (ii) providing of prescription drugs or devices;
  - (iii) monitoring of drug therapy; and
  - (iv) counseling of patients on proper use of a prescription drug or device in the practice of pharmacy;
- (4) adopt rules regulating a prescription drug order or medication order transmitted by electronic means; and
- (5) register a balance used for compounding drugs in a pharmacy licensed in this state and periodically inspect the balance to verify accuracy.

(b) In implementing Subsection (a)(1), the board may, after notice and hearing, seize any prescription drug or device that poses a hazard to the public health and welfare.

(c) In implementing Subsection (a)(1), the board may not regulate:

- (1) any manufacturer's representative or employee acting in the normal course of business;
- (2) a person engaged in the wholesale drug business and licensed by the commissioner of public health as provided by Chapter 431, Health and Safety Code; or
- (3) an employee of a person described by Subdivision (2) if the employee is acting in the normal course of business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.301(d), eff. Sept. 1, 2001.

Sec. 554.006. FEES. The board by rule shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 554.007. FUNDS. (a) The board shall deposit revenue collected under this subtitle to the credit of the general revenue fund.



(b) The board may receive and spend money, or use gifts, grants, and other funds and assets, in addition to money collected under Subsection (a), in accordance with state law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 9, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 5, eff. June 14, 2013.

Sec. 554.009. LEASE OR PURCHASE OF VEHICLES. (a) The board may lease or purchase vehicles for use in official board business.

(b) A vehicle acquired under Subsection (a) is exempt from a requirement to bear state government identification.

(c) The board may register a vehicle with the Texas Department of Motor Vehicles in an alias name only for investigative personnel.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.01, eff. September 1, 2009.

Sec. 554.010. PEACE OFFICERS. (a) The board may commission as a peace officer to enforce this subtitle an employee who has been certified as qualified to be a peace officer by the Texas Commission on Law Enforcement.

(b) An employee commissioned as a peace officer under this subtitle has the powers, privileges, and immunities of a peace officer while carrying out duties as a peace officer under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1361 (S.B. 650), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.57, eff. May 18, 2013.

Sec. 554.011. PILOT AND DEMONSTRATION RESEARCH PROJECTS. (a) The board may approve pilot and demonstration research projects for innovative applications in the practice of pharmacy.

(b) The board shall specify the procedures to be followed in applying for approval of a project.

(c) The approval may include a provision granting an exception to any rule adopted under this subtitle. The board may extend the time an exception to a rule is granted as necessary for the board to adopt an amendment or modification of the rule. The board may condition approval of a project on compliance with this section and rules adopted under this section.

(d) A project may not include therapeutic substitution or substitution of a medical device used in patient care.

(e) This section does not expand the definition of pharmacy under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.302(a), eff. Sept. 1, 2001.

Sec. 554.012. NOTIFICATION RELATING TO THERAPEUTIC OPTOMETRISTS. The board shall inform each holder of a license to practice pharmacy and each holder of a license to operate a pharmacy of the authority of a therapeutic optometrist to prescribe a drug under Section 351.357 by annually mailing to each license holder a notice that:

(1) describes the authority of a therapeutic optometrist to prescribe a drug; and

(2) lists each drug that a therapeutic optometrist may lawfully prescribe.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 554.014. INFORMATION PROVIDED TO LICENSE HOLDERS. At least once each biennium, the board shall provide to license holders information on:

(1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;

(2) abusive and addictive behavior of certain persons who use prescription pain medications;

(3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and

(4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 7, eff. Sept. 1, 2003.

Sec. 554.015. POISON CONTROL CENTER INFORMATION. The board shall provide to license holders information regarding the services provided by poison control centers.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 7, eff. Sept. 1, 2003.

Sec. 554.016. CANADIAN PHARMACY INSPECTION; DESIGNATION; FEES; INFORMATION. (a) The board shall designate at least one and not more than 10 Canadian pharmacies whose primary business is to dispense prescription drugs under prescription drug orders to Canadian residents, as having passed inspection by the board for shipping, mailing, or delivering to this state a prescription dispensed under a prescription drug order to a resident in this state.

(b) The board by rule shall set fees in amounts reasonable and necessary to cover the costs incurred by the board in inspecting Canadian pharmacies as provided by Subsection (a).

(c) The board shall establish and maintain an Internet website to provide information necessary to enable residents of this state to conveniently order prescription drugs from Canadian pharmacies designated by the board as having passed inspection to dispense prescription drugs to residents in this state in accordance with this subtitle and board rules. The board shall include on the website a statement that the board is not liable for any act or omission of a Canadian pharmacy designated as having passed inspection to dispense prescription drugs to residents in this state.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. [410](#)), Sec. 37, eff.

September 1, 2005.

Sec. 554.017. LIST OF PHARMACISTS AUTHORIZED TO SIGN PRESCRIPTION DRUG ORDERS. The board shall provide on its Internet website a list of pharmacists who are authorized to sign a prescription drug order under Section 157.101(b-1), including the name of the pharmacist's delegating physician under the protocol required under that subsection.

Added by Acts 2009, 81st Leg., R.S., Ch. 271 (S.B. 381), Sec. 2, eff. September 1, 2009.

#### **SUBCHAPTER B. RULEMAKING**

Sec. 554.051. RULEMAKING: GENERAL POWERS AND DUTIES. (a) The board shall adopt rules consistent with this subtitle for the administration and enforcement of this subtitle.

(b) If the board determines it necessary to protect the health and welfare of the citizens of this state, the board may make a rule concerning the operation of a licensed pharmacy located in this state applicable to a pharmacy licensed by the board that is located in another state.

(c) The board shall adopt rules regarding records to be maintained by a pharmacist performing a specific act under a written protocol.

(d) The board by rule shall specify minimum standards for professional responsibility in the conduct of a pharmacy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 554.052. IMMUNIZATIONS AND VACCINATIONS; PHYSICIAN SUPERVISION. (a) The board by rule shall require a pharmacist to notify a physician who prescribes an immunization or vaccination within 24 hours after the pharmacist administers the immunization or vaccination.

(b) The board shall establish minimum education and continuing education standards for a pharmacist who administers an immunization or vaccination. The standards must include Centers for Disease Control and Prevention training, basic life support training, and

hands-on training in techniques for administering immunizations and vaccinations.

(c) Supervision by a physician is adequate if the delegating physician:

(1) is responsible for formulating or approving an order or protocol, including the physician's order, standing medical order, or standing delegation order, and periodically reviews the order or protocol and the services provided to a patient under the order or protocol;

(2) except as provided by Subsection (c-1), has established a physician-patient relationship with each patient under 14 years of age and referred the patient to the pharmacist;

(3) is geographically located to be easily accessible to the pharmacy where an immunization or vaccination is administered;

(4) receives, as appropriate, a periodic status report on the patient, including any problem or complication encountered; and

(5) is available through direct telecommunication for consultation, assistance, and direction.

(c-1) A pharmacist may administer an influenza vaccination to a patient over seven years of age without an established physician-patient relationship.

(d) The Texas Medical Board by rule shall establish the minimum content of a written order or protocol. The order or protocol may not permit delegation of medical diagnosis.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 375 (H.B. 1409), Sec. 1, eff. September 1, 2009.

Sec. 554.053. RULEMAKING: PHARMACY TECHNICIAN AND PHARMACY TECHNICIAN TRAINEE. (a) The board shall establish rules for the use and the duties of a pharmacy technician and pharmacy technician trainee in a pharmacy licensed by the board. A pharmacy technician and pharmacy technician trainee shall be responsible to and must be directly supervised by a pharmacist.

(b) The board may not adopt a rule establishing a ratio of pharmacists to pharmacy technicians and pharmacy technician trainees in a Class C pharmacy or limiting the number of pharmacy technicians

or pharmacy technician trainees that may be used in a Class C pharmacy.

(c) The board shall determine and issue standards for recognition and approval of a training program for pharmacy technicians and maintain a list of board-approved training programs that meet those standards.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.303(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 6, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 7, eff. June 14, 2013.

Sec. 554.054. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by that person.

(b) The board may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement used by the person; or
- (4) restricts the use of a trade name in advertising by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 554.055. RULEMAKING; ELECTRONIC MEDIA. The board shall adopt rules regarding the sale and delivery of drugs by use of electronic media, including the Internet.

Added by Acts 2001, 77th Leg., ch. 972, Sec. 1, eff. Sept. 1, 2001.

Sec. 554.056. RULEMAKING; ADDITION OF FLAVORING TO COMMERCIAL PRODUCT. The board may adopt rules governing the procedures for a pharmacist, as part of compounding, to add flavoring to a commercial product at the request of a patient or a patient's agent.

Added by Acts 2007, 80th Leg., R.S., Ch. 550 (S.B. 1274), Sec. 1, eff. September 1, 2007.

Sec. 554.057. RULEMAKING; IMPLEMENTATION OF DRUG THERAPY UNDER PROTOCOL. The board, with the advice of the Texas Medical Board, shall adopt rules that allow a pharmacist to implement or modify a patient's drug therapy pursuant to a physician's delegation under Section 157.101(b-1).

Added by Acts 2009, 81st Leg., R.S., Ch. 271 (S.B. 381), Sec. 3, eff. September 1, 2009.

#### **CHAPTER 555. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 555.001. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

(c) The board shall provide on its website a list of all Internet pharmacies licensed by the board and shall provide information about each pharmacy, including the pharmacy's name, license number, and state of physical location. In this subsection, an Internet pharmacy is a pharmacy physically located in this state or another state that:

(1) dispenses a prescription drug or device under a prescription drug order in response to a request received by way of the Internet to dispense the drug or device; and

(2) delivers the drug or device to a patient in this state by United States mail, common carrier, or delivery service.

(d) Information regarding the home address or home telephone number of a person licensed or registered under this subtitle, including a pharmacy owner, is confidential and not subject to disclosure under Chapter 552, Government Code, but each person

licensed or registered must provide the board with a business address or address of record that is subject to disclosure under Chapter 552, Government Code, and that may be posted on the board's Internet site or in the board's licensure verification database.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 10, eff. September 1, 2005.

Sec. 555.002. COMPLAINTS. (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

- (1) on each registration form, application, or written contract for services of a person regulated by the board;
- (2) on a sign prominently displayed in the place of business of each person regulated by the board; or
- (3) in a bill for service provided by a person regulated by the board.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

(c) Any person who has knowledge relating to an action or omission of a pharmacist or pharmacy licensed by the board that constitutes a ground for disciplinary action under Section 565.001 or 565.002, or a rule adopted under one of those sections, may provide relevant records, report relevant information, or provide assistance to the board.

(d) A complaint directed to the board under this section may be made through the Internet.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 972, Sec. 2, eff. Sept. 1, 2001.

Sec. 555.003. COMPLAINT FORM. The board by rule shall adopt a form on which a person may file a complaint with the board.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 555.004. ASSISTANCE WITH COMPLAINT. The board shall provide reasonable assistance to a person who wants to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 555.005. RECORDS OF COMPLAINTS. For each complaint received by the board, the board shall maintain information about parties to the complaint, including the complainant's identity, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and the disposition of the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 11, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 522 (S.B. 404), Sec. 1, eff. September 1, 2013.

Sec. 555.006. NOTIFICATION CONCERNING COMPLAINT. (a) The board shall notify the complainant not later than the 30th day after the date the board receives the complaint and shall provide an estimated time for resolution of the complaint.

(b) If a written complaint is filed with the board that the board has authority to resolve, the board, at least every four months and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 555.007. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt policies and procedures concerning the investigation of a complaint filed with the board.

The policies and procedures must:

- (1) determine the seriousness of the complaint;
- (2) ensure that a complaint is not closed without appropriate consideration;
- (3) ensure that a letter is sent to the person who filed the complaint explaining the action taken on the complaint;
- (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;
- (5) prescribe guidelines concerning the types of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator; and
- (6) allow appropriate employees of the board to dismiss a complaint if an investigation shows that:
  - (A) no violation occurred; or
  - (B) the subject of the complaint is outside the board's jurisdiction.

(b) The board shall:

- (1) dispose of a complaint in a timely manner; and
- (2) establish a schedule for conducting each phase of the investigation or disposition that is under the control of the board.

(c) At each public meeting of the board, the executive director shall report to the board each complaint dismissed under Subsection (a)(6) since the board's last public meeting.

(d) The board may not consider or act on a complaint involving a violation alleged to have occurred more than seven years before the date the complaint is received by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 12, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 522 (S.B. 404), Sec. 2, eff. September 1, 2013.

Sec. 555.008. NOTICE TO BOARD CONCERNING COMPLAINTS. (a) The executive director shall notify the board of the number of complaints that are unresolved after two years after the date of the filing of the complaint. The executive director shall provide the board with an explanation of the reason that a complaint has not been resolved.

(b) The executive director shall provide the notice and explanation required under Subsection (a) periodically at regularly scheduled board meetings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 555.009. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on an issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 555.010. CONFIDENTIALITY. The identity of a person who reports to or assists the board under Section 555.002(c) and a document that could disclose the identity of that person are confidential and are not considered public information for the purposes of Chapter 552, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 555.011. IMMUNITY. (a) A person who provides information or assistance under Section 555.002(c) is immune from civil liability arising from providing the information or assistance.

(b) Subsection (a) shall be liberally construed to accomplish the purposes of this chapter, and the immunity provided under that subsection is in addition to any other immunity provided by law.

(c) A person who provides information or assistance to the board under this chapter is presumed to have acted in good faith. A person who alleges a lack of good faith has the burden of proof on that issue.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 555.012. COUNTERCLAIM OR SUIT. (a) A person who provides information or assistance under Section 555.002(c) and who is named as a defendant in a civil action filed as a result of the information or assistance may file a counterclaim in a pending action or may prove a cause of action in a subsequent suit to recover defense costs, including court costs, attorney's fees, and damages incurred as a result of the civil action, if the plaintiff's original suit is determined to be frivolous, unreasonable, without foundation, or brought in bad faith.

(b) A board employee or member or an agent of the board who is named as a defendant in a civil action filed as a result of an action taken in the person's official capacity or in the course and scope of employment may file a counterclaim in a pending action or may prove a cause of action in a subsequent suit to recover defense costs, including court costs, attorney's fees, and damages incurred as a result of the civil action, if the plaintiff's original suit is determined to be frivolous, unreasonable, without foundation, or brought in bad faith.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## **CHAPTER 556. ADMINISTRATIVE INSPECTIONS AND WARRANTS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 556.001. DEFINITION. In this chapter, "facility" means a place:

- (1) for which an application has been made for a pharmacy license under this subtitle;
- (2) at which a pharmacy licensed under this subtitle is located;
- (3) at which a pharmacy is being operated in violation of this subtitle; or
- (4) where the practice of pharmacy occurs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

### **SUBCHAPTER B. INSPECTIONS**

Sec. 556.051. AUTHORIZATION TO ENTER AND INSPECT. The board or a representative of the board may enter and inspect a facility relative to the following:

- (1) drug storage and security;
- (2) equipment;
- (3) components used in compounding, finished and unfinished products, containers, and labeling of any item;
- (4) sanitary conditions; or
- (5) records, reports, or other documents required to be kept or made under this subtitle, Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.) or rules adopted under one of those laws.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 2, eff. September 1, 2005.

Sec. 556.052. REQUIREMENTS BEFORE ENTRY AND INSPECTION. (a) Before an entry and inspection of the facility, the person authorized to represent the board must:

- (1) state the purpose for the inspection; and
- (2) present to the owner, pharmacist, or agent in charge of the facility:
  - (A) appropriate credentials; and
  - (B) written notice of the authority for the inspection.

(b) If an inspection is required by or is supported by an administrative inspection warrant, the warrant is the notice for purposes of Subsection (a)(2)(B).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.053. EXTENT OF INSPECTION; CONFIDENTIALITY. (a) Except as otherwise provided in an inspection warrant, the person authorized to represent the board may:

- (1) inspect and copy documents, including records or reports, required to be kept or made under this subtitle, Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.) or rules adopted under one of those laws;
- (2) inspect, within reasonable limits and in a reasonable

manner, a facility's storage, equipment, security, prescription drugs or devices, components used in compounding, finished and unfinished products, or records; or

(3) perform an inventory of any stock of prescription drugs or devices, components used in compounding, or finished and unfinished products in a facility and obtain samples of those substances.

(b) Reports, records, formulas, and test results of samples of products compounded by pharmacies obtained by the board may be provided to the pharmacy that compounded the product but otherwise are confidential and do not constitute public information for purposes of Chapter 552, Government Code. The board may create, use, or disclose statistical information from the test results of samples of compounded products.

(c) The board may disclose information confidential under Subsection (b):

(1) in a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order;

(2) to a pharmacist licensing or disciplinary authority of another jurisdiction; or

(3) under a court order.

(d) The board shall require a pharmacy to recall a compounded product and may release the results of the tests of the samples of the compounded product if the board determines that:

(1) the test results indicate a patient safety problem that may involve potential harm to a patient; and

(2) the release of the test results is necessary to protect the public.

(e) The board shall release the test results described by Subsection (d) if a pharmacy is unable to or does not recall the compounded product within 48 hours after the board's request under that subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 3, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 785 (S.B. 1127), Sec. 1, eff. June 19, 2009.

Sec. 556.054. LIMITATION ON INSPECTION. Unless the owner, pharmacist, or agent in charge of a facility consents in writing, an inspection of the facility authorized by this chapter may not extend to:

- (1) financial data;
- (2) sales data, other than shipment data; or
- (3) pricing data.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.055. INSPECTIONS WITH WARNING NOTICE. Before a complaint may be filed with the board as the result of a written warning notice that is issued during an inspection authorized by this chapter and that lists a specific violation of this subtitle or a rule adopted under this subtitle, the license holder must be given a reasonable time, as determined by the board, to comply with this subtitle or rules adopted under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.0551. INSPECTION OF LICENSED NONRESIDENT PHARMACY.

(a) The board may inspect a nonresident pharmacy licensed by the board that compounds sterile preparations as necessary to ensure compliance with the safety standards and other requirements of this subtitle and board rules.

(b) A nonresident pharmacy shall reimburse the board for all expenses, including travel, incurred by the board in inspecting the pharmacy as provided by Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 1, eff. September 1, 2013.

Sec. 556.0555. INSPECTIONS. (a) At least annually, the board shall conduct random inspections of Canadian pharmacies designated under Section 554.016 as necessary to ensure compliance with the safety standards and other requirements of this subtitle and board rules.

(b) Notwithstanding the requirements of this chapter, the board

by rule may establish the standards and procedures for inspections under this section.

(c) The board may enter into a written agreement with another state for an agency or employee of the state to perform services for the board related to inspecting a Canadian pharmacy designated by the board under Section 554.016 to dispense prescription drugs to residents in this state. This subsection does not apply to the initial inspection of the pharmacy.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 38, eff. September 1, 2005.

Sec. 556.056. CODE OF PROFESSIONAL RESPONSIBILITY. (a) The board shall adopt a code of professional responsibility to regulate the conduct of a representative of the board authorized to inspect and survey a pharmacy.

(b) The code must contain:

(1) a procedure to be followed by a person authorized to represent the board:

- (A) on entering a pharmacy;
- (B) during inspection of the pharmacy; and
- (C) during an exit conference; and

(2) standards of conduct that the person must follow in dealing with the staff and management of the pharmacy and the public.

(c) The board shall establish a procedure for receiving and investigating a complaint of a code violation. The board shall investigate each complaint of a code violation. The board shall forward results of an investigation to the complainant.

(d) The board may adopt rules establishing sanctions for code violations.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. WARRANTS**

Sec. 556.101. WARRANT NOT REQUIRED. A warrant is not required under this chapter to:

- (1) inspect books or records under an administrative subpoena issued under this subtitle; or
- (2) enter a facility or conduct an administrative



inspection of a facility if:

(A) the owner, pharmacist, or agent in charge of the facility consents to the inspection;

(B) the situation presents imminent danger to the public health and safety;

(C) the situation involves inspection of a conveyance, if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant; or

(D) any other exceptional situation or emergency exists involving an act of God or natural disaster in which time or opportunity to apply for a warrant is lacking.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.102. COMPLIANCE WITH CHAPTER. An administrative inspection warrant may be issued and executed only in accordance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.103. ISSUANCE OF WARRANT. (a) In this section, "probable cause" means a valid public interest exists in the effective enforcement of this subtitle or a rule adopted under this subtitle that is sufficient to justify an administrative inspection of the facility, area, building, or conveyance, or its contents in the circumstances specified in the application for the warrant.

(b) A district judge may, on proper oath or affirmation that shows probable cause, issue a warrant to:

(1) conduct an administrative inspection authorized by this chapter or rules adopted under this subtitle; and

(2) seize property appropriate to the inspection.

(c) A warrant may be issued only on an affidavit that:

(1) is given by a board representative who has knowledge of the facts alleged;

(2) is sworn to before the judge; and

(3) establishes the grounds for issuance of the warrant.

(d) The judge shall issue a warrant if the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.104. CONTENTS OF WARRANT. The warrant must:

- (1) identify:
  - (A) the facility, area, building, or conveyance to be inspected;
  - (B) the purpose of the inspection;
  - (C) the type of property to be inspected, if appropriate; and
  - (D) each item or type of property to be seized, if any;
- (2) state the grounds for issuance of the warrant and the name of each person whose affidavit has been taken in support of the warrant;
- (3) be directed to a person authorized under this chapter to execute the warrant;
- (4) command the person to whom the warrant is directed to inspect the facility, area, building, or conveyance identified for the purpose specified;
- (5) direct the seizure of the property specified, if appropriate;
- (6) direct that the warrant be served during normal business hours; and
- (7) designate the judge to whom the warrant is to be returned.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.105. EXECUTION AND RETURN OF WARRANT. (a) A warrant issued under this chapter must be executed and returned not later than the 10th day after the date of the warrant's issuance unless the judge allows additional time in the warrant after a showing by the board of a need for additional time.

(b) A person who seizes property under a warrant shall provide a copy of the warrant and a receipt for the property taken by:

- (1) giving the copy and receipt to the person from whom or from whose facility the property was taken; or
- (2) leaving the copy and receipt at the facility from which the property was taken.

(c) The return of the warrant shall be made promptly and be accompanied by a written inventory of any property taken. The inventory shall be:

(1) prepared in the presence of the person executing the warrant and of:

(A) the person from whose possession or facility the property was taken, if present; or

(B) at least one credible person other than the person preparing the inventory; and

(2) verified by the person executing the warrant.

(d) The judge, on request, shall deliver a copy of the inventory to:

(1) the person from whose possession or facility the property was taken; and

(2) the applicant for the warrant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.106. FILING WITH DISTRICT COURT. (a) A judge who issues a warrant under this chapter shall attach to the warrant:

(1) a copy of the return; and

(2) the papers filed in connection with the warrant.

(b) The judge shall file the copy of the return and the papers with the clerk of the district court with jurisdiction of the area in which the inspection was conducted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.107. DISPOSAL OF SEIZED PROPERTY. Property seized under this chapter must be disposed of in a manner considered appropriate by the board if the board has jurisdiction over the property or the district court if the court has jurisdiction over the property.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **CHAPTER 557. PHARMACIST-INTERNS**

Sec. 557.001. PHARMACIST-INTERN REGISTRATION. A person must

register with the board before beginning a board-approved internship in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 557.002. APPLICATION FOR REGISTRATION. An application for registration as a pharmacist-intern must be on a form prescribed by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 557.003. DURATION OF REGISTRATION. A person's registration as a pharmacist-intern remains in effect as long as the person meets the qualifications for an internship specified by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 557.004. LIMITATIONS ON REGISTRATION. (a) The board may:

- (1) refuse to issue a registration to an applicant; or
- (2) restrict, suspend, or revoke a pharmacist-intern registration for a violation of this subtitle.

(b) The board may take disciplinary action against an applicant for a pharmacist-intern registration or the holder of a current or expired pharmacist-intern registration in the same manner as against an applicant for a license or a license holder by imposing a sanction authorized under Section 565.051 if the board finds that the applicant or registration holder has engaged in conduct described by Section 565.001.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 8, eff. June 14, 2013.

**CHAPTER 558. LICENSE TO PRACTICE PHARMACY**  
**SUBCHAPTER A. LICENSE**

Sec. 558.001. LICENSE REQUIRED. (a) A person may not practice pharmacy unless the person holds a license to practice pharmacy under this subtitle.

(b) A person may not:

- (1) impersonate a pharmacist; or
- (2) use the title "Registered Pharmacist" or "R.Ph.," or words of similar intent, unless the person is licensed to practice pharmacy in this state.

(c) A person may not dispense or distribute prescription drugs unless the person:

- (1) is a pharmacist; or
- (2) is otherwise authorized by this subtitle to dispense or distribute prescription drugs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.002. UNAUTHORIZED ACQUISITION OF LICENSE. A person may not:

- (1) impersonate before the board an applicant applying for a license under this subtitle; or
- (2) acquire, with the intent to fraudulently acquire the license, a license in a manner other than the manner provided by this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. LICENSING BY EXAMINATION**

Sec. 558.051. QUALIFICATIONS FOR LICENSE BY EXAMINATION. (a) To qualify for a license to practice pharmacy, an applicant for licensing by examination must submit to the board:

- (1) a license fee set by the board; and
- (2) a completed application on a form prescribed by the board with satisfactory sworn evidence that the applicant:
  - (A) is at least 18 years of age;
  - (B) is of good moral character;
  - (C) has completed a minimum of a 1,000-hour internship or other program that has been approved by the board or has demonstrated, to the board's satisfaction, experience in the practice of pharmacy that meets or exceeds the board's minimum internship

requirements;

(D) has graduated and received a professional practice degree, as defined by board rule, from an accredited pharmacy degree program approved by the board;

(E) has passed the examination required by the board;  
and

(F) has not had a pharmacist license granted by another state restricted, suspended, revoked, or surrendered, for any reason.

(b) Each applicant must obtain practical experience in the practice of pharmacy concurrent with college attendance or after college graduation, or both, under conditions the board determines.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.052. CONTENT, PREPARATION, AND VALIDATION OF EXAMINATION. (a) The board shall determine the content and subject matter of a licensing examination.

(b) The examination shall be prepared to measure the competence of the applicant to practice pharmacy.

(c) The board may employ and cooperate with an organization or consultant in preparing an appropriate examination.

(d) A written examination prepared or offered by the board, including a standardized national examination, must be validated by an independent testing professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.053. GRADING OF EXAMINATION. (a) The board may employ and cooperate with an organization or consultant in grading the examination.

(b) The board shall determine whether an applicant has passed the examination. The board has sole discretion and responsibility for that determination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.054. FREQUENCY OF OFFERING EXAMINATION. The board shall give the examination at least two times during each state

fiscal year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.055. FAILURE TO PASS; REEXAMINATION. (a) An applicant who on the applicant's first attempt fails the examination may take the examination two additional times.

(b) Before an applicant who has failed the examination three times is allowed to retake the examination, the applicant must provide documentation from a college of pharmacy that the applicant has successfully completed additional college course work in each examination subject area the applicant failed.

(c) If requested in writing by a person who fails the examination, the board shall furnish the person with an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.056. NOTIFICATION. The board shall notify each person taking an examination of the results of the examination not later than the 30th day after the date the board receives the results from a national testing service if the board uses a national testing service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.057. INTERNSHIP OR OTHER PROGRAM TO QUALIFY FOR EXAMINATION. (a) In this section, "preceptor" means a pharmacist licensed in this state to practice pharmacy or another health care professional who meets the preceptor requirements specified by rule and who is recognized by the board to supervise and be responsible for the activities and functions of a pharmacist-intern in an internship program.

(b) The board shall:

(1) establish standards for an internship or other program necessary to qualify an applicant for the licensing examination; and

(2) determine the qualifications necessary for a preceptor used in the program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 13, eff. September 1, 2005.

Sec. 558.058. ACCESSIBILITY OF EXAMINATION. The board by rule shall ensure that an examination under this subchapter is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 14, eff. September 1, 2005.

Sec. 558.059. EXAMINATION FEE REFUND. (a) The board may retain all or part of an examination fee paid by an applicant who is unable to take the examination.

(b) The board shall adopt policies allowing the board to refund the examination fee paid by an applicant who:

(1) provides advance notice of the applicant's inability to take the examination; or

(2) is unable to take the examination because of an emergency.

(c) The board's policy must establish the required notification period and the emergencies that warrant a refund.

(d) The board shall make efforts to ensure that the policy does not conflict with the policy of a national testing body involved in administering the examination.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 15, eff. September 1, 2005.

#### **SUBCHAPTER C. LICENSING BY RECIPROCITY**

Sec. 558.101. QUALIFICATIONS FOR LICENSE BY RECIPROCITY. (a) To qualify for a license to practice pharmacy, an applicant for licensing by reciprocity must:

(1) submit to the board:

(A) a reciprocity fee set by the board; and



(B) a completed application in the form prescribed by the board, given under oath;

(2) be of good moral character;

(3) have graduated and received a professional practice degree, as defined by board rule, from an accredited pharmacy degree program approved by the board;

(4) have presented to the board:

(A) proof of current or initial licensing by examination; and

(B) proof that the current license and any other license granted to the applicant by another state has not been restricted, suspended, revoked, or surrendered for any reason; and

(5) pass the Texas Pharmacy Jurisprudence examination.

(b) An applicant is not eligible for licensing by reciprocity unless the state in which the applicant is currently or was initially licensed as a pharmacist grants reciprocal licensing to pharmacists licensed by examination in this state, under like circumstances and conditions.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 16, eff. September 1, 2005.

#### **SUBCHAPTER D. PROVISIONAL AND TEMPORARY LICENSING**

Sec. 558.151. QUALIFICATIONS FOR PROVISIONAL LICENSE. (a) The board may grant a provisional license to practice pharmacy to an applicant licensed in another state who seeks a license in this state. An applicant for a provisional license under this section must:

(1) pay a fee set by the board;

(2) be licensed in good standing as a pharmacist in another state that has professional standards and licensing requirements that the board considers to be substantially equivalent to the requirements of this subtitle;

(3) have passed a national or other examination recognized by the board relating to pharmacy; and

(4) be sponsored by a person licensed under this subtitle with whom the provisional license holder may practice under this

subchapter.

(b) The board may waive the requirement of Subsection (a)(4) for an applicant if the board determines that compliance with that subsection constitutes a hardship to the applicant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.152. DURATION OF PROVISIONAL LICENSE. A provisional license is valid until the date the board approves or denies the license application under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.153. PROCESSING OF LICENSE APPLICATION. The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued or at the time licenses are issued following the successful completion of the examination, whichever date is later.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.154. ISSUANCE OF LICENSE TO PROVISIONAL LICENSE HOLDER. The board shall issue a license to practice pharmacy under this subtitle to the holder of a provisional license if:

(1) the provisional license holder passes the jurisprudence examination required under this subtitle;

(2) the board verifies that the provisional license holder has the academic and experience requirements for a license to practice pharmacy under this subtitle; and

(3) the provisional license holder satisfies all other requirements for a license to practice pharmacy under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.155. TEMPORARY LICENSE. The board by rule may provide for the issuance of a temporary license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER E. CERTAIN PROHIBITED PRACTICES**

Sec. 558.201. DUPLICATING LICENSE OR CERTIFICATE. Except as expressly provided under this subtitle, a person may not in any manner duplicate a license to practice pharmacy or a license renewal certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.202. FALSE AFFIDAVIT. A person who falsely makes the affidavit prescribed by Section 558.051 or 558.101 is guilty of fraudulent and dishonorable conduct and malpractice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**CHAPTER 559. RENEWAL OF LICENSE TO PRACTICE PHARMACY**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 559.001. EXPIRATION OF LICENSE. (a) Except as provided by Subsection (b), a license to practice pharmacy expires December 31 of each year or of every other year, as determined by the board.

(b) The board may adopt a system under which licenses to practice pharmacy expire on various dates during the year.

(c) If the board changes the expiration date of a license, the board shall prorate the license renewal fee to cover the months for which the license is valid for the year in which the date is changed. The total license renewal fee is due on the new expiration date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.002. RENEWAL PERIOD. A license to practice pharmacy may be renewed for one or two years, as determined by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.003. REQUIREMENTS FOR RENEWAL. (a) To renew a

license to practice pharmacy, the license holder must before the expiration date of the license:

- (1) pay a renewal fee as determined by the board;
- (2) comply with the continuing education requirements prescribed by the board; and
- (3) file with the board a completed application for a license renewal certificate that:
  - (A) is given under oath; and
  - (B) is accompanied by a certified statement executed by the license holder that attests that the license holder has satisfied the continuing education requirements during the preceding license period.

(b) A person whose license has been expired for 90 days or less may renew the expired license by paying to the board a renewal fee that is equal to one and one-half times the normally required renewal fee for the license.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the expired license by paying to the board a renewal fee that is equal to two times the normally required renewal fee for the license.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license, including the examination requirement.

(e) A person may not renew a license to practice pharmacy if the person holds a license to practice pharmacy in another state that has been suspended, revoked, canceled, or subject to an action that prohibits the person from practicing pharmacy in that state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 17, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 9, eff. June 14, 2013.

Sec. 559.004. ISSUANCE OF LICENSE RENEWAL CERTIFICATE. (a) The board shall issue a license renewal certificate to an applicant

after the board has received, in a time prescribed by Section 559.003:

- (1) the completed application;
- (2) the renewal fee; and
- (3) proof of completion of the continuing education requirements prescribed by Subchapter B.

(b) The renewal certificate must contain:

- (1) the pharmacist's license number;
- (2) the period for which the license is renewed; and
- (3) other information the board determines necessary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.005. ISSUANCE OF NEW LICENSE. (a) The board may issue a new license to practice pharmacy to a person who is prohibited under Section 559.003(d) from renewing a license if the person has not had a license granted by any other state restricted, suspended, revoked, canceled, or surrendered for any reason and qualifies under this section.

(b) A person qualifies for a license under this section if the person:

- (1) was licensed as a pharmacist in this state, moved to another state, and is licensed and has been practicing pharmacy in the other state for the two years preceding the date the application for a new license is submitted;
- (2) pays to the board an amount equal to the examination fee for the license; and
- (3) passes the Texas Pharmacy Jurisprudence examination.

(c) A person qualifies for a license under this section if the person:

- (1) was licensed as a pharmacist in this state;
- (2) pays to the board an amount equal to the examination fee for the license; and
- (3) passes the Texas Pharmacy Jurisprudence examination and any other examination required by the board and in addition to or instead of passing the examination as required by the board, participates in continuing pharmacy education and practices under conditions set by the board.

(d) A person qualifies for a license under this section if the

person:

- (1) submits to reexamination; and
- (2) complies with the requirements and procedures for obtaining an original license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.006. LICENSE EXPIRATION NOTICE. At least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the license holder's last known address according to the board's records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.007. PRACTICING PHARMACY WITHOUT RENEWAL CERTIFICATE. A person who practices pharmacy without a current license renewal certificate as required by this chapter is practicing pharmacy without a license and is subject to all penalties for practicing pharmacy without a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. MANDATORY CONTINUING EDUCATION**

Sec. 559.051. SATISFACTION OF CONTINUING EDUCATION REQUIREMENT.

(a) A holder of a license to practice pharmacy may meet the continuing education requirement by:

- (1) completing continuing education programs approved by the board; or
- (2) passing a standardized pharmacy examination approved by the board.

(b) A license holder who takes the examination under Subsection (a)(2) must pay the examination fee assessed by the board under Section 554.006.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.052. RULES RELATING TO CONTINUING EDUCATION. (a) The board shall adopt rules relating to:

- (1) the adoption or approval of mandatory continuing education programs;
- (2) the approval of providers and the operation of continuing education programs; and
- (3) the evaluation of the effectiveness of continuing education programs and a license holder's participation and performance in those programs.

(b) In establishing the requirement for continuing education, the board shall consider:

- (1) factors that lead to the competent performance of professional duties; and
- (2) the continuing education needs of license holders.

(c) In adopting rules relating to the approval of continuing education programs or providers, the board may consider:

- (1) programs approved by the Texas Pharmacy Foundation; and
- (2) providers approved by the American Council on Pharmaceutical Education.

(d) The board shall approve home study courses, correspondence courses, or other similar programs.

(e) The board by rule may grant an extension for the completion of a continuing education requirement for good cause.

(f) The board by rule may exempt a person from all or part of the continuing education requirements.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.0525. CONTINUING EDUCATION RELATING TO OPIOID DRUGS.

(a) The board shall develop a continuing education program regarding opioid drug abuse and the delivery, dispensing, and provision of tamper-resistant opioid drugs after considering input from interested persons.

(b) The board by rule may require a license holder to satisfy a number of the continuing education hours required by Section 559.053 through attendance of a program developed under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 518 (S.B. 316), Sec. 1, eff. June 14, 2013.

Sec. 559.053. PROGRAM HOURS REQUIRED. A license holder satisfies the continuing education requirement by presenting evidence satisfactory to the board of completion of at least 30 hours of continuing education during the preceding 24 months of the person's license period.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1254, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.304(a), eff. Sept. 1, 2001.

Sec. 559.054. CERTIFICATE OF COMPLETION. Each continuing education program approved by the board shall issue a certificate of completion to a license holder who satisfactorily completes the program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.055. RECORDS. Each license holder shall maintain records for three years showing the continuing education programs completed by the license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.056. DEMONSTRATION OF COMPLIANCE. On an audit by the board, a license holder is in compliance with the continuing education requirements if the license holder submits to the board:

- (1) an affidavit stating that the license holder has complied with those requirements; and
- (2) records showing completion of the continuing education programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. INACTIVE STATUS**

Sec. 559.101. ELIGIBILITY FOR INACTIVE STATUS. The board by



rule shall adopt a system for placing on inactive status a license held by a person who:

- (1) is licensed by the board to practice pharmacy;
- (2) is not eligible to renew the license because of failure to comply with the continuing education requirements under Subchapter B; and
- (3) is not practicing pharmacy in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.102. RESTRICTION ON LENGTH OF INACTIVE STATUS. The board may restrict the length of time a license may remain on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.103. APPLICATION FOR INACTIVE STATUS. A license holder may place the holder's license on inactive status by:

- (1) applying for inactive status on a form prescribed by the board before the expiration date of the license; and
- (2) complying with all other requirements for renewal of a license other than the continuing education requirements under Subchapter B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.104. RETURN TO ACTIVE STATUS. A holder of a license that is on inactive status may return the license to active status by:

- (1) applying for active status on a form prescribed by the board; and
- (2) providing evidence satisfactory to the board that the license holder has completed the number of hours of continuing education, up to 36 hours, that would otherwise have been required for renewal of the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.105. PRACTICING PHARMACY DURING INACTIVE STATUS. (a) A holder of a license that is on inactive status may not practice pharmacy in this state.

(b) A license holder who practices pharmacy while the holder's license is on inactive status is practicing pharmacy without a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## CHAPTER 560. LICENSING OF PHARMACIES

### SUBCHAPTER A. LICENSE REQUIRED

Sec. 560.001. LICENSE REQUIRED. (a) A person may not operate a pharmacy in this state unless the pharmacy is licensed by the board.

(b) A pharmacy located in another state may not ship, mail, or deliver to this state a prescription drug or device dispensed under a prescription drug order, or dispensed or delivered as authorized by Subchapter D, Chapter 562, unless the pharmacy is licensed by the board or is exempt under Section 560.004.

(c) A pharmacy located in Canada may not ship, mail, or deliver to this state a prescription drug dispensed under a prescription drug order to a resident of this state unless the pharmacy is designated by the board under Section 554.016.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 39, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 2, eff. September 1, 2013.

Sec. 560.002. USE OF "PHARMACY"; PROVIDING PHARMACY SERVICES WITHOUT LICENSE. (a) A person may not display in or on a place of business the word "pharmacy" or "apothecary" in any language, any word or combination of words of the same or similar meaning, or a graphic representation that would lead or tend to lead the public to believe that the business is a pharmacy unless the facility is a pharmacy licensed under this chapter.

(b) A person may not advertise a place of business as a

pharmacy or provide pharmacy services unless the facility is a pharmacy licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1254, Sec. 4, eff. Sept. 1, 2001.

Sec. 560.003. PROHIBITED ADVERTISING OF PHARMACY. (a) A pharmacy that is not licensed under this chapter may not advertise the pharmacy's services in this state.

(b) A person who is a resident of this state may not advertise the pharmacy services of a pharmacy that is not licensed by the board if the pharmacy or person makes the advertisement with the knowledge that the advertisement will or is likely to induce a resident of this state to use the pharmacy to dispense a prescription drug order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 560.004. EXEMPTION. The board may grant an exemption from the licensing requirements of this chapter on the application of a pharmacy located in another state that restricts to isolated transactions the pharmacy's dispensing of a prescription drug or device to a resident of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. PHARMACY CLASSIFICATION**

Sec. 560.051. LICENSE CLASSIFICATIONS. (a) Each applicant for a pharmacy license shall apply for a license in one or more of the following classifications:

- (1) Class A;
- (2) Class B;
- (3) Class C;
- (4) Class D;
- (5) Class E; or

(6) another classification established by the board under Section 560.053.

(b) A Class A pharmacy license or community pharmacy license authorizes a pharmacy to dispense a drug or device to the public

under a prescription drug order.

(c) A Class B pharmacy license or nuclear pharmacy license authorizes a pharmacy to dispense a radioactive drug or device for administration to an ultimate user.

(d) A Class C pharmacy license or institutional pharmacy license may be issued to a pharmacy located in:

(1) an inpatient facility, including a hospital, licensed under Chapter 241 or 577, Health and Safety Code;

(2) a hospital maintained or operated by the state;

(3) a hospice inpatient facility licensed under Chapter 142, Health and Safety Code; or

(4) an ambulatory surgical center licensed under Chapter 243, Health and Safety Code.

(e) A Class D pharmacy license or clinic pharmacy license authorizes a pharmacy to dispense a limited type of drug or device under a prescription drug order.

(f) A Class E pharmacy license or nonresident pharmacy license may be issued to a pharmacy located in another state whose primary business is to:

(A) dispense a prescription drug or device under a prescription drug order; and

(B) deliver the drug or device to a patient, including a patient in this state, by United States mail, common carrier, or delivery service.

(g) The board may determine the classification under which a pharmacy may be licensed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.305(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 941, Sec. 1, eff. Sept. 1, 2003.

Sec. 560.052. QUALIFICATIONS. (a) The board by rule shall establish the standards that each pharmacy and the pharmacy's employees involved in the practice of pharmacy must meet to qualify for licensing as a pharmacy in each classification.

(b) To qualify for a pharmacy license, an applicant must submit to the board:

(1) a license fee set by the board, except as provided by Subsection (d); and

(2) a completed application that:

- (A) is on a form prescribed by the board;
- (B) is given under oath;
- (C) includes proof that a license held in this state or another state, if applicable, has not been restricted, suspended, revoked, or surrendered for any reason; and
- (D) includes a statement of:
  - (i) the ownership;
  - (ii) the location of the pharmacy;
  - (iii) the license number of each pharmacist who is employed by the pharmacy, if the pharmacy is located in this state, or who is licensed to practice pharmacy in this state, if the pharmacy is located in another state;
  - (iv) the license number of the pharmacist-in-charge; and
  - (v) any other information the board determines necessary.

(c) A pharmacy located in another state that applies for a license, in addition to satisfying the other requirements of this chapter, must provide to the board:

(1) evidence that the applicant holds a pharmacy license, registration, or permit in good standing issued by the state in which the pharmacy is located;

(2) the name of the owner and pharmacist-in-charge of the pharmacy for service of process;

(3) evidence of the applicant's ability to provide to the board a record of a prescription drug order dispensed or delivered as authorized by Subchapter D, Chapter 562, by the applicant to a resident of or practitioner in this state not later than 72 hours after the time the board requests the record;

(4) an affidavit by the pharmacist-in-charge that states that the pharmacist has read and understands the laws and rules relating to the applicable license;

(5) proof of creditworthiness;

(6) an inspection report issued:

(A) not more than two years before the date the license application is received; and

(B) by the pharmacy licensing board in the state of the pharmacy's physical location, except as provided by Subsection (f); and

(7) any other information the board determines necessary.

(d) A pharmacy operated by the state or a local government that qualifies for a Class D pharmacy license is not required to pay a fee to obtain a license.

(e) With respect to a Class C pharmacy license, the board may issue a license to a pharmacy on certification by the appropriate agency that the facility in which the pharmacy is located has substantially completed the requirements for licensing.

(f) A Class E pharmacy may submit an inspection report issued by an entity other than the pharmacy licensing board of the state in which the pharmacy is physically located if:

(1) the state's licensing board does not conduct inspections;

(2) the inspection is substantively equivalent to an inspection conducted by the board, as determined by board rule; and

(3) the inspecting entity meets specifications adopted by the board for inspecting entities.

(g) A license may not be issued to a pharmacy that compounds sterile preparations unless the pharmacy has been inspected by the board to ensure the pharmacy meets the safety standards and other requirements of this subtitle and board rules.

(h) The board may accept, as satisfying the inspection requirement in Subsection (g) for a pharmacy located in another state, an inspection report issued by the pharmacy licensing board in the state in which the pharmacy is located if:

(1) the board determines that the other state has comparable standards and regulations applicable to pharmacies, including standards and regulations related to health and safety; and

(2) the pharmacy provides to the board any requested documentation related to the inspection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.306(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 18, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 10, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 3, eff.

September 1, 2013.

Sec. 560.0525. ADDITIONAL QUALIFICATION REQUIREMENTS FOR CANADIAN PHARMACIES. (a) To pass an inspection by the board, a Canadian pharmacy must meet Texas licensing standards.

(b) In addition to satisfying the other requirements of this chapter, to qualify for designation by the board under Section 554.016, a Canadian pharmacy applicant must submit to the board:

(1) evidence satisfactory to the board that the applicant holds a pharmacy license, registration, or permit in good standing issued by Canada or the Canadian province in which the pharmacy is located and is not subject to any pending disciplinary action or legal action by any regulatory authority;

(2) the name and address of the pharmacy's owner and pharmacist-in-charge for service of process;

(3) evidence of the applicant's ability to provide to the board, not later than 72 hours after the time the board requests the record, a record of a prescription drug order authorizing the pharmacy to dispense a prescription drug to a resident of this state;

(4) an affidavit by the pharmacist-in-charge that states the pharmacist has read and understands this subtitle and the rules adopted under this subtitle that relate to a Canadian pharmacy designated by the board as having passed inspection to dispense prescription drugs to residents in this state;

(5) evidence satisfactory to the board that the applicant meets the standards established by board rule to ensure customer safety for each order filled and in the dispensing, storing, packaging, shipping, and delivering of prescription drugs; and

(6) evidence satisfactory to the board that the applicant's employees hold the appropriate Canadian licenses required to dispense prescription drugs in Canada.

(c) Before a Canadian pharmacy is designated as having passed inspection to dispense prescription drugs to residents in this state, a representative of the board shall visit the pharmacy's facilities and review the pharmacy's compliance with the requirements and safety standards established under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 40, eff. September 1, 2005.

Sec. 560.053. ESTABLISHMENT OF ADDITIONAL PHARMACY CLASSIFICATIONS. The board by rule may establish classifications of pharmacy licenses in addition to the classifications under Section 560.051 if the board determines that:

(1) the practice setting will provide pharmaceutical care services to the public;

(2) the existing classifications of pharmacy licenses are not appropriate for that practice setting; and

(3) establishment of a new classification of pharmacy license is necessary to protect the public health, safety, and welfare.

Added by Acts 2003, 78th Leg., ch. 941, Sec. 2, eff. Sept. 1, 2003.

#### **SUBCHAPTER C. RESTRICTIONS ON LICENSE**

Sec. 560.101. LICENSE NOT TRANSFERABLE. A pharmacy license issued under this chapter is not transferable or assignable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 560.102. SEPARATE LICENSE FOR EACH LOCATION. (a) A separate pharmacy license is required for each principal place of business of a pharmacy.

(b) Only one pharmacy license may be issued for a specific location.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. CERTAIN PROHIBITED PRACTICES**

Sec. 560.103. FALSE AFFIDAVIT. A person who falsely makes the affidavit prescribed by Section 560.052 is guilty of fraudulent and dishonorable conduct and malpractice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



**CHAPTER 561. RENEWAL OF PHARMACY LICENSE**

Sec. 561.001. EXPIRATION OF LICENSE. (a) A pharmacy license expires May 31 of each year.

(b) The board may adopt a system under which pharmacy licenses expire on various dates during the year or every other year, as appropriate.

(c) If the board changes the expiration date of a license, the board shall prorate the license renewal fee to cover the number of months for which the license is valid for the year in which the date is changed. The total license renewal fee is due on the new expiration date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.307(a), eff. Sept. 1, 2001.

Sec. 561.002. PHARMACY LICENSE RENEWAL. A pharmacy license must be renewed annually or biennially as determined by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.306(b), eff. Sept. 1, 2001.

Sec. 561.003. REQUIREMENTS FOR RENEWAL. (a) The board by rule shall establish:

- (1) procedures to be followed for renewal of a pharmacy license;
  - (2) the fees to be paid for renewal of a pharmacy license;
- and

(3) the standards in each classification that each pharmacy and the pharmacy's employees involved in the practice of pharmacy must meet to qualify for relicensing as a pharmacy.

(b) A pharmacy license may be renewed by:

- (1) payment of a renewal fee set by the board; and
- (2) filing with the board a completed application for a license renewal certificate given under oath before the expiration date of the license or license renewal certificate.

(c) A pharmacy whose license has been expired for 90 days or less may renew the expired license by paying to the board a renewal

fee that is equal to one and one-half times the normally required renewal fee for the license.

(d) A pharmacy whose license has been expired for more than 90 days but less than one year may renew the expired license by paying to the board a renewal fee that is equal to two times the normally required renewal fee for the license.

(e) If a pharmacy's license has been expired for one year or more, the pharmacy may not renew the license. The pharmacy may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(f) A pharmacy may not renew a license under this section if the pharmacy's license to operate in another state has been suspended, revoked, canceled, or subject to an action that prohibits the pharmacy from operating in that state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 19, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 11, eff. June 14, 2013.

Sec. 561.0031. ADDITIONAL RENEWAL REQUIREMENT FOR CLASS E PHARMACY. (a) In addition to the renewal requirements under Section 561.003, the board shall require that a Class E pharmacy have on file with the board an inspection report issued:

(1) not more than three years before the date the renewal application is received; and

(2) by the pharmacy licensing board in the state of the pharmacy's physical location, except as provided by Subsection (b).

(b) A Class E pharmacy may have on file with the board an inspection report issued by an entity other than the pharmacy licensing board of the state in which the pharmacy is physically located if the requirements of Section 560.052(f) are met.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 20, eff. September 1, 2005.

Sec. 561.0032. ADDITIONAL RENEWAL REQUIREMENT FOR COMPOUNDING

PHARMACY. (a) In addition to the renewal requirements under Section 561.003, a pharmacy that compounds sterile preparations may not renew a pharmacy license unless the pharmacy:

- (1) has been inspected as provided by board rule; and
- (2) if the pharmacy is located in another state, has reimbursed the board for all expenses, including travel, incurred by the board in inspecting the pharmacy during the term of the expiring license.

(b) The board may accept, as satisfying the inspection requirement in Subsection (a) for a pharmacy located in another state, an inspection report issued by the pharmacy licensing board in the state in which the pharmacy is located if:

- (1) the board determines that the other state has comparable standards and regulations applicable to pharmacies, including standards and regulations related to health and safety; and
- (2) the pharmacy provides to the board any requested documentation related to the inspection.

Added by Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. [1100](#)), Sec. 4, eff. September 1, 2013.

Sec. 561.004. ISSUANCE OF LICENSE RENEWAL CERTIFICATE. On timely receipt of a completed application and renewal fee, the board shall issue a license renewal certificate that contains:

- (1) the pharmacy license number;
- (2) the period for which the license is renewed; and
- (3) other information the board determines necessary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 561.005. SUSPENSION OF PHARMACY LICENSE FOR NONRENEWAL.

(a) The board shall suspend the license and remove from the register of licensed pharmacies the name of a pharmacy that does not file a completed application and pay the renewal fee on or before the date the license expires.

(b) After review by the board, the board may determine that Subsection (a) does not apply if the license is the subject of a pending investigation or disciplinary action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1254, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.307(b), eff. Sept. 1, 2001.

## **CHAPTER 562. PRACTICE BY LICENSE HOLDER**

### **SUBCHAPTER A. PRESCRIPTION AND SUBSTITUTION REQUIREMENTS**

Sec. 562.001. DEFINITIONS. In this subchapter:

(1) "Generically equivalent" means a drug that is pharmaceutically equivalent and therapeutically equivalent to the drug prescribed.

(2) "Pharmaceutically equivalent" means drug products that have identical amounts of the same active chemical ingredients in the same dosage form and that meet the identical compendial or other applicable standards of strength, quality, and purity according to the United States Pharmacopoeia or another nationally recognized compendium.

(3) "Therapeutically equivalent" means pharmaceutically equivalent drug products that, if administered in the same amounts, will provide the same therapeutic effect, identical in duration and intensity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.002. LEGISLATIVE INTENT. It is the intent of the legislature to save consumers money by allowing the substitution of lower-priced generically equivalent drug products for certain brand name drug products and for pharmacies and pharmacists to pass on the net benefit of the lower costs of the generically equivalent drug product to the purchaser.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.003. DISCLOSURE OF PRICE; PATIENT'S OPTION. If the price of a drug to a patient is lower than the amount of the patient's copayment under the patient's prescription drug insurance plan, the pharmacist shall offer the patient the option of paying for the drug at the lower price instead of paying the amount of the copayment.

Added by Acts 2005, 79th Leg., Ch. 943 (H.B. 836), Sec. 1, eff. September 1, 2005.

Sec. 562.004. PRESCRIPTION TRANSMITTED ORALLY BY PRACTITIONER. A pharmacist to whom a prescription is transmitted orally shall:

- (1) note on the file copy of the prescription the dispensing instructions of the practitioner or the practitioner's agent; and
- (2) retain the prescription for the period specified by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.005. RECORD OF DISPENSED DRUG. A pharmacist shall record on the prescription form the name, strength, and manufacturer or distributor of a drug dispensed as authorized by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.006. LABEL. (a) Unless otherwise directed by the practitioner, the label on the dispensing container must indicate the actual drug dispensed, indicated by either:

- (1) the brand name; or
- (2) if there is not a brand name, the generic name, the strength of the drug, and the name of the manufacturer or distributor of the drug.

(a-1) In addition to the information required by Subsection (a), the label on the dispensing container of a drug dispensed by a Class A or Class E pharmacy must indicate:

- (1) the name, address, and telephone number of the pharmacy;
- (2) the date the prescription is dispensed;
- (3) the name of the prescribing practitioner;
- (4) the name of the patient or, if the drug was prescribed for an animal, the species of the animal and the name of the owner;
- (5) instructions for use;
- (6) the quantity dispensed;
- (7) if the drug is dispensed in a container other than the

manufacturer's original container, the date after which the prescription should not be used, determined according to criteria established by board rule based on standards in the United States Pharmacopeia-National Formulary; and

(8) any other information required by board rule.

(a-2) The information required by Subsection (a-1)(7) may be recorded on any label affixed to the dispensing container.

(a-3) Subsection (a-1) does not apply to a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication.

(b) If a drug has been selected other than the one prescribed, the pharmacist shall place on the container the words "Substituted for brand prescribed" or "Substituted for 'brand name'" where "brand name" is the name of the brand name drug prescribed.

(c) The board shall adopt rules requiring the label on a dispensing container to be in plain language and printed in an easily readable font size for the consumer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 457 (H.B. 948), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 289 (H.B. 19), Sec. 1, eff. September 1, 2009.

Sec. 562.0061. OTHER PRESCRIPTION INFORMATION. The board shall adopt rules specifying the information a pharmacist must provide to a consumer when dispensing a prescription to the consumer for self-administration. The information must be:

- (1) written in plain language;
- (2) relevant to the prescription; and
- (3) printed in an easily readable font size.

Added by Acts 2007, 80th Leg., R.S., Ch. 457 (H.B. 948), Sec. 2, eff. September 1, 2007.

Sec. 562.0062. REQUIRED STATEMENT REGARDING MEDICATION DISPOSAL. The board by rule shall require pharmacists, when dispensing certain drugs, to include on the dispensing container

label or in the information required by Section 562.0061 the statement "Do not flush unused medications or pour down a sink or drain."

Added by Acts 2009, 81st Leg., R.S., Ch. 289 (H.B. 19), Sec. 2, eff. September 1, 2009.

Sec. 562.007. REFILLS. Except as provided by Section 562.0545, a properly authorized prescription refill shall follow the original dispensing instruction unless otherwise indicated by the practitioner or the practitioner's agent.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 303 (H.B. 2069), Sec. 1, eff. September 1, 2011.

Sec. 562.008. GENERIC EQUIVALENT AUTHORIZED. (a) If a practitioner certifies on the prescription form that a specific prescribed brand is medically necessary, the pharmacist shall dispense the drug as written by the practitioner. The certification must be made as required by the dispensing directive adopted under Section 562.015. This subchapter does not permit a pharmacist to substitute a generically equivalent drug unless the substitution is made as provided by this subchapter.

(b) Except as otherwise provided by this subchapter, a pharmacist who receives a prescription for a drug for which there is one or more generic equivalents may dispense any of the generic equivalents.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1254, Sec. 6, eff. Sept. 1, 2001.

Sec. 562.009. REQUIREMENTS CONCERNING SELECTION OF GENERICALLY EQUIVALENT DRUG. (a) Before delivery of a prescription for a generically equivalent drug, a pharmacist must personally, or through the pharmacist's agent or employee:

(1) inform the patient or the patient's agent that a less

expensive generically equivalent drug is available for the brand prescribed; and

(2) ask the patient or the patient's agent to choose between the generically equivalent drug and the brand prescribed.

(a-1) In addition to the requirements of Subsection (a), a pharmacist must display, in a prominent place that is in clear public view where prescription drugs are dispensed, a sign in block letters not less than one inch in height that reads, in both English and Spanish:

"TEXAS LAW REQUIRES A PHARMACIST TO INFORM YOU IF A LESS EXPENSIVE GENERICALLY EQUIVALENT DRUG IS AVAILABLE FOR CERTAIN BRAND NAME DRUGS AND TO ASK YOU TO CHOOSE BETWEEN THE GENERIC AND THE BRAND NAME DRUG. YOU HAVE A RIGHT TO ACCEPT OR REFUSE THE GENERICALLY EQUIVALENT DRUG."

(b) A pharmacy is not required to comply with the provisions of Subsection (a):

(1) in the case of the refill of a prescription for which the pharmacy previously complied with Subsection (a) with respect to the same patient or patient's agent; or

(2) if the patient's physician or physician's agent advises the pharmacy that:

(A) the physician has informed the patient or the patient's agent that a less expensive generically equivalent drug is available for the brand prescribed; and

(B) the patient or the patient's agent has chosen either the brand prescribed or the less expensive generically equivalent drug.

(c) A pharmacy that supplies a prescription by mail is considered to have complied with the provisions of Subsection (a) if the pharmacy includes on the prescription order form completed by the patient or the patient's agent language that clearly and conspicuously:

(1) states that if a less expensive generically equivalent drug is available for the brand prescribed, the patient or the patient's agent may choose between the generically equivalent drug and the brand prescribed; and

(2) allows the patient or the patient's agent to indicate the choice of the generically equivalent drug or the brand prescribed.

(d) If the patient or the patient's agent fails to indicate



otherwise to a pharmacy on the prescription order form under Subsection (c), the pharmacy may dispense a generically equivalent drug.

(e) If the prescription is for an immunosuppressant drug, as defined by Section 562.0141(a)(1), the pharmacist must comply with the provisions of Section 562.0141. This subsection expires if Section 562.0141 expires under the requirements of Section 562.0142.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 943 (H.B. 836), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 943 (H.B. 836), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 943 (H.B. 836), Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 943 (H.B. 836), Sec. 5, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 385 (S.B. 625), Sec. 3, eff. June 15, 2007.

Sec. 562.010. RESPONSIBILITY CONCERNING GENERICALLY EQUIVALENT DRUG; LIABILITY. (a) A pharmacist who selects a generically equivalent drug to be dispensed under this subchapter assumes the same responsibility for selecting the generically equivalent drug as the pharmacist does in filling a prescription for a drug prescribed by generic name.

(b) The prescribing practitioner is not liable for a pharmacist's act or omission in selecting, preparing, or dispensing a drug under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.011. RESTRICTION ON SELECTION OF AND CHARGING FOR GENERICALLY EQUIVALENT DRUG. (a) A pharmacist may not select a generically equivalent drug unless the generically equivalent drug selected costs the patient less than the prescribed drug.

(b) A pharmacist may not charge for dispensing a generically equivalent drug a professional fee higher than the fee the pharmacist

customarily charges for dispensing the brand name drug prescribed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.012. SUBSTITUTION OF DOSAGE FORM PERMITTED. With the patient's consent, a pharmacist may dispense a dosage form of a drug different from that prescribed, such as a tablet instead of a capsule or a liquid instead of a tablet, if the dosage form dispensed:

- (1) contains the identical amount of the active ingredients as the dosage prescribed for the patient;
- (2) is not an enteric-coated or timed release product; and
- (3) does not alter desired clinical outcomes.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 12, eff. June 14, 2013.

Sec. 562.013. APPLICABILITY OF SUBCHAPTER. Unless a drug is determined to be generically equivalent to the brand prescribed, drug selection as authorized by this subchapter does not apply to:

- (1) an enteric-coated tablet;
- (2) a controlled release product;
- (3) an injectable suspension, other than an antibiotic;
- (4) a suppository containing active ingredients for which systemic absorption is necessary for therapeutic activity; or
- (5) a different delivery system for aerosol or nebulizer drugs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.014. NARROW THERAPEUTIC INDEX DRUGS. (a) Except as provided by this section, drug selection as authorized by this subchapter does not apply to the refill of a prescription for a narrow therapeutic index drug. The board, in consultation with the Texas Medical Board, shall by rule establish a list of narrow therapeutic index drugs to which this subsection applies. A prescription for a narrow therapeutic index drug may be refilled only

by using the same drug product by the same manufacturer that the pharmacist last dispensed under the prescription, unless otherwise agreed to by the prescribing practitioner. If a pharmacist does not have the same drug product by the same manufacturer in stock to refill the prescription, the pharmacist may dispense a drug product that is generically equivalent if the pharmacist, before dispensing the generically equivalent drug product, notifies:

(1) the patient, at the time the prescription is dispensed, that a substitution of the prescribed drug product has been made; and

(2) the prescribing practitioner of the drug product substitution by telephone, facsimile, or mail, at the earliest reasonable time, but not later than 72 hours after dispensing the prescription.

(b) The board and the Texas Medical Board shall establish a joint committee to recommend to the board a list of narrow therapeutic index drugs and the rules, if any, by which this section applies to those drugs. The committee must consist of an equal number of members from each board. The committee members shall select a member of the committee to serve as presiding officer for a one year term. The presiding officer may not represent the same board as the presiding officer's predecessor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 385 (S.B. 625), Sec. 1, eff. June 15, 2007.

For contingent effect of this section, see Subsection (e).

Sec. 562.0141. TRANSPLANT IMMUNOSUPPRESSANT DRUG PRODUCT SELECTION PROHIBITED. (a) In this section:

(1) "Immunosuppressant drug" means any drug prescribed for immunosuppressant therapy following a transplant.

(2) "Interchange" means the substitution of one version of the same immunosuppressant drug, including a generic version for the prescribed brand, a brand version for the prescribed generic version, a generic version by one manufacturer for a generic version by a different manufacturer, a different formulation of the prescribed immunosuppressant drug, or a different immunosuppressant drug for the immunosuppressant drug originally prescribed.

(b) A pharmacist may not interchange an immunosuppressant drug or formulation of an immunosuppressant drug, brand or generic, for the treatment of a patient following a transplant without prior consent to the interchange from the prescribing practitioner.

(c) To comply with Subsection (b), a pharmacist shall notify a prescribing practitioner orally or electronically to secure permission to interchange an immunosuppressant drug or formulation of an immunosuppressant drug, brand or generic. The practitioner's authorization or denial of authorization must be documented by the pharmacist and by the practitioner.

(d) If a pharmacist does not have the same drug product by the same manufacturer in stock to refill the prescription, or if the practitioner is unavailable to give authorization, the pharmacist may dispense a drug product that is generically equivalent if the pharmacist, before dispensing the generally equivalent drug product:

(1) notifies and receives consent from the patient, at the time the prescription is dispensed, to substitute the prescribed drug product; and

(2) notifies the prescribing practitioner of the drug product substitution orally or electronically at the earliest reasonable time, but not later than 24 hours after dispensing the prescription.

(e) This section is only effective subject to the conditions established by Section 562.0142.

Added by Acts 2007, 80th Leg., R.S., Ch. 385 (S.B. 625), Sec. 2, eff. June 15, 2007.

Sec. 562.0142. ADOPTION OF RULES. (a) If, not later than October 1, 2007, a drug manufacturer requests that the joint committee under Section 562.014 conduct a hearing and make a recommendation to include a drug listed in Section 562.014(c) on the list of narrow therapeutic index drugs, the joint committee shall make a recommendation to the board to enable the board to adopt a rule and issue findings not later than July 1, 2008.

(b) If, not later than October 1, 2007, no drug manufacturer requests that the joint committee conduct a hearing and make recommendations to the board to include a drug listed in Section 562.014(c) on the list of narrow therapeutic index drugs, Section

562.0141 expires October 1, 2007.

(c) If all drug manufacturers that request, before October 1, 2007, the joint committee to conduct a hearing and make a recommendation to the board to include a drug listed in Section 562.014(c) on the list of narrow therapeutic index drugs subsequently withdraw those requests before the date the joint committee makes a recommendation to include the drug on that list, Section 562.0141 expires effective on the date of the manufacturers' withdrawal of those requests.

(d) If the joint committee receives a request under Subsection (a), the recommendation of the joint committee under that subsection may include the drugs listed in Section 562.014(c) or the joint committee may recommend that no drug should be added to the list of narrow therapeutic index drugs following the review by the joint committee.

(e) If the joint committee receives a request under Subsection (a) and, not later than July 1, 2008, the board adopts a rule to include any drug listed in Section 562.014(c) on the list of narrow therapeutic index drugs or determines by rule that no drug should be added to the list of narrow therapeutic index drugs, Section 562.0141 expires on July 1, 2008.

(f) If the joint committee receives a request under Subsection (a) and the board does not before July 1, 2008, adopt a rule to include any drug listed in Section 562.014(c) on the list of narrow therapeutic index drugs or determine by rule that no drug should be added to the list of narrow therapeutic index drugs, Section 562.0141 takes effect July 1, 2008.

(g) If the joint committee receives a request under Subsection (a) and litigation or a request for an attorney general's opinion regarding this section, Section 562.014, or Section 562.0141 is filed by a drug manufacturer between the effective date of this section and July 1, 2008, the time limits established by Subsections (e) and (f) are tolled until the litigation is resolved or the attorney general renders an opinion.

(h) For purposes of this section, notice of the following must be published in the Texas Register not later than the third business day after the date of occurrence:

- (1) a request by a drug manufacturer for inclusion of a drug on the list of narrow therapeutic index drugs;
- (2) withdrawal of a request described by Subdivision (1);

- (3) litigation described by Subsection (g);
- (4) resolution of litigation described by Subsection (g);

and

(5) a request for an attorney general's opinion described by Subsection (g).

Added by Acts 2007, 80th Leg., R.S., Ch. 385 (S.B. 625), Sec. 2, eff. June 15, 2007.

Sec. 562.015. DISPENSING DIRECTIVE; COMPLIANCE WITH FEDERAL LAW. (a) The board shall adopt rules to provide a dispensing directive to instruct pharmacists on the manner in which to dispense a drug according to the contents of a prescription. The rules adopted under this section must:

(1) require the use of the phrase "brand necessary" or "brand medically necessary" on a prescription form to prohibit the substitution of a generically equivalent drug for a brand name drug;

(2) be in a format that protects confidentiality as required by the Health Insurance Portability and Accountability Act of 1996 (29 U.S.C. Section 1181 et seq.) and its subsequent amendments;

(3) comply with federal and state law, including rules, with regard to formatting and security requirements;

(4) be developed to coordinate with 42 C.F.R. Section 447.331(c); and

(5) include an exemption for electronic prescriptions as provided by Subsection (b).

(b) The board shall provide an exemption from the directive adopted under this section for prescriptions transmitted electronically. The board may regulate the use of electronic prescriptions in the manner provided by federal law, including rules.

Added by Acts 2001, 77th Leg., ch. 1254, Sec. 7, eff. Sept. 1, 2001.

#### **SUBCHAPTER B. OTHER PRACTICE BY PHARMACIST**

Sec. 562.051. DISPLAY OF PHARMACIST LICENSE. A pharmacist shall publicly display the pharmacist's license to practice pharmacy and license renewal certificate in the pharmacist's primary place of practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.052. RELEASE OF CONFIDENTIAL RECORDS. A confidential record is privileged and a pharmacist may release a confidential record only to:

- (1) the patient or the patient's agent;
- (2) a practitioner or another pharmacist if, in the pharmacist's professional judgment, the release is necessary to protect the patient's health and well-being;
- (3) the board or to a person or another state or federal agency authorized by law to receive the confidential record;
- (4) a law enforcement agency engaged in investigation of a suspected violation of Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);
- (5) a person employed by a state agency that licenses a practitioner, if the person is performing the person's official duties; or
- (6) an insurance carrier or other third party payor authorized by the patient to receive the information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.053. REPORTS TO BOARD. A pharmacist shall report in writing to the board not later than the 10th day after the date of a change of address or place of employment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.054. EMERGENCY REFILLS. (a) A pharmacist may exercise the pharmacist's professional judgment in refilling a prescription for a prescription drug, other than a controlled substance listed in Schedule II as established by the commissioner of state health services under Chapter 481, Health and Safety Code, without the authorization of the prescribing practitioner if:

- (1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;
- (2) either:

(A) a natural or manmade disaster has occurred that prohibits the pharmacist from being able to contact the practitioner; or

(B) the pharmacist is unable to contact the practitioner after reasonable effort;

(3) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(4) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without the practitioner's authorization and that authorization of the practitioner is required for a future refill; and

(5) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time.

(b) Notwithstanding Subsection (a), in the event of a natural or manmade disaster, a pharmacist may dispense not more than a 30-day supply of a prescription drug, other than a controlled substance listed in Schedule II as established by the commissioner of state health services under Chapter 481, Health and Safety Code, without the authorization of the prescribing practitioner if:

(1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(2) the natural or manmade disaster prohibits the pharmacist from being able to contact the practitioner;

(3) the governor has declared a state of disaster under Chapter 418, Government Code; and

(4) the board, through the executive director, has notified pharmacies in this state that pharmacists may dispense up to a 30-day supply of a prescription drug.

(c) The prescribing practitioner is not liable for an act or omission by a pharmacist in dispensing a prescription drug under Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 567 (S.B. 1658), Sec. 1, eff. September 1, 2007.

Sec. 562.0545. 90-DAY SUPPLY AND ACCELERATED REFILLS. A pharmacist may dispense up to a 90-day supply of a dangerous drug



pursuant to a valid prescription that specifies the dispensing of a lesser amount followed by periodic refills of that amount if:

(1) the total quantity of dosage units dispensed does not exceed the total quantity of dosage units authorized by the prescriber on the original prescription, including refills;

(2) the patient consents to the dispensing of up to a 90-day supply and the physician has been notified electronically or by telephone;

(3) the physician has not specified on the prescription that dispensing the prescription in an initial amount followed by periodic refills is medically necessary;

(4) the dangerous drug is not a psychotropic drug; and

(5) the patient is at least 18 years of age.

Added by Acts 2011, 82nd Leg., R.S., Ch. 303 (H.B. 2069), Sec. 2, eff. September 1, 2011.

Sec. 562.055. REPORT TO TEXAS DEPARTMENT OF HEALTH. A pharmacist shall report to the Texas Department of Health any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological toxins that might pose a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. Prescription-related events that require a report include:

(1) an unusual increase in the number of:

(A) prescriptions to treat respiratory or gastrointestinal complaints or fever;

(B) prescriptions for antibiotics; and

(C) requests for information on over-the-counter pharmaceuticals to treat respiratory or gastrointestinal complaints or fever; and

(2) any prescription that treats a disease that is relatively uncommon and has bioterrorism potential.

Added by Acts 2003, 78th Leg., ch. 1312, Sec. 8, eff. June 21, 2003.

Sec. 562.056. PRACTITIONER-PATIENT RELATIONSHIP REQUIRED. (a)

Before dispensing a prescription, a pharmacist shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug if the pharmacist knows or should know that the prescription was issued on the basis of an Internet-based or telephonic consultation without a valid practitioner-patient relationship.

(a-1) To be a valid prescription, a prescription for a controlled substance must be issued for a legitimate medical purpose by a practitioner acting in the usual course of the practitioner's professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is on the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.

(b) This section does not prohibit a pharmacist from dispensing a prescription when a valid practitioner-patient relationship is not present in an emergency.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 21, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 13, eff. June 14, 2013.

#### **SUBCHAPTER C. PRACTICE BY PHARMACY**

Sec. 562.101. SUPERVISION OF PHARMACY. (a) A pharmacy is required to be under the supervision of a pharmacist as provided by this section.

(b) A Class A or Class B pharmacy is required to be under the continuous on-site supervision of a pharmacist during the time the pharmacy is open for pharmacy services.

(c) A Class C pharmacy that is in an institution with more than 100 beds is required to be under the continuous on-site supervision of a pharmacist during the time the pharmacy is open for pharmacy services.

(d) A Class C pharmacy that is in an institution with 100 beds or fewer is required to have the services of a pharmacist on a part-time or consulting basis according to the needs of the institution.

(e) A Class D pharmacy is required to be under the continuous supervision of a pharmacist whose services are required according to

the needs of the pharmacy.

(f) A Class E pharmacy is required to be under the continuous on-site supervision of a pharmacist and shall designate one pharmacist licensed to practice pharmacy by the regulatory or licensing agency of the state in which the Class E pharmacy is located to serve as the pharmacist-in-charge of the Class E pharmacy.

(f-1) A Canadian pharmacy designated by the board as having passed inspection to dispense prescription drugs to residents in this state is required to be under the continuous on-site supervision of a pharmacist and shall designate one pharmacist licensed to practice pharmacy by the regulatory or licensing agency of Canada or of the Canadian province in which the Canadian pharmacy is located to serve as the pharmacist-in-charge of the Canadian pharmacy.

(g) For a pharmacy license classification established under Section 560.053, the board shall adopt rules that provide for the supervision of the pharmacy by a pharmacist. Supervision under the board rules must require at least continuous supervision by a pharmacist according to the needs of the pharmacy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 941, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 41, eff. September 1, 2005.

Sec. 562.1011. OPERATION OF CLASS C PHARMACY IN CERTAIN RURAL HOSPITALS. (a) In this section:

(1) "Nurse" has the meaning assigned by Section 301.002. The term includes a nurse who is also registered as a pharmacy technician.

(2) "Rural hospital" means a licensed hospital with 75 beds or fewer that:

(A) is located in a county with a population of 50,000 or less; or

(B) has been designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital.

(b) If a practitioner orders a prescription drug or device for a patient in a rural hospital when the hospital pharmacist is not on

duty or when the institutional pharmacy is closed, a nurse or practitioner may withdraw the drug or device from the pharmacy in sufficient quantity to fill the order.

(c) The hospital pharmacist shall verify the withdrawal of a drug or device under Subsection (b) and perform a drug regimen review not later than the seventh day after the date of the withdrawal.

(d) In a rural hospital that uses a floor stock method of drug distribution, a nurse or practitioner may withdraw a prescription drug or device from the institutional pharmacy in the original manufacturer's container or a prepackaged container.

(e) The hospital pharmacist shall verify the withdrawal of a drug or device under Subsection (d) and perform a drug regimen review not later than the seventh day after the date of the withdrawal.

(f) A rural hospital may allow a pharmacy technician to perform the duties specified in Subsection (g) if:

(1) the pharmacy technician is registered and meets the training requirements specified by the board;

(2) a pharmacist is accessible at all times to respond to any questions and needs of the pharmacy technician or other hospital employees, by telephone, answering or paging service, e-mail, or any other system that makes a pharmacist accessible; and

(3) a nurse or practitioner or a pharmacist by remote access verifies the accuracy of the actions of the pharmacy technician.

(g) If the requirements of Subsection (f) are met, the pharmacy technician may, during the hours that the institutional pharmacy in the hospital is open, perform the following duties in the pharmacy without the direct supervision of a pharmacist:

(1) enter medication order and drug distribution information into a data processing system;

(2) prepare, package, or label a prescription drug according to a medication order if a licensed nurse or practitioner verifies the accuracy of the order before administration of the drug to the patient;

(3) fill a medication cart used in the rural hospital;

(4) distribute routine orders for stock supplies to patient care areas;

(5) access and restock automated medication supply cabinets; and

(6) perform any other duty specified by the board by rule.

(h) The pharmacist-in-charge of an institutional pharmacy in a rural hospital shall develop and implement policies and procedures for the operation of the pharmacy when a pharmacist is not on-site.

(i) On or after September 1, 2011, the board may establish, by rule, a requirement for prospective and retrospective drug use review by a pharmacist for each new drug order. A drug use review is not required when a delay in administration of the drug would harm the patient in an urgent or emergency situation, including sudden changes in a patient's clinical status.

(j) Rural hospitals may establish standing orders and protocols, to be developed jointly by the pharmacist and medical staff, that may include additional exceptions to instances in which prospective drug use review is required.

(k) This section does not restrict or prohibit the board from adopting a rule related to authorizing the withdrawal of a drug or device by a nurse or practitioner from, or the supervision of a pharmacy technician in, an institutional pharmacy not located in a rural hospital. As part of the rulemaking process, the board shall consider the effect that a proposed rule, if adopted, would have on access to pharmacy services in hospitals that are not rural hospitals.

(l) The board shall adopt rules to implement this section, including rules specifying:

- (1) the records that must be maintained under this section;
- (2) the requirements for policies and procedures for operation of a pharmacy when a pharmacist is not on-site; and
- (3) the training requirements for pharmacy technicians.

Added by Acts 2009, 81st Leg., R.S., Ch. 1128 (H.B. 1924), Sec. 1, eff. June 19, 2009.

Sec. 562.102. CONFIDENTIAL RECORD. A pharmacy shall comply with Section 562.052 concerning the release of a confidential record.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.103. DISPLAY OF LICENSES BY PHARMACY. (a) A pharmacy shall display in the pharmacy in full public view the license under which the pharmacy operates.

(b) A Class A or Class C pharmacy that serves the public shall:

(1) display the word "pharmacy" or a similar word or symbol as determined by the board in a prominent place on the front of the pharmacy; and

(2) display in public view the license of the pharmacist-in-charge of the pharmacy.

(c) A pharmacy shall maintain and make available to the public on request proof that each pharmacist, pharmacist-intern, pharmacy technician, and pharmacist technician trainee working in the pharmacy holds the appropriate license or registration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 14, eff. June 14, 2013.

Sec. 562.104. TOLL-FREE TELEPHONE NUMBER REQUIRED. A pharmacy whose primary business is to dispense a prescription drug or device under a prescription drug order to a patient located outside the area covered by the pharmacy's telephone area code shall provide a toll-free telephone line that is answered during normal business hours to enable communication between a patient or the patient's physician and a pharmacist at the pharmacy who has access to the patient's records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.1045. LINKING INTERNET SITES. (a) This section applies only to a pharmacy that:

(1) maintains a generally accessible Internet site; and

(2) sells or distributes drugs through the Internet.

(b) A pharmacy subject to this section shall link its site to the Internet site maintained by the board. The link must be:

(1) on the pharmacy's initial home page; and

(2) if the pharmacy sells drugs through its site, on the page where the sale occurs.

(c) A pharmacy subject to this section shall post:

(1) on its initial home page general information on how to file a complaint about the pharmacy with the board; and

(2) specific information on how to file a complaint with

the board not more than two links away from its initial home page.

(d) Information under Subsection (c) must include the board's telephone number, mailing address, and Internet website address.

Added by Acts 2001, 77th Leg., ch. 972, Sec. 3, eff. Nov. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 23, eff. September 1, 2005.

Sec. 562.105. MAINTENANCE OF RECORDS. A pharmacy shall maintain a permanent record of:

(1) any civil litigation initiated against the pharmacy by a resident of this state; or

(2) a complaint that arises out of a prescription for a resident of this state that was lost during delivery.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.106. NOTIFICATION. (a) A pharmacy shall report in writing to the board not later than the 10th day after the date of:

(1) a permanent closing of the pharmacy;

(2) a change of ownership of the pharmacy;

(3) a change of location of the pharmacy;

(4) a change of the person designated as the pharmacist-in-charge of the pharmacy;

(5) a sale or transfer of any controlled substance or dangerous drug as a result of the permanent closing or change of ownership of the pharmacy;

(6) any matter or occurrence that the board requires by rule to be reported;

(7) as determined by the board, an out-of-state purchase of any controlled substance;

(8) a final order against the pharmacy license holder by the regulatory or licensing agency of the state in which the pharmacy is located if the pharmacy is located in another state; or

(9) a final order against a pharmacist who is designated as the pharmacist-in-charge of the pharmacy by the regulatory or licensing agency of the state in which the pharmacy is located if the pharmacy is located in another state.

(b) A pharmacy shall report in writing to the board a theft or significant loss of any controlled substance immediately on discovery of the theft or loss. The pharmacy shall include with the report a list of all controlled substances stolen or lost.

(c) A pharmacy shall report in writing to the board a disaster, accident, or emergency that may affect the strength, purity, or labeling of a drug, medication, device, or other material used in the diagnosis or treatment of injury, illness, or disease, immediately on the occurrence of the disaster, accident, or emergency.

(d) The reporting pharmacy shall maintain a copy of any notification required by this section or Section 562.053 for two years and make the copy available for inspection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 5, eff. September 1, 2013.

Sec. 562.107. WRITTEN CONSUMER INFORMATION REQUIRED. (a) Each pharmacy shall make available to a consumer written information designed for the consumer that provides at a minimum:

- (1) the therapeutic use of a drug; and
- (2) the names of generically equivalent drugs.

(b) The information must be in a conspicuous location that is easily accessible to pharmacy customers. The information shall be periodically updated, as necessary, to reflect a change in the information.

(c) On request by a consumer, the pharmacy shall make available to the consumer the cost index ratio of the prescribed drug and any generic equivalents of the prescribed drug.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.108. EMERGENCY MEDICATION KITS. (a) A Class A or Class C pharmacy, or a Class E pharmacy located not more than 20 miles from any institution in this state that is licensed under Chapter 242 or 252, Health and Safety Code, may maintain controlled substances and dangerous drugs in an emergency medication kit used at an institution licensed under those chapters. A United States



Department of Veterans Affairs pharmacy or another federally operated pharmacy may maintain controlled substances and dangerous drugs in an emergency medication kit used at an institution licensed under Chapter 242, Health and Safety Code, that is a veterans home, as defined by Section 164.002, Natural Resources Code. The controlled substances and dangerous drugs may be used only for the emergency medication needs of a resident at the institution. A Class E pharmacy may not maintain drugs in an emergency medication kit for an institution that is located more than 20 miles from a pharmacy.

(b) The board shall adopt rules relating to emergency medication kits, including:

- (1) the amount and type of dangerous drugs and controlled substances that may be maintained in an emergency medication kit;
- (2) procedures regarding the use of drugs from an emergency medication kit;
- (3) recordkeeping requirements; and
- (4) security requirements.

Added by Acts 2001, 77th Leg., ch. 1254, Sec. 8, eff. Sept. 1, 2001.  
Amended by Acts 2003, 78th Leg., ch. 582, Sec. 1, eff. June 20, 2003;  
Acts 2003, 78th Leg., ch. 914, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.006, eff. September 1, 2005.

Sec. 562.1085. UNUSED DRUGS RETURNED BY CERTAIN PHARMACISTS.

(a) A pharmacist who practices in or serves as a consultant for a health care facility or a licensed health care professional responsible for administration of drugs in a penal institution, as defined by Section 1.07, Penal Code, in this state may return to a pharmacy certain unused drugs, other than a controlled substance as defined by Chapter 481, Health and Safety Code, purchased from the pharmacy as provided by board rule. The unused drugs must:

- (1) be approved by the federal Food and Drug Administration and be:
  - (A) sealed in unopened tamper-evident packaging and either individually packaged or packaged in unit-dose packaging;
  - (B) oral or parenteral medication in sealed single-dose containers approved by the federal Food and Drug Administration;

(C) topical or inhalant drugs in sealed units-of-use containers approved by the federal Food and Drug Administration; or

(D) parenteral medications in sealed multiple-dose containers approved by the federal Food and Drug Administration from which doses have not been withdrawn; and

(2) not be the subject of a mandatory recall by a state or federal agency or a voluntary recall by a drug seller or manufacturer.

(b) A pharmacist for the pharmacy shall examine a drug returned under this section to ensure the integrity of the drug product. A health care facility or penal institution may not return a drug that:

(1) has been compounded;

(2) appears on inspection to be adulterated;

(3) requires refrigeration; or

(4) has less than 120 days until the expiration date or end of the shelf life.

(c) The pharmacy may restock and redistribute unused drugs returned under this section.

(d) The pharmacy shall reimburse or credit the state Medicaid program for an unused drug returned under this section.

(e) The board shall adopt the rules, policies, and procedures necessary to administer this section, including rules that require a health care facility to inform the Health and Human Services Commission of medicines returned to a pharmacy under this section.

(f) The tamper-evident packaging required under Subsection (a)(1) for the return of unused drugs is not required to be the manufacturer's original packaging unless that packaging is required by federal law.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.126, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 321, Sec. 1, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 14, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 820 (S.B. 1896), Sec. 1, eff. June 15, 2007.

Sec. 562.1086. LIMITATION ON LIABILITY. (a) A pharmacy that returns unused drugs and a manufacturer that accepts the unused drugs

under Section 562.1085 and the employees of the pharmacy or manufacturer are not liable for harm caused by the accepting, dispensing, or administering of drugs returned in strict compliance with Section 562.1085 unless the harm is caused by:

- (1) wilful or wanton acts of negligence;
- (2) conscious indifference or reckless disregard for the safety of others; or
- (3) intentional conduct.

(b) This section does not limit, or in any way affect or diminish, the liability of a drug seller or manufacturer under Chapter 82, Civil Practice and Remedies Code.

(c) This section does not apply if harm results from the failure to fully and completely comply with the requirements of Section 562.1085.

(d) This section does not apply to a pharmacy or manufacturer that fails to comply with the insurance provisions of Chapter 84, Civil Practice and Remedies Code.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.126, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 321, Sec. 1, eff. June 18, 2003.

Sec. 562.109. AUTOMATED PHARMACY SYSTEMS. (a) In this section, "automated pharmacy system" means a mechanical system that:

- (1) dispenses prescription drugs; and
- (2) maintains related transaction information.

(b) A Class A or Class C pharmacy may provide pharmacy services through an automated pharmacy system in a facility that is not at the same location as the Class A or Class C pharmacy. The pharmacist in charge of the Class A or Class C pharmacy is responsible for filling and loading the storage containers for medication stored in bulk at the facility.

(c) An automated pharmacy system is required to be under the continuous supervision of a pharmacist as determined by board rule. To qualify as continuous supervision for an automated pharmacy system, the pharmacist is not required to be physically present at the site of the automated pharmacy system and may supervise the system electronically.

(d) An automated pharmacy system may be located only at a health care facility regulated by the state.

(e) The board shall adopt rules regarding the use of an automated pharmacy system under this section, including:

- (1) the types of health care facilities at which an automated pharmacy system may be located, which shall include a facility regulated under Chapter 142, 242, or 252, Health and Safety Code;
- (2) recordkeeping requirements; and
- (3) security requirements.

Added by Acts 2001, 77th Leg., ch. 92, Sec. 1, eff. May 11, 2001.

Sec. 562.110. TELEPHARMACY SYSTEMS. (a) In this section, "telepharmacy system" means a system that monitors the dispensing of prescription drugs and provides for related drug use review and patient counseling services by an electronic method, including the use of the following types of technology:

- (1) audio and video;
- (2) still image capture; and
- (3) store and forward.

(b) A Class A or Class C pharmacy located in this state may provide pharmacy services, including the dispensing of drugs, through a telepharmacy system in a facility that is not at the same location as the Class A or Class C pharmacy.

(c) A telepharmacy system is required to be under the continuous supervision of a pharmacist as determined by board rule. To qualify as continuous supervision for a telepharmacy system, the pharmacist is not required to be physically present at the site of the telepharmacy system. The pharmacist shall supervise the system electronically by audio and video communication.

(d) A telepharmacy system may be located only at a health care facility in this state that is regulated by this state or the United States.

(e) The board shall adopt rules regarding the use of a telepharmacy system under this section, including:

(1) the types of health care facilities at which a telepharmacy system may be located, which must include the following facilities:

(A) a clinic designated as a rural health clinic regulated under 42 U.S.C. Section 1395x(aa), as amended; and

(B) a health center as defined by 42 U.S.C. Section 254b, as amended;

- (2) the areas that qualify under Subsection (f);
- (3) recordkeeping requirements; and
- (4) security requirements.

(f) A telepharmacy system may not be located in a community in which a Class A or Class C pharmacy is located as determined by board rule. If a Class A or Class C pharmacy is established in a community in which a telepharmacy system has been located under this section, the telepharmacy system may continue to operate in that community.

Added by Acts 2001, 77th Leg., ch. 1220, Sec. 1, eff. Sept. 1, 2001.

Sec. 562.111. PRESCRIPTION DRUG ORDER FOR CONSUMER. (a) A pharmacy in this state may order for a consumer a prescription drug from a Canadian pharmacy designated by the board under Section 554.016 to dispense prescription drugs to residents in this state.

(b) A pharmacy may order a prescription drug under this section only with the knowledge and clear consent of the consumer.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 42, eff. September 1, 2005.

Sec. 562.112. PRACTITIONER-PATIENT RELATIONSHIP REQUIRED. (a) A pharmacy shall ensure that its agents and employees, before dispensing a prescription, determine in the exercise of sound professional judgment that the prescription is a valid prescription. A pharmacy may not dispense a prescription drug if an agent or employee of the pharmacy knows or should know that the prescription was issued on the basis of an Internet-based or telephonic consultation without a valid practitioner-patient relationship.

(b) Subsection (a) does not prohibit a pharmacy from dispensing a prescription when a valid practitioner-patient relationship is not present in an emergency.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 22, eff. September 1, 2005.

Renumbered from Occupations Code, Section 562.111 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(58), eff. September 1,

2007.

**SUBCHAPTER D. COMPOUNDED AND PREPACKAGED DRUGS**

Sec. 562.151. DEFINITIONS. In this subchapter:

(1) "Office use" means the provision and administration of a compounded drug to a patient by a practitioner in the practitioner's office or by the practitioner in a health care facility or treatment setting, including a hospital, ambulatory surgical center, or pharmacy in accordance with Chapter 563.

(2) "Prepackaging" means the act of repackaging and relabeling quantities of drug products from a manufacturer's original container into unit dose packaging or a multiple dose container for distribution within a facility licensed as a Class C pharmacy or to other pharmacies under common ownership for distribution within those facilities. The term as defined does not prohibit the prepackaging of drug products for use within other pharmacy classes.

(3) "Reasonable quantity" with reference to drug compounding means an amount of a drug that:

(A) does not exceed the amount a practitioner anticipates may be used in the practitioner's office before the expiration date of the drug;

(B) is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice; and

(C) for any practitioner and all practitioners as a whole, is not greater than an amount the pharmacy is capable of compounding in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation practices.

Added by Acts 2003, 78th Leg., ch. 890, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 28 (S.B. [492](#)), Sec. 4, eff. September 1, 2005.

Sec. 562.152. COMPOUNDING FOR OFFICE USE. A pharmacy may dispense and deliver a reasonable quantity of a compounded drug to a practitioner for office use by the practitioner in accordance with

this chapter.

Amended by:

Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 4, eff. September 1, 2005.

Sec. 562.153. REQUIREMENTS FOR OFFICE USE COMPOUNDING. To dispense and deliver a compounded drug under Section 562.152, a pharmacy must:

(1) verify the source of the raw materials to be used in a compounded drug;

(2) comply with applicable United States Pharmacopoeia guidelines, including the testing requirements, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);

(3) comply with all applicable competency and accrediting standards as determined by the board; and

(4) comply with board rules, including rules regarding the reporting of adverse events by practitioners and recall procedures for compounded products.

Amended by:

Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 4, eff. September 1, 2005.

Sec. 562.154. DISTRIBUTION OF COMPOUNDED AND PREPACKAGED PRODUCTS TO CERTAIN PHARMACIES. (a) A Class A pharmacy licensed under Chapter 560 is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute compounded pharmaceutical products to a Class C pharmacy licensed under Chapter 560.

(b) A Class C pharmacy licensed under Chapter 560 is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute compounded and prepackaged pharmaceutical products that the Class C pharmacy has compounded or prepackaged to other Class C pharmacies licensed under Chapter 560 and under common ownership.

Amended by:

Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 4, eff. September 1, 2005.

Sec. 562.155. COMPOUNDING SERVICE AND COMPOUNDED DRUG PRODUCTS. A compounding pharmacist or pharmacy may advertise or promote:

- (1) nonsterile prescription compounding services provided by the pharmacist or pharmacy; and
- (2) specific compounded drug products that the pharmacy or pharmacist dispenses or delivers.

Amended by:

Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 4, eff. September 1, 2005.

Sec. 562.156. COMPOUNDED STERILE PREPARATION; NOTICE TO BOARD.

(a) A pharmacy may not compound and dispense a sterile preparation unless the pharmacy holds a license as required by board rule.

(b) A pharmacy that compounds a sterile preparation shall notify the board:

- (1) immediately of any adverse effects reported to the pharmacy or that are known by the pharmacy to be potentially attributable to a sterile preparation compounded by the pharmacy; and
- (2) not later than 24 hours after the pharmacy issues a recall for a sterile preparation compounded by the pharmacy.

Added by Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 6, eff. September 1, 2013.

#### **SUBCHAPTER E. PRACTICE BY CANADIAN PHARMACY**

Sec. 562.201. ADDITIONAL PRACTICE REQUIREMENTS. In addition to complying with the other requirements of this chapter, a Canadian pharmacy designated by the board under Section 554.016 shall:

- (1) dispense a prescription drug to a resident of this state only under the lawful order of a practitioner licensed in the United States;
- (2) dispense to a resident of this state only a prescription drug that is approved by Canada's Therapeutic Products Directorate for sale to residents of Canada;



(3) dispense to a resident of this state a prescription drug in the original, unopened manufacturer's packaging whenever possible; and

(4) dispense to a resident of this state only drugs prescribed for long-term use.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 43, eff. September 1, 2005.

Sec. 562.202. LIMITATIONS ON PRACTICE. A Canadian pharmacy designated by the board under Section 554.016 to dispense prescription drugs to residents in this state may not:

(1) dispense to a resident of this state a prescription drug for which there is not an equivalent drug approved by the United States Food and Drug Administration for sale in the United States;

(2) dispense to a resident of this state a prescription drug that cannot be safely shipped by mail, common carrier, or delivery service;

(3) dispense in one order to a resident of this state a quantity of a prescription drug that exceeds:

(A) a three-month supply; or

(B) the amount ordered by the practitioner;

(4) fill a prescription drug order for a consumer who is a resident of this state that the consumer indicates is the consumer's first prescription for that drug; or

(5) dispense to a resident of this state any of the following:

(A) a substance designated as a controlled substance under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(B) a biological product, as described by Section 351, Public Health Service Act (42 U.S.C. Section 262);

(C) an infused drug, including a peritoneal dialysis solution;

(D) an intravenously injected drug; or

(E) a drug that is inhaled during surgery.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 43, eff. September 1, 2005.

Sec. 562.203. COMPLAINT REPORT. A Canadian pharmacy designated by the board under Section 554.016 to dispense prescription drugs to residents in this state shall provide to the board periodic reports in accordance with board rules on each complaint received by the pharmacy from a consumer in this state who purchases a prescription drug from the pharmacy.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 43, eff. September 1, 2005.

Sec. 562.204. PRICE LIST. A Canadian pharmacy designated by the board under Section 554.016 shall:

- (1) compile and maintain a current price list for prescription drugs provided to residents in this state; and
- (2) guarantee those prices for not less than 30 days from the date the list is effective.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 43, eff. September 1, 2005.

## **CHAPTER 563. PRESCRIPTION REQUIREMENTS; DELEGATION OF ADMINISTRATION AND PROVISION OF DANGEROUS DRUGS**

### **SUBCHAPTER B. DELEGATION OF ADMINISTRATION AND PROVISION OF DANGEROUS DRUGS**

Sec. 563.051. GENERAL DELEGATION OF ADMINISTRATION AND PROVISION OF DANGEROUS DRUGS. (a) A physician may delegate to any qualified and properly trained person acting under the physician's supervision the act of administering or providing dangerous drugs in the physician's office, as ordered by the physician, that are used or required to meet the immediate needs of the physician's patients. The administration or provision of the dangerous drugs must be performed in compliance with laws relating to the practice of medicine and state and federal laws relating to those dangerous drugs.

(b) A physician may also delegate to any qualified and properly trained person acting under the physician's supervision the act of administering or providing dangerous drugs through a facility licensed by the board, as ordered by the physician, that are used or required to meet the needs of the physician's patients. The

administration of those dangerous drugs must be in compliance with laws relating to the practice of medicine, professional nursing, and pharmacy and state and federal drug laws. The provision of those dangerous drugs must be in compliance with:

- (1) laws relating to the practice of medicine, professional nursing, and pharmacy;
- (2) state and federal drug laws; and
- (3) rules adopted by the board.

(c) The administration or provision of the drugs may be delegated through a physician's order, a standing medical order, a standing delegation order, or another order defined by the Texas State Board of Medical Examiners.

(d) This section does not authorize a physician or a person acting under the supervision of a physician to keep a pharmacy, advertised or otherwise, for the retail sale of dangerous drugs, other than as authorized under Section 158.003, without complying with the applicable laws relating to the dangerous drugs.

(e) A practitioner may designate a licensed vocational nurse or a person having education equivalent to or greater than that required for a licensed vocational nurse to communicate the prescriptions of an advanced practice nurse or physician assistant authorized by the practitioner to sign prescription drug orders under Subchapter B, Chapter 157.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.308(a), eff. Sept. 1, 2001.

Sec. 563.052. SUITABLE CONTAINER REQUIRED. A drug or medicine provided under this subchapter must be supplied in a suitable container labeled in compliance with applicable drug laws. A qualified and trained person, acting under the supervision of a physician, may specify at the time of the provision of the drug the inclusion on the container of the date of the provision and the patient's name and address.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 563.053. DISPENSING OF DANGEROUS DRUGS IN CERTAIN RURAL

AREAS. (a) In this section, "reimbursement for cost" means an additional charge, separate from that imposed for the physician's professional services, that includes the cost of the drug product and all other actual costs to the physician incidental to providing the dispensing service. The term does not include a separate fee imposed for the act of dispensing the drug itself.

(b) This section applies to an area located in a county with a population of 5,000 or less, or in a municipality or an unincorporated town with a population of less than 2,500, that is within a 15-mile radius of the physician's office and in which a pharmacy is not located. This section does not apply to a municipality or an unincorporated town that is adjacent to a municipality with a population of 2,500 or more.

(c) A physician who practices medicine in an area described by Subsection (b) may:

(1) maintain a supply of dangerous drugs in the physician's office to be dispensed in the course of treating the physician's patients; and

(2) be reimbursed for the cost of supplying those drugs without obtaining a license under Chapter 558.

(d) A physician who dispenses dangerous drugs under Subsection (c) shall:

(1) comply with each labeling provision under this subtitle applicable to that class of drugs; and

(2) oversee compliance with packaging and recordkeeping provisions applicable to that class of drugs.

(e) A physician who desires to dispense dangerous drugs under this section shall notify both the board and the Texas State Board of Medical Examiners that the physician practices in an area described by Subsection (b). The physician may continue to dispense dangerous drugs in the area until the board determines, after notice and hearing, that the physician no longer practices in an area described by Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 563.054. ADMINISTRATION OF DANGEROUS DRUGS. (a) A veterinarian may:

(1) administer or provide dangerous drugs to a patient in

the veterinarian's office, or on the patient's premises, if the drugs are used or required to meet the needs of the veterinarian's patients;

(2) delegate the administration or provision of dangerous drugs to a person who:

(A) is qualified and properly trained; and

(B) acts under the veterinarian's supervision; and

(3) itemize and receive compensation for the administration or provision of the dangerous drugs under Subdivision (1).

(b) This section does not permit a veterinarian to maintain a pharmacy for the retailing of drugs without complying with applicable laws.

(c) The administration or provision of dangerous drugs must comply with:

(1) laws relating to the practice of veterinary medicine; and

(2) state and federal laws relating to dangerous drugs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**CHAPTER 564. PROGRAM TO AID IMPAIRED PHARMACISTS AND PHARMACY STUDENTS; PHARMACY PEER REVIEW**

**SUBCHAPTER A. REPORTING AND CONFIDENTIALITY**

Sec. 564.001. REPORTS. (a) An individual or entity, including a pharmaceutical peer review committee, who has knowledge relating to an action or omission of a pharmacist in this state or a pharmacy student who is enrolled in the professional sequence of an accredited pharmacy degree program approved by the board that might provide grounds for disciplinary action under Section 565.001(a)(4) or (7) may report relevant facts to the board.

(b) A committee of a professional society composed primarily of pharmacists, the staff of the committee, or a district or local intervenor participating in a program established to aid pharmacists or pharmacy students impaired by chemical abuse or mental or physical illness may report in writing to the board the name of an impaired pharmacist or pharmacy student and the relevant information relating to the impairment.

(c) The board may report to a committee of the professional society or the society's designated staff information that the board

receives relating to a pharmacist or pharmacy student who may be impaired by chemical abuse or mental or physical illness.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 1, eff. June 17, 2011.

Sec. 564.002. CONFIDENTIALITY. (a) All records and proceedings of the board, an authorized agent of the board, or a pharmaceutical organization committee relating to the administration of this chapter are confidential and are not considered public information for purposes of Chapter 552, Government Code. Records considered confidential under this section include:

(1) information relating to a report made under Section 564.001, including the identity of the individual or entity making the report;

(2) the identity of an impaired pharmacist or pharmacy student participating in a program administered under this chapter, except as provided by Section 564.003;

(3) a report, interview, statement, memorandum, evaluation, communication, or other information possessed by the board, an authorized agent of the board, or a pharmaceutical organization committee, related to a potentially impaired pharmacist or pharmacy student;

(4) a policy or procedure of an entity that contracts with the board relating to personnel selection; and

(5) a record relating to the operation of the board, an authorized agent of the board, or a pharmaceutical organization committee, as the record relates to a potentially impaired pharmacist or pharmacy student.

(b) A record or proceeding described by this section is not subject to disclosure, subpoena, or discovery, except to a member of the board or an authorized agent of the board involved in the discipline of an applicant or license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 2, eff. June 17, 2011.

Sec. 564.003. DISCLOSURE OF CERTAIN INFORMATION. (a) The board may disclose information confidential under Section 564.002 only:

(1) during a proceeding conducted by the State Office of Administrative Hearings, the board, or a panel of the board, or in a subsequent trial or appeal of a board action or order;

(2) to a pharmacist licensing or disciplinary authority of another jurisdiction;

(3) under a court order;

(4) to a person providing a service to the board, including an expert witness, investigator, or employee of an entity that contracts with the board, related to a disciplinary proceeding against an applicant or license holder, if the information is necessary for preparation for, or a presentation in, the proceeding; or

(5) as provided by Subsection (b).

(a-1) Information that is disclosed under Subsection (a) remains confidential and is not subject to discovery or subpoena in a civil suit and may not be introduced as evidence in any action other than an appeal of a board action.

(a-2) Information that is confidential under Section 564.002 and that is admitted under seal in a proceeding conducted by the State Office of Administrative Hearings is confidential information for the purpose of a subsequent trial or appeal.

(b) The board may disclose that the license of a pharmacist who is the subject of an order of the board that is confidential under Section 564.002 is suspended, revoked, canceled, restricted, or retired or that the pharmacist is in any other manner limited in the practice of pharmacy. The board may not disclose the nature of the impairment or other information that resulted in the board's action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(a-1), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 3, eff. June 17, 2011.

Sec. 564.004. IMMUNITY. (a) Any person, including a board employee or member, peer review committee member, pharmaceutical organization committee member, or pharmaceutical organization district or local intervenor, who provides information, reports, or records under Section 564.001 to aid an impaired pharmacist or pharmacy student is immune from civil liability if the person provides the information in good faith.

(b) Subsection (a) shall be liberally construed to accomplish the purposes of this subchapter, and the immunity provided under that subsection is in addition to any other immunity provided by law.

(c) A person who provides information or assistance to the board under this subchapter is presumed to have acted in good faith. A person who alleges a lack of good faith has the burden of proof on that issue.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 4, eff. June 17, 2011.

Sec. 564.005. RECORD OF REPORT. On a determination by the board that a report submitted by a peer review committee or pharmaceutical organization committee under Section 564.001(a) or (b) is without merit, the board shall expunge the report from the pharmacist's or pharmacy student's individual record in the board's office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 564.006. EXAMINATION OF REPORT. A pharmacist, a pharmacy student, or an authorized representative of the pharmacist or student is entitled on request to examine the peer review or the pharmaceutical organization committee report submitted to the board and to place into the record a statement of reasonable length of the pharmacist's or pharmacy student's view concerning information in the report.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



**SUBCHAPTER B. PROGRAM ADMINISTRATION**

Sec. 564.051. PROGRAM AUTHORIZATION; FUNDING. (a) The board may add a surcharge of not more than \$10 for each 12 months in a license period to a license or license renewal fee authorized under this subtitle to fund a program to aid impaired pharmacists and pharmacy students.

(b) The board may accept, transfer, and spend funds from the federal or state government, from another public source, or from a private source to be used in the program authorized by this section.

(c) Funds and surcharges collected under this section shall be deposited in the general revenue fund and may only be used by the board to administer the program authorized by this section, including providing for initial evaluation and referral of an impaired pharmacist or pharmacy student by a qualified health professional and paying the administrative costs incurred by the board in connection with that funding. The money may not be used for costs incurred for treatment or rehabilitation after initial evaluation and referral.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.309(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 24, eff. September 1, 2005.

Sec. 564.052. RULES OR CRITERIA. In administering and enforcing this subchapter, the board shall adopt rules or minimum criteria that are at least as strict as the rules or minimum criteria for the administration or enforcement of a peer assistance program adopted by the Texas Commission on Alcohol and Drug Abuse under Chapter 467, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER C. PHARMACY PEER REVIEW**

Sec. 564.101. DEFINITIONS. In this subchapter:

(1) "Pharmacy peer review committee" means:

(A) a pharmacy peer review, judicial, or grievance committee of a pharmacy society or association that is authorized to

evaluate the quality of pharmacy services or the competence of pharmacists and suggest improvements in pharmacy systems to enhance patient care; or

(B) a pharmacy peer review committee established by a person who owns a pharmacy or employs pharmacists that is authorized to evaluate the quality of pharmacy services or the competence of pharmacists and suggest improvements in pharmacy systems to enhance patient care.

(2) "Pharmacy society or association" means a membership organization of pharmacists that is incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or that is exempt from the payment of federal income taxes under Section 501(c) of the Internal Revenue Code of 1986.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept. 1, 2001.

Sec. 564.102. PHARMACY PEER REVIEW COMMITTEE. (a) A pharmacy peer review committee may be established to evaluate the quality of pharmacy services or the competence of pharmacists and suggest improvements in pharmacy systems to enhance patient care.

(b) The committee may review documentation of quality-related activities in a pharmacy, assess system failures and personnel deficiencies, determine facts, and make recommendations or issue decisions in a written report that can be used for continuous quality improvement purposes.

(c) A pharmacy peer review committee includes the members, employees, and agents of the committee, including assistants, investigators, attorneys, and any other agent that serves the committee in any capacity.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept. 1, 2001.

Sec. 564.103. CONFIDENTIALITY. (a) Except as otherwise provided by this subchapter, all proceedings and records of a pharmacy peer review committee are confidential and all communications made to a pharmacy peer review committee are privileged.

(b) If a court makes a preliminary finding that a proceeding, record, or communication described by Subsection (a) is relevant to an anticompetitive action or an action brought under federal civil rights provisions under 42 U.S.C. Section 1983, then the proceeding, record, or communication is not confidential to the extent it is considered to be relevant.

(c) The final report of, and any written or oral communication made to, a pharmacy peer review committee and the records and proceedings of the committee may be disclosed to another pharmacy peer review committee, appropriate state or federal agencies, national accreditation bodies, or the state board of registration or licensure of this or any other state.

(d) Disclosure to the affected pharmacist of confidential pharmacy peer review committee information pertinent to the matter under review does not constitute waiver of the confidentiality provisions provided by this section.

(e) If a pharmacy peer review committee takes action that could result in censure, license suspension, restriction, limitation, or revocation by the board or denial of membership or privileges in a health care entity, the affected pharmacist must be provided a written copy of the recommendation of the pharmacy peer review committee and a copy of the pharmacy peer review committee's final decision, including a statement of the basis for the decision.

(f) Unless disclosure is required or authorized by law, records or determinations of, or communications to, a pharmacy peer review committee are not subject to subpoena or discovery and are not admissible as evidence in any civil, judicial, or administrative proceeding without waiver of the privilege of confidentiality executed in writing by the committee. The evidentiary privilege created by this section may be invoked by any person or organization in any civil, judicial, or administrative proceeding unless the person or organization has secured a waiver of the privilege executed in writing by the presiding officer, assistant presiding officer, or secretary of the affected pharmacy peer review committee.

(g) Reports, information, or records received and maintained by the board under this subchapter are considered investigative files and are confidential and may only be released as specified in Section 565.055.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept.

1, 2001.

Sec. 564.104. USE OF INFORMATION IN CIVIL AND CRIMINAL ACTIONS.

(a) If a pharmacy peer review committee, a person participating in peer review, or any organization named as a defendant in any civil action filed as a result of participation in peer review may use otherwise confidential information in the committee's, person's, or organization's own defense or in a claim or suit under Section 564.106(b), a plaintiff in the proceeding may disclose records or determinations of, or communications to, a peer review committee in rebuttal to information supplied by the defendant.

(b) Any person seeking access to privileged information must plead and prove waiver of the privilege.

(c) A member, employee, or agent of a pharmacy peer review committee who provides access to otherwise privileged communications or records in cooperation with a law enforcement authority in a criminal investigation is not considered to have waived any privilege established under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept. 1, 2001.

Sec. 564.105. COMPLIANCE WITH SUBPOENA. All persons, including governing bodies and medical staffs of health care entities, shall comply fully with a subpoena issued by the board for documents or information as otherwise authorized by law. The disclosure of documents or information under the subpoena does not constitute a waiver of the privilege associated with a pharmacy peer review committee proceeding. Failure to comply with the subpoena is grounds for disciplinary action against the facility or individual by the appropriate licensing board.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept. 1, 2001.

Sec. 564.106. IMMUNITY. (a) A cause of action does not accrue against the members, agents, or employees of a pharmacy peer review committee from any act, statement, determination, or recommendation

made or act reported, without malice, in the course of peer review according to this subchapter.

(b) A pharmacy peer review committee, a person participating in peer review, or a health care entity named as a defendant in any civil action filed as a result of participation in peer review may use otherwise confidential information obtained for legitimate internal business and professional purposes, including use in the committee's, person's, or entity's own defense. The use of the information does not waive the confidential and privileged nature of pharmacy peer review committee proceedings.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept. 1, 2001.

## **CHAPTER 565. DISCIPLINARY ACTIONS AND PROCEDURES; REINSTATEMENT OF LICENSE**

### **SUBCHAPTER A. GROUNDS FOR DISCIPLINE OF APPLICANT OR LICENSE HOLDER**

Sec. 565.001. APPLICANT FOR OR HOLDER OF LICENSE TO PRACTICE PHARMACY. (a) The board may discipline an applicant for or the holder of a current or expired license to practice pharmacy if the board finds that the applicant or license holder has:

- (1) violated this subtitle or a board rule adopted under this subtitle;
- (2) engaged in unprofessional conduct as defined by board rule;
- (3) engaged in gross immorality as defined by board rule;
- (4) developed an incapacity that prevents or could prevent the applicant or license holder from practicing pharmacy with reasonable skill, competence, and safety to the public;
- (5) engaged in fraud, deceit, or misrepresentation, as defined by board rule, in practicing pharmacy or in seeking a license to practice pharmacy;
- (6) been convicted of or placed on deferred adjudication community supervision or deferred disposition or the applicable federal equivalent for:
  - (A) a misdemeanor:
    - (i) involving moral turpitude; or
    - (ii) under Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of

1970 (21 U.S.C. Section 801 et seq.); or

(B) a felony;

(7) used alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;

(8) failed to maintain records required by this subtitle or failed to maintain complete and accurate records of purchases or disposals of drugs listed in Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

(9) violated any provision of:

(A) Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.), or rules relating to one of those laws; or

(B) Section 485.031, 485.032, 485.033, or 485.034, Health and Safety Code;

(10) aided or abetted an unlicensed person in the practice of pharmacy if the pharmacist knew or reasonably should have known that the person was unlicensed at the time;

(11) refused entry into a pharmacy for an inspection authorized by this subtitle if the pharmacist received notification from which the pharmacist knew or reasonably should have known that the attempted inspection was authorized;

(12) violated any pharmacy or drug statute or rule of this state, another state, or the United States;

(13) been negligent in the practice of pharmacy;

(14) failed to submit to an examination after hearing and being ordered to do so by the board under Section 565.052;

(15) dispensed a prescription drug while acting outside the usual course and scope of professional practice;

(16) been disciplined by a pharmacy board or by another health regulatory board of this state or another state for conduct substantially equivalent to conduct described under this subsection;

(17) violated a disciplinary order, including a confidential order or contract under the program to aid impaired pharmacists and pharmacy students under Chapter 564;

(18) failed to adequately supervise a task delegated to a pharmacy technician or pharmacy technician trainee;

(19) inappropriately delegated a task delegated to a pharmacy technician or pharmacy technician trainee;

(20) been responsible for a drug audit shortage; or

(21) been convicted or adjudicated of a criminal offense that requires registration as a sex offender under Chapter 62, Code of Criminal Procedure.

(b) A certified copy of the record of the state taking action described by Subsection (a)(16) is conclusive evidence of the action taken by that state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1254, Sec. 9, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1463, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 25, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 15, eff. June 14, 2013.

Sec. 565.002. APPLICANT FOR OR HOLDER OF PHARMACY LICENSE. (a) The board may discipline an applicant for or the holder of a pharmacy license, including a Class E pharmacy license subject to Section 565.003(b), if the board finds that the applicant or license holder has:

(1) been convicted of or placed on deferred adjudication community supervision or deferred disposition or the applicable federal equivalent for:

(A) a misdemeanor:

(i) involving moral turpitude; or

(ii) under Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or

(B) a felony;

(2) advertised a prescription drug or device in a deceitful, misleading, or fraudulent manner;

(3) violated any provision of this subtitle or any rule adopted under this subtitle or that an owner or employee of a pharmacy has violated any provision of this subtitle or any rule adopted under this subtitle;

(4) sold without legal authorization a prescription drug or device to a person other than:

- (A) a pharmacy licensed by the board;
  - (B) a practitioner;
  - (C) a person who procures a prescription drug or device for lawful research, teaching, or testing, and not for resale;
  - (D) a manufacturer or wholesaler licensed by the commissioner of public health as required by Chapter 431, Health and Safety Code; or
  - (E) a carrier or warehouseman;
- (5) allowed an employee who is not a pharmacist to practice pharmacy;
- (6) sold an adulterated or misbranded prescription or nonprescription drug;
- (7) failed to engage in or ceased to engage in the business described in the application for a license;
- (8) failed to maintain records as required by this subtitle, Chapter 481 or 483, Health and Safety Code, the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.), or any rule adopted under this subtitle or Chapter 483, Health and Safety Code;
- (9) failed to establish and maintain effective controls against diversion of prescription drugs into other than a legitimate medical, scientific, or industrial channel as provided by this subtitle, another state statute or rule, or a federal statute or rule;
- (10) engaged in fraud, deceit, or misrepresentation as defined by board rule in operating a pharmacy or in applying for a license to operate a pharmacy;
- (11) violated a disciplinary order;
- (12) been responsible for a drug audit shortage; or
- (13) been disciplined by the regulatory board of another state for conduct substantially equivalent to conduct described under this subsection.

(b) This subsection applies only to an applicant or license holder that is a legal business entity. The board may discipline an applicant for or the holder of a pharmacy license, including a Class E pharmacy license, if the board finds that a managing officer of the applicant or license holder has been convicted of or placed on deferred adjudication community supervision or deferred disposition or the applicable federal equivalent for:

- (1) a misdemeanor:



(A) involving moral turpitude; or  
 (B) under Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or  
 (2) a felony.

(c) A certified copy of the record of the state taking action described by Subsection (a)(13) is conclusive evidence of the action taken by that state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 26, eff. September 1, 2005.

Sec. 565.003. ADDITIONAL GROUNDS FOR DISCIPLINE REGARDING APPLICANT FOR OR HOLDER OF NONRESIDENT PHARMACY LICENSE. Unless compliance would violate the pharmacy or drug statutes or rules in the state in which the pharmacy is located the board may discipline an applicant for or the holder of a nonresident pharmacy license if the board finds that the applicant or license holder has failed to comply with:

- (1) Section 481.074 or 481.075, Health and Safety Code;
- (2) Texas substitution requirements regarding:
  - (A) the practitioner's directions concerning generic substitution;
  - (B) the patient's right to refuse generic substitution;
 or
  - (C) notification to the patient of the patient's right to refuse substitution;
- (3) any board rule relating to providing drug information to the patient or the patient's agent in written form or by telephone; or
- (4) any board rule adopted under Section 554.051(a) and determined by the board to be applicable under Section 554.051(b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 45, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 7, eff.

September 1, 2013.

**SUBCHAPTER B. DISCIPLINARY ACTIONS AND PROCEDURES**

Sec. 565.051. DISCIPLINE AUTHORIZED. On a determination that a ground for discipline exists under Subchapter A, or that a violation of this subtitle or a rule adopted under this subtitle has been committed by a license holder or applicant for a license or renewal of a license, the board may:

- (1) suspend the person's license;
  - (2) revoke the person's license;
  - (3) restrict the person's license to prohibit the person from performing certain acts or from practicing pharmacy or operating a pharmacy in a particular manner for a term and under conditions determined by the board;
  - (4) impose an administrative penalty under Chapter 566;
  - (5) refuse to issue or renew the person's license;
  - (6) place the offender's license on probation and supervision by the board for a period determined by the board and impose a requirement that the license holder:
    - (A) report regularly to the board on matters that are the basis of the probation;
    - (B) limit practice to the areas prescribed by the board;
    - (C) continue or review professional education until the license holder attains a degree of skill satisfactory to the board in each area that is the basis of the probation; or
    - (D) pay the board a probation fee to defray the costs of monitoring the license holder during the period of probation;
  - (7) reprimand the person;
  - (8) retire the person's license as provided by board rule;
- or
- (9) impose more than one of the sanctions listed in this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 27, eff. September 1, 2005.

## Sec. 565.052. SUBMISSION TO MENTAL OR PHYSICAL EXAMINATION.

(a) In enforcing Section 565.001(a)(4) or (7), the board or an authorized agent of the board on probable cause, as determined by the board or agent, shall request a pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant to submit to a mental or physical examination by a physician or other health care professional designated by the board.

(b) If the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant refuses to submit to the examination, the board or the executive director of the board shall issue an order requiring the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant to show cause why the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant will not submit to the examination and shall schedule a hearing before a panel of three members of the board appointed by the president of the board on the order not later than the 30th day after the date notice is served on the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant. The pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant shall be notified by either personal service or certified mail with return receipt requested.

(c) At the hearing, the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant and an attorney are entitled to present testimony or other evidence to show why the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant should not be required to submit to the examination. The pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant has the burden of proof to show why the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant should not be required to submit to the examination.

(d) After the hearing, the panel shall by order require the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant to submit to the examination not later than the 60th day after the date of the order or withdraw the request for examination, as applicable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. [1438](#)), Sec. 5, eff. June 17, 2011.

Sec. 565.053. DISCIPLINE OF NONRESIDENT PHARMACY; NOTICE TO RESIDENT STATE. The board shall give notice of a disciplinary action by the board against a license holder located in another state to the regulatory or licensing agency of the state in which the pharmacy is located.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 28, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 8, eff. September 1, 2013.

Sec. 565.054. SERVICE OF PROCESS ON NONRESIDENT PHARMACY. (a) Service of process on a nonresident pharmacy under Section 565.058 or 566.051 or for disciplinary action taken by the board under Section 565.061 shall be on the owner and pharmacist-in-charge of the pharmacy, as designated on the pharmacy's license application.

(b) The complaining party shall mail by certified mail, return receipt requested and postage prepaid, a copy of the process served to the license holder at the address of the license holder designated on the license application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 9, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 10, eff. September 1, 2013.

Sec. 565.055. INVESTIGATION; CONFIDENTIALITY OF INFORMATION.

(a) The board or the board's authorized representative may investigate and gather evidence concerning any alleged violation of this subtitle or a board rule.

(b) Information or material compiled by the board in connection with an investigation, including an investigative file of the board, is confidential and not subject to:

(1) disclosure under Chapter 552, Government Code; or  
 (2) any means of legal compulsion for release, including disclosure, discovery, or subpoena, to anyone other than the board or a board employee or board agent involved in discipline of a license holder.

(c) Notwithstanding Subsection (b), information or material compiled by the board in connection with an investigation may be disclosed:

(1) during any proceeding conducted by the State Office of Administrative Hearings, to the board, or a panel of the board, or in a subsequent trial or appeal of a board action or order;

(2) to a person providing a service to the board, including an expert witness, investigator, or employee of an entity that contracts with the board, related to a disciplinary proceeding against an applicant or license holder, or a subsequent trial or appeal, if the information is necessary for preparation for, or a presentation in, the proceeding;

(3) to an entity in another jurisdiction that:

(A) licenses or disciplines pharmacists or pharmacies;

or

(B) registers or disciplines pharmacy technicians or pharmacy technician trainees;

(4) to a pharmaceutical or pharmacy peer review committee as described under Chapter 564;

(5) to a law enforcement agency;

(6) to a person engaged in bona fide research, if all information identifying a specific individual has been deleted; or

(7) to an entity that administers a board-approved pharmacy technician certification examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.311(a), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 6, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 16, eff. June 14, 2013.

Sec. 565.056. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt a procedure governing:

(1) informal disposition of a contested case under Chapter 2001, Government Code; and

(2) an informal proceeding held in compliance with Chapter 2001, Government Code.

(b) A rule adopted under this section must:

(1) provide the complainant, if applicable and permitted by law, and the license holder an opportunity to be heard;

(2) require the presence of an attorney to advise the board or a board employee; and

(3) if an informal meeting will be held, require notice of the time and place of the informal meeting to be given to the license holder not later than the 45th day before the date the informal meeting is held.

(c) The attorney must be a member of the board's legal staff, if the board has a legal staff. If the board does not have a legal staff, the attorney must be an employee of the office of the attorney general.

(d) The notice required by Subsection (b)(3) must be accompanied by a written statement of the nature of the allegations against the license holder and the information the board intends to use at the informal meeting. If the board does not provide the statement or information when the notice is provided, the license holder may use that failure as grounds for rescheduling the informal meeting. The license holder must provide to the board the license holder's rebuttal not later than the 15th day before the date of the meeting in order for that information to be considered at the meeting.

(e) On request by a license holder under review, the board shall make a recording of the informal meeting. The recording is a part of the investigative file and may not be released to a third party unless authorized under this subtitle. The board may charge the license holder a fee to cover the cost of recording the meeting. The board shall provide a copy of the recording to the license holder on the license holder's request.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 522 (S.B. 404), Sec. 3, eff.

September 1, 2013.

Sec. 565.057. MONITORING OF LICENSE HOLDER. (a) The board shall develop a policy and procedure for monitoring a license holder's compliance with this subtitle.

(b) A policy or procedure adopted under this section must include a procedure to:

(1) monitor for compliance a license holder who is ordered by the board to perform a certain act; and

(2) identify and monitor a license holder who represents a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 565.058. SUBPOENA AUTHORITY. (a) The board or an officer of the board may:

(1) issue subpoenas ad testificandum or subpoenas duces tecum to compel the attendance of witnesses or the production of items, including books, records, or documents;

(2) administer oaths; and

(3) take testimony concerning matters in the board's or officer's jurisdiction.

(b) A person designated in the subpoena may serve the subpoena.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 565.059. TEMPORARY SUSPENSION OR RESTRICTION OF LICENSE.

(a) The president of the board shall appoint a three-member disciplinary panel consisting of board members to determine whether a license under this subtitle should be temporarily suspended or restricted. If a majority of the disciplinary panel determines from evidence or information presented to the panel that the holder of a license by continuation in the practice of pharmacy or in the operation of a pharmacy would constitute a continuing threat to the public welfare, the panel shall temporarily suspend or restrict the license as provided by Subsection (b).

(b) The disciplinary panel may temporarily suspend or restrict the license:

(1) after a hearing conducted by the panel after the 10th day after the date notice of the hearing is provided to the license holder; or

(2) without notice or hearing if, at the time the suspension or restriction is ordered, a hearing before the panel is scheduled to be held not later than the 14th day after the date of the temporary suspension or restriction to determine whether the suspension or restriction should be continued.

(c) Not later than the 90th day after the date of the temporary suspension or restriction, the board shall initiate a disciplinary action against the license holder, and a contested case hearing shall be held by the State Office of Administrative Hearings. If the State Office of Administrative Hearings does not hold the hearing in the time required by this subsection, the suspended or restricted license is automatically reinstated.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 29, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 7, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 8, eff. June 17, 2011.

Sec. 565.060. REMEDIAL PLAN. (a) The board may issue and establish the terms of a remedial plan to resolve the investigation of a complaint relating to this subtitle.

(b) A remedial plan may not be imposed to resolve a complaint:

(1) concerning:

(A) a death;

(B) a hospitalization;

(C) the commission of a felony; or

(D) any other matter designated by board rule; or

(2) in which the appropriate resolution may involve a



restriction on the manner in which a license holder practices pharmacy.

(c) The board may not issue a remedial plan to resolve a complaint against a license holder if the license holder has entered into a remedial plan with the board in the preceding 24 months for the resolution of a different complaint relating to this subtitle.

(d) If a license holder complies with and successfully completes the terms of a remedial plan, the board shall remove all records of the remedial plan from the board's records on the fifth anniversary of the date the board issued the terms of the remedial plan.

(e) The board may assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 522 (S.B. 404), Sec. 4, eff. September 1, 2013.

Sec. 565.061. ADMINISTRATIVE PROCEDURE. (a) Except as provided by Chapter 564, a disciplinary action taken by the board under Section 565.060 or on the basis of a ground for discipline under Subchapter A is governed by Chapter 2001, Government Code, and the rules of practice and procedure before the board.

(b) A final decision of the board under this chapter is subject to judicial review under Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 565.062. BURDEN OF PROOF. (a) In a proceeding under this subtitle, including a trial or hearing, the state is not required to negate an exemption or exception set forth by this subtitle in a pleading, including in a complaint, information, or indictment.

(b) The burden of going forward with the evidence with respect to an exemption or exception is on the person claiming the benefit of the exemption or exception.

(c) In the absence of proof that a person is the authorized holder of an appropriate license issued under this subtitle, the

person is presumed not to be the holder of the license. The presumption is subject to rebuttal by a person charged with an offense under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 565.063. LIABILITY. This subtitle does not impose liability on an authorized board employee or person acting under the supervision of a board employee, or on a state, county, or municipal officer, engaged in the lawful enforcement of this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 565.064. CONSTRUCTION. This subtitle does not bar a criminal prosecution for a violation of this subtitle if the violation is a criminal offense under another law of this state or a law of the United States.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. PETITION FOR REINSTATEMENT OR REMOVAL OF RESTRICTION**

Sec. 565.101. PETITION FOR REINSTATEMENT OR REMOVAL OF RESTRICTION. (a) A person whose pharmacy license, license to practice pharmacy, pharmacy technician registration, or pharmacy technician trainee registration in this state has been revoked or restricted under this subtitle, whether voluntarily or by board action, may, after the first anniversary of the effective date of the revocation or restriction, petition the board for reinstatement or removal of the restriction of the license or registration.

(b) The petition must be in writing and in the form prescribed by the board.

(c) A person petitioning for reinstatement or removal of a restriction has the burden of proof.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.312(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 17, eff. June 14, 2013.

Sec. 565.102. ACTION BY BOARD. (a) On investigation and review of a petition under this subchapter, the board may grant or deny the petition or may modify the board's original finding to reflect a circumstance that has changed sufficiently to warrant the modification.

(b) If the board denies the petition, the board may not consider a subsequent petition from the petitioner until the first anniversary of the date of denial of the previous petition.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.312(a), eff. Sept. 1, 2001.

Sec. 565.103. CONDITION FOR REINSTATEMENT OR REMOVAL OF RESTRICTION. The board may require a person to pass one or more examinations to reenter the practice of pharmacy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.312(a), eff. Sept. 1, 2001.

## **CHAPTER 566. PENALTIES AND ENFORCEMENT PROVISIONS**

### **SUBCHAPTER A. ADMINISTRATIVE PENALTY**

Sec. 566.001. IMPOSITION OF PENALTY. The board may impose an administrative penalty on a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.002. AMOUNT OF PENALTY. (a) The amount of the administrative penalty may not exceed \$5,000 for each violation, including a violation involving the diversion of a controlled substance.

(b) Each day a violation continues or occurs is a separate violation for purposes of imposing the penalty.

(c) The amount, to the extent possible, shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) The board by rule shall adopt an administrative penalty schedule for violations of this subtitle or board rules to ensure that the amounts of penalties imposed are appropriate to the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 30, eff. September 1, 2005.

Sec. 566.003. NOTICE OF VIOLATION. (a) If the board by order determines that a violation occurred and imposes an administrative penalty, the board shall give notice of the board's order to the person found to have committed the violation.

(b) The notice must include a statement of the person's right to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.004. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court and that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.005. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.006. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred on appeal, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.007. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the administrative penalty is reduced or is not upheld by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not upheld or order the release of the bond after the person pays the penalty imposed if the person gave a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.008. EFFECT OF SUBCHAPTER. This subchapter does not limit the board's ability to impose an administrative penalty under a consent order entered in accordance with board rules and requirements adopted under Section 565.056.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.009. ADMINISTRATIVE PROCEDURE. (a) The board by rule shall prescribe procedures, consistent with provisions of Chapter 2001, Government Code, relating to contested cases, by which the board may impose an administrative penalty.

(b) Chapter 2001, Government Code, applies to a proceeding under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. INJUNCTIVE RELIEF**

Sec. 566.051. INJUNCTIVE RELIEF. (a) The attorney general at the request of the board may petition a district court for an injunction to prohibit a person who is violating this subtitle from continuing the violation.

(b) Venue in a suit for injunctive relief is in Travis County.

(c) After application and a finding that a person is violating this subtitle, the district court shall grant the injunctive relief the facts warrant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 31, eff. September 1, 2005.

Sec. 566.052. CEASE AND DESIST ORDER. (a) If it appears to the board that a person is engaging in an act or practice that constitutes the practice of pharmacy without a license or registration under this subtitle, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order issued under this section constitutes grounds for imposing an administrative penalty under Subchapter A.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 32, eff. September 1, 2005.

#### **SUBCHAPTER C. CIVIL PENALTY**

Sec. 566.101. CIVIL PENALTY. (a) A person who violates the license requirements of this subtitle is liable to the state for a civil penalty not to exceed \$1,000 for each day the violation continues.

(b) A person found by the board to have unlawfully engaged in the practice of pharmacy or unlawfully operated a pharmacy is subject to a civil penalty under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.102. COLLECTION BY ATTORNEY GENERAL. At the request of the board, the attorney general shall institute an action to collect a civil penalty from a person who has violated this subtitle or any rule adopted under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.103. COLLECTION BY DISTRICT, COUNTY, OR CITY ATTORNEY.

(a) If the attorney general fails to take action before the 31st day after the date of referral from the board under Section 566.102, the board shall refer the case to the local district attorney, county attorney, or city attorney.

(b) The district attorney, county attorney, or city attorney shall file suit in a district court to collect and retain the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.104. VENUE. Venue for a suit under this subchapter is in Travis County.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. CRIMINAL OFFENSES**

Sec. 566.151. OFFENSES; CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subtitle or any rule adopted under this subtitle relating to unlawfully engaging in the practice of pharmacy or unlawfully operating a pharmacy.

(b) A person commits an offense if the person knowingly violates the licensing requirements of this subtitle or Section 558.001, 558.002, or 560.002.



(c) A person commits an offense if the person violates Section 560.001 or 560.003.

(d) Each day of violation under Subsection (b) or (c) is a separate offense.

(e) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**CHAPTER 568. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES**

Sec. 568.001. RULES; QUALIFICATIONS. (a) In establishing rules under Section 554.053(c), the board shall require that:

(1) a pharmacy technician:

(A) have a high school diploma or a high school equivalency certificate or be working to achieve an equivalent diploma or certificate; and

(B) have passed a board-approved pharmacy technician certification examination; and

(2) a pharmacy technician trainee have a high school diploma or a high school equivalency certificate or be working to achieve an equivalent diploma or certificate.

(b) The board shall adopt rules that permit a pharmacy technician and pharmacy technician trainee to perform only nonjudgmental technical duties under the direct supervision of a pharmacist.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.313(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 19, eff. June 14, 2013.

Sec. 568.002. REGISTRATION REQUIRED. (a) A person must register with the board before beginning work in a pharmacy in this state as a pharmacy technician or a pharmacy technician trainee.

(b) The board may allow a pharmacy technician to petition the board for a special exemption from the pharmacy technician certification requirement if the pharmacy technician is in a county with a population of less than 50,000.

(c) An applicant for registration as a pharmacy technician or a

pharmacy technician trainee must:

- (1) be of good moral character; and
- (2) submit an application on a form prescribed by the

board.

(d) A person's registration as a pharmacy technician or pharmacy technician trainee remains in effect as long as the person meets the qualifications established by board rule.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.313(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 20, eff. June 14, 2013.

Sec. 568.003. GROUNDS FOR DISCIPLINARY ACTION. (a) The board may take disciplinary action under Section 568.0035 against an applicant for or the holder of a current or expired pharmacy technician or pharmacy technician trainee registration if the board determines that the applicant or registrant has:

- (1) violated this subtitle or a rule adopted under this subtitle;
- (2) engaged in gross immorality, as that term is defined by the rules of the board;
- (3) engaged in any fraud, deceit, or misrepresentation, as those terms are defined by the rules of the board, in seeking a registration to act as a pharmacy technician or pharmacy technician trainee;
- (4) been convicted of or placed on deferred adjudication community supervision or deferred disposition or the applicable federal equivalent for:
  - (A) a misdemeanor:
    - (i) involving moral turpitude; or
    - (ii) under Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or
  - (B) a felony;
- (5) developed an incapacity that prevents the applicant or registrant from practicing as a pharmacy technician or pharmacy technician trainee with reasonable skill, competence, and safety to

the public;

(6) violated:

(A) Chapter 481 or 483, Health and Safety Code, or rules relating to those chapters;

(B) Sections 485.031-485.035, Health and Safety Code; or

(C) a rule adopted under Section 485.011, Health and Safety Code;

(7) violated the pharmacy or drug laws or rules of this state, another state, or the United States;

(8) performed duties in a pharmacy that only a pharmacist may perform, as defined by the rules of the board;

(9) used alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;

(10) engaged in negligent, unreasonable, or inappropriate conduct when working in a pharmacy;

(11) violated a disciplinary order;

(12) been convicted or adjudicated of a criminal offense that requires registration as a sex offender under Chapter 62, Code of Criminal Procedure; or

(13) been disciplined by a pharmacy or other health regulatory board of this state or another state for conduct substantially equivalent to conduct described by this subsection.

(b) A certified copy of the record of a state taking action described by Subsection (a)(13) is conclusive evidence of the action taken by the state.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.313(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 33, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 837 (S.B. 1853), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 21, eff. June 14, 2013.

Sec. 568.0035. DISCIPLINE AUTHORIZED; EFFECT ON TRAINEE. (a) On a determination that a ground for discipline exists under Section

568.003, the board may:

- (1) suspend the person's registration;
  - (2) revoke the person's registration;
  - (3) restrict the person's registration to prohibit the person from performing certain acts or from practicing as a pharmacy technician or pharmacy technician trainee in a particular manner for a term and under conditions determined by the board;
  - (4) impose an administrative penalty under Chapter 566;
  - (5) refuse to issue or renew the person's registration;
  - (6) place the offender's registration on probation and supervision by the board for a period determined by the board and impose a requirement that the registrant:
    - (A) report regularly to the board on matters that are the basis of the probation;
    - (B) limit practice to the areas prescribed by the board;
    - (C) continue or review professional education until the registrant attains a degree of skill satisfactory to the board in each area that is the basis of the probation; or
    - (D) pay the board a probation fee to defray the costs of monitoring the registrant during the period of probation;
  - (7) reprimand the person;
  - (8) retire the person's registration as provided by board rule; or
  - (9) impose more than one of the sanctions listed in this section.
- (b) A disciplinary action affecting the registration of a pharmacy technician trainee remains in effect if the trainee obtains registration as a pharmacy technician.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 34, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 837 (S.B. 1853), Sec. 2, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 22, eff. June 14, 2013.

Sec. 568.0036. SUBMISSION TO MENTAL OR PHYSICAL EXAMINATION.

(a) This section applies to a pharmacy technician, pharmacy technician applicant, pharmacy technician trainee, or pharmacy technician trainee applicant.

(b) In enforcing Section 568.003(a)(5) or (7), the board or an authorized agent of the board on probable cause, as determined by the board or agent, may request a person subject to this section to submit to a mental or physical examination by a physician or other health care professional designated by the board.

(c) If the person refuses to submit to the examination, the board or the executive director of the board shall:

(1) issue an order requiring the person to show cause why the person will not submit to the examination; and

(2) schedule a hearing before a panel of three members of the board appointed by the president of the board on the order not later than the 30th day after the date notice of the order is served on the person under Subsection (d).

(d) The person shall be notified by either personal service or certified mail, return receipt requested.

(e) At the hearing, the person and the person's counsel may present testimony or other evidence to show why the person should not be required to submit to the examination. The person has the burden of proof to show why the person should not be required to submit to the examination.

(f) After the hearing, as applicable, the panel shall, by order:

(1) require the person to submit to the examination not later than the 60th day after the date of the order; or

(2) withdraw the request for examination.

Added by Acts 2009, 81st Leg., R.S., Ch. 837 (S.B. 1853), Sec. 3, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 9, eff. June 17, 2011.

Sec. 568.0037. TEMPORARY SUSPENSION OR RESTRICTION OF REGISTRATION. (a) The president of the board shall appoint a disciplinary panel consisting of three board members to determine whether a registration under this chapter should be temporarily

suspended or restricted. If a majority of the panel determines from evidence or information presented to the panel that the registrant by continuation in practice as a pharmacy technician or pharmacy technician trainee would constitute a continuing threat to the public welfare, the panel shall temporarily suspend or restrict the registration as provided by Subsection (b).

(b) A disciplinary panel may temporarily suspend or restrict the registration:

(1) after a hearing conducted by the panel after the 10th day after the date notice of the hearing is provided to the registrant; or

(2) without notice or hearing if, at the time the suspension or restriction is ordered, a hearing before the panel is scheduled to be held not later than the 14th day after the date of the temporary suspension or restriction to determine whether the suspension or restriction should be continued.

(c) Not later than the 90th day after the date of the temporary suspension or restriction, the board shall initiate a disciplinary action under this chapter, and a contested case hearing shall be held by the State Office of Administrative Hearings. If the State Office of Administrative Hearings does not hold the hearing in the time required by this subsection, the suspended or restricted registration is automatically reinstated.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the disciplinary panel.

Added by Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 10, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 23, eff. June 14, 2013.

Sec. 568.004. RENEWAL OF REGISTRATION. The board may adopt a system in which the registrations of pharmacy technicians and pharmacy technician trainees expire on various dates during the year.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.313(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 24, eff. June 14, 2013.

Sec. 568.005. FEES. The board may adopt fees as necessary for the registration of pharmacy technicians and pharmacy technician trainees.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.313(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 25, eff. June 14, 2013.

Sec. 568.006. RATIO OF PHARMACISTS TO PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES. The ratio of pharmacists to pharmacy technicians and pharmacy technician trainees in a Class A pharmacy must be at least one pharmacist for every five pharmacy technicians or pharmacy technician trainees if the Class A pharmacy dispenses not more than 20 different prescription drugs and does not produce intravenous or intramuscular drugs on-site.

Added by Acts 2003, 78th Leg., ch. 1198, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 26, eff. June 14, 2013.

Sec. 568.008. PHARMACY TECHNICIANS IN HOSPITALS WITH CLINICAL PHARMACY PROGRAM. (a) In this section, "clinical pharmacy program" means a program that provides pharmaceutical care services as specified by board rule.

(b) A Class C pharmacy that has an ongoing clinical pharmacy program may allow a pharmacy technician to verify the accuracy of work performed by another pharmacy technician relating to the filling of floor stock and unit dose distribution systems for a patient admitted to the hospital if the patient's orders have previously been reviewed and approved by a pharmacist.

(c) The pharmacist-in-charge of the clinical pharmacy program

shall adopt policies and procedures for the verification process authorized by this section.

(d) A hospital must notify the board before implementing the verification process authorized by this section.

(e) The board shall adopt rules to implement this section, including rules specifying:

(1) the duties that may be verified by another pharmacy technician;

(2) the records that must be maintained for the verification process; and

(3) the training requirements for pharmacy technicians who verify the accuracy of the work of other pharmacy technicians.

Added by Acts 2009, 81st Leg., R.S., Ch. 1128 (H.B. 1924), Sec. 2, eff. June 19, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 27, eff. June 14, 2013.

Sec. 568.009. CHANGE OF ADDRESS OR EMPLOYMENT. Not later than the 10th day after the date of a change of address or employment, a pharmacy technician or a pharmacy technician trainee shall notify the board in writing of the change.

Added by Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 28, eff. June 14, 2013.

#### **CHAPTER 569. REPORTING REQUIREMENTS FOR PROFESSIONAL LIABILITY INSURERS**

Sec. 569.001. DUTY TO REPORT. (a) Every insurer or other entity providing pharmacist's professional liability insurance, pharmacy technician professional and supplemental liability insurance, or druggist's professional liability insurance covering a pharmacist, pharmacy technician, pharmacy technician trainee, or pharmacy license holder in this state shall submit to the board the information described in Section 569.002 at the time prescribed.

(b) The information shall be provided with respect to a notice of claim letter or complaint filed against an insured in a court, if the notice or complaint seeks damages relating to the insured's



conduct in providing or failing to provide appropriate service within the scope of pharmaceutical care or services, and with respect to settlement of a claim or lawsuit made on behalf of the insured.

(c) If a pharmacist, pharmacy technician, pharmacy technician trainee, or pharmacy licensed in this state does not carry or is not covered by pharmacist's professional liability insurance, pharmacy technician professional and supplemental liability insurance, or druggist's professional liability insurance and is insured by a nonadmitted carrier or other entity providing pharmacy professional liability insurance that does not report under this subtitle, the duty to report information under Section 569.002 is the responsibility of the pharmacist, pharmacy technician, pharmacy technician trainee, or pharmacy license holder.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.314(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 29, eff. June 14, 2013.

Sec. 569.002. INFORMATION TO BE REPORTED. (a) The following information must be furnished to the board not later than the 30th day after receipt by the insurer of the notice of claim letter or complaint from the insured:

- (1) the name of the insured and the insured's state pharmacy technician registration number, pharmacy technician trainee registration number, or pharmacist or pharmacy license number;
- (2) the policy number; and
- (3) a copy of the notice of claim letter or complaint.

(b) The board shall, in consultation with the Texas Department of Insurance, adopt rules for reporting additional information as the board may require. Other claim reports required under state and federal law shall be considered in determining the information to be reported, the form of the report, and frequency of reporting under the rules. Additional information that the board may require may include:

- (1) the date of any judgment, dismissal, or settlement;
- and
- (2) whether an appeal has been taken and by which party.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.314(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 30, eff. June 14, 2013.

Sec. 569.003. IMMUNITY FROM LIABILITY. An insurer reporting under this subchapter, its agents or employees, or the board or its employees or representatives are not liable for damages in a suit brought by any person or entity for reporting as required by this subchapter or for any other action taken under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.314(a), eff. Sept. 1, 2001.

Sec. 569.004. RESTRICTION ON USE OF INFORMATION REPORTED. (a) Information submitted to the board under this subchapter and the fact that the information has been submitted to the board may not be:

(1) offered in evidence or used in any manner in the trial of a suit described in this subchapter; or  
(2) used in any manner to determine the eligibility or credentialing of a pharmacy to participate in a health insurance plan defined by the Insurance Code.

(b) Information submitted under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code.

(c) The board shall adopt rules to ensure the confidentiality of information submitted under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.314(a), eff. Sept. 1, 2001.

Sec. 569.005. INVESTIGATION OF REPORT. (a) Except as otherwise provided in this section, a report received by the board under this subchapter is not a complaint for which a board investigation is required.

(b) The board shall review the information relating to a pharmacist, pharmacy technician, pharmacy technician trainee, or pharmacy license holder against whom at least three professional

liability claims have been reported within a five-year period in the same manner as if a complaint against the pharmacist, pharmacy technician, pharmacy technician trainee, or pharmacy license holder had been made under Chapter 555.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.314(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 31, eff. June 14, 2013.

Sec. 569.006. SANCTIONS IMPOSED ON INSURER. The Texas Department of Insurance may impose on any insurer subject to this subtitle sanctions authorized by Chapter 82, Insurance Code, if the insurer fails to report information as required by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.314(a), eff. Sept. 1, 2001.

**SUBTITLE K. PROFESSIONS RELATED TO USE OF CERTAIN MEDICAL EQUIPMENT**  
**CHAPTER 601. MEDICAL RADIOLOGIC TECHNOLOGISTS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 601.001. SHORT TITLE. This chapter may be cited as the Medical Radiologic Technologist Certification Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.002. DEFINITIONS. In this chapter:

(1) "Authorized person" means a person who meets or exceeds the minimum educational standards of the board under Section 601.201.

(2) "Board" means the Texas Board of Health.

(3) "Department" means the Texas Department of Health.

(4) "Direct supervision" means supervision and control by a medical radiologic technologist or a practitioner who:

(A) assumes legal liability for a student employed to perform a radiologic procedure and enrolled in a program that meets the requirements adopted under Section 601.053; and

(B) is physically present during the performance of the

radiologic procedure to provide consultation or direct the action of the student.

(5) "Education program" means clinical training or any other program offered by an organization approved by the board that:

(A) has a specified objective;

(B) includes planned activities for participants; and

(C) uses an approved method for measuring the progress of participants.

(6) "Medical radiologic technologist" means a person certified under this chapter who, under the direction of a practitioner, intentionally administers radiation to another for a medical purpose. The term does not include a practitioner.

(7) "Practitioner" means a person who:

(A) is licensed in this state as a doctor of:

(i) medicine;

(ii) osteopathy;

(iii) podiatry;

(iv) dentistry; or

(v) chiropractic; and

(B) prescribes radiologic procedures for other persons.

(8) "Radiation" means ionizing radiation:

(A) in amounts beyond normal background levels; and

(B) from a source such as a medical or dental

radiologic procedure.

(9) "Radiologic procedure" means a procedure or article, including a diagnostic X-ray or a nuclear medicine procedure, that:

(A) is intended for use in:

(i) the diagnosis of disease or other medical or dental conditions in humans; or

(ii) the cure, mitigation, treatment, or prevention of disease in humans; and

(B) achieves its intended purpose through the emission of radiation.

(10) "Radiologic technology" means the administration of radiation to a person for a medical purpose.

(11) "Registered nurse" means a person licensed by the Texas Board of Nursing to practice professional nursing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 47, eff. September 1, 2007.

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

Sec. 601.051. CERTIFICATION PROGRAM. The bureau of licensing and compliance of the department shall administer the certification program required by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.052. RULES. The board may adopt rules necessary to implement this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.053. MINIMUM STANDARDS. The board by rule shall establish minimum standards for:

- (1) issuing, renewing, suspending, or revoking a certificate issued under this chapter;
- (2) approving curricula and education programs to train individuals, registered nurses, and physician assistants to perform radiologic procedures;
- (3) approving instructors to teach approved curricula or education programs to train individuals to perform radiologic procedures; and
- (4) rescinding an approval described by Subdivision (2) or (3).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.054. APPROVAL AND REVIEW OF CURRICULA AND TRAINING PROGRAMS. (a) An applicant for approval of a curriculum or training program must apply to the department on a form and under rules adopted by the board.

(b) The department shall approve a curriculum or training program that meets the minimum standards adopted under Section 601.053. The department may review the approval annually.

(c) The board may set a fee for approval of a curriculum or training program not to exceed the estimated amount that the department projects to be required for the evaluation of the curriculum or training program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.055. APPROVAL AND REVIEW OF INSTRUCTOR APPROVAL. (a) An applicant for approval of an instructor must apply to the department on a form and under rules adopted by the board.

(b) The department shall approve an instructor who meets the minimum standards adopted under Section 601.053. The department may review the approval annually.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.056. DANGEROUS OR HAZARDOUS PROCEDURES. (a) The board with the assistance of other appropriate state agencies shall identify by rule radiologic procedures, other than radiologic procedures described by Subsection (c), that are dangerous or hazardous and that may be performed only by a practitioner or a medical radiologic technologist certified under this chapter.

(b) In adopting rules under Subsection (a), the board may consider whether the radiologic procedure will be performed by a registered nurse or a licensed physician assistant.

(c) Subsection (a) does not apply to a radiologic procedure involving a dental X-ray machine, including a panarex or other equipment designed and manufactured only for use in dental radiography.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.057. FEES. The board may set fees for examination, certificate issuance, registration of a person under Section 601.202, and application processing under Section 601.203 in amounts that are reasonable to cover the costs of administering this chapter without the use of additional general revenue.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.321(a), eff. Sept. 1, 2001.

Sec. 601.058. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a medical radiologic technologist except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the board may not include a rule that:

- (1) restricts the use of any medium for advertising;
- (2) restricts the use of a medical radiologic technologist's personal appearance or voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the medical radiologic technologist; or
- (4) restricts the medical radiologic technologist's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.322(a), eff. Sept. 1, 2001.

#### **SUBCHAPTER C. CERTIFICATION REQUIREMENTS**

Sec. 601.101. CERTIFICATION REQUIRED. A person may not perform a radiologic procedure unless the person holds a certificate issued under this chapter, except as otherwise provided by Subchapter D.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.102. CLASSES OF CERTIFICATES. (a) The board shall establish classes of certificates to include all radiologic procedures used in the course and scope of the practice of practitioners licensed in this state.

(b) The board may issue to a person:

- (1) a general certificate to perform radiologic procedures;
- or
- (2) a limited certificate that authorizes the person to perform radiologic procedures only on specific parts of the human body.

(c) The board may issue to a person a temporary general certificate or a temporary limited certificate that authorizes the person to perform radiologic procedures for a period not to exceed one year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.103. APPLICATION; APPLICATION FEE. An applicant for a certificate under this chapter must:

- (1) apply to the department on a form and under rules adopted by the board; and
- (2) submit with the application a nonrefundable application fee in an amount determined by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.104. EXAMINATION. The board may prepare and conduct an examination for applicants for a certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.1041. NOTIFICATION OF EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes an examination for a certificate under this chapter, the department shall notify the person of the results of the examination.

(b) If the examination is graded or reviewed by a testing service, the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service. If notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails an examination for a certificate administered under this chapter, the department shall furnish the person with an analysis of the person's performance on the examination.



Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.323(a), eff. Sept. 1, 2001.

Sec. 601.105. ISSUANCE OF CERTIFICATE. (a) The department shall issue a certificate to an applicant who meets the minimum standards for certification established under Section 601.053.

(b) A certificate is valid for a period established by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.106. TRANSFER OF CERTIFICATE PROHIBITED. A certificate issued under this chapter is not transferable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.107. CERTIFICATION BY ENDORSEMENT. In adopting minimum standards for certifying medical radiologic technologists, the board may establish criteria for issuing a certificate to a person licensed or otherwise registered as a medical radiologic technologist by the American Registry of Radiologic Technologists, the American Registry of Clinical Radiography Technologists, or another state whose requirements for licensure or registration were on the date of licensing or registration substantially equal to the requirements of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.108. CONTINUING EDUCATION AND OTHER GUIDELINES. (a) The board may establish guidelines.

(b) The board shall prepare, recognize, or administer continuing education programs for medical radiologic technologists in which participation is required, to the extent required by the board, to keep the person's certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.324(a), eff. Sept. 1,

2001.

Sec. 601.109. PROVISIONAL CERTIFICATE. (a) The board may issue a provisional certificate to an applicant currently licensed or certified in another jurisdiction who seeks certification in this state and who:

(1) has been licensed or certified in good standing as a medical radiologic technologist for at least two years in another jurisdiction, including a foreign country, that has licensing or certification requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the board relating to the practice of radiologic technology; and

(3) is sponsored by a medical radiologic technologist certified by the board under this chapter with whom the provisional certificate holder will practice during the time the person holds a provisional certificate.

(b) The board may waive the requirement of Subsection (a)(3) for an applicant if the board determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional certificate is valid until the date the board approves or denies the provisional certificate holder's application for a certificate. The board shall issue a certificate under this chapter to the provisional certificate holder if:

(1) the provisional certificate holder is eligible to be certified under Section 601.107; or

(2) the provisional certificate holder passes the part of the examination under Section 601.104 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of radiologic technology in this state and:

(A) the board verifies that the provisional certificate holder meets the academic and experience requirements for a certificate under this chapter; and

(B) the provisional certificate holder satisfies any other licensing requirements under this chapter.

(d) The board must approve or deny a provisional certificate holder's application for a certificate not later than the 180th day after the date the provisional certificate is issued. The board may extend the 180-day period if the results of an examination have not

been received by the board before the end of that period.

(e) The board may establish a fee for a provisional certificate in an amount reasonable and necessary to cover the cost of issuing the certificate.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.325(a), eff. Sept. 1, 2001.

Sec. 601.110. CERTIFICATE EXPIRATION. (a) Not later than the 30th day before the date a person's certificate is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

(b) The board by rule may adopt a system under which certificates expire on various dates during the year. For the year in which the certificate expiration date is changed, the department shall prorate certificate fees on a monthly basis so that each certificate holder pays only that portion of the certificate fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.323(b), eff. Sept. 1, 2001.

Sec. 601.111. CERTIFICATE RENEWAL PROCEDURE. (a) A person who is otherwise eligible to renew a certificate may renew an unexpired certificate by paying the required renewal fee to the department before the expiration date of the certificate. A person whose certificate has expired may not engage in activities that require a certificate until the certificate has been renewed.

(b) A person whose certificate has been expired for 90 days or less may renew the certificate by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose certificate has been expired for more than 90 days but less than one year may renew the certificate by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose certificate has been expired for one year or

more may not renew the certificate. The person may obtain a new certificate by complying with the requirements and procedures, including the examination requirements, for an original certificate.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.323(c), eff. Sept. 1, 2001.

Sec. 601.112. RENEWAL OF CERTIFICATE BY OUT-OF-STATE PRACTITIONER. (a) A person who held a certificate in this state, moved to another state, and currently holds a certificate or license and has been in practice in the other state for the two years preceding the date of application may obtain a new certificate without reexamination.

(b) The person must pay to the department a fee that is equal to two times the normally required renewal fee for the certificate.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.323(c), eff. Sept. 1, 2001.

#### **SUBCHAPTER D. EXEMPTIONS FROM CERTIFICATION AND REGISTRATION REQUIREMENTS**

Sec. 601.151. PRACTITIONERS. A person is not required to hold a certificate issued under this chapter to perform a radiologic procedure if the person is a practitioner and performs the procedure in the course and scope of the profession for which the person holds a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.152. PERSON SUPERVISED BY PRACTITIONER. A person is not required to hold a certificate issued under this chapter to perform a radiologic procedure if:

- (1) the person performs the procedure under the instruction or direction of a practitioner; and
- (2) the person and the practitioner comply with rules adopted under Section 601.252.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.153. PERSON SUPERVISED BY DENTIST. A person is not required to hold a certificate issued under this chapter to perform a radiologic procedure if:

(1) the procedure is performed under the supervision of a dentist; and

(2) the person:

(A) is registered with the State Board of Dental Examiners; and

(B) complies with rules adopted by that board under Section 601.252.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.154. HOSPITAL PROCEDURES. A person is not required to hold a certificate issued under this chapter to perform a radiologic procedure in a hospital if:

(1) the hospital participates in the federal Medicare program or is accredited by the Joint Commission on Accreditation of Hospitals; and

(2) the person has completed a training program approved by the board under Section 601.201.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.155. STUDENTS. A person is not required to hold a certificate issued under this chapter or to comply with the registration requirements adopted under Section 601.252 if the person:

(1) is a student enrolled in a training program that meets the minimum standards adopted under Section 601.201; and

(2) is performing a radiologic procedure in an academic or clinical setting as part of the training program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.156. PROCEDURE PERFORMED AS PART OF CONTINUING

EDUCATION PROGRAM. A person is not required to hold a certificate issued under this chapter or to comply with the registration requirements adopted under Section 601.252 if the person is:

(1) licensed or otherwise registered as a medical radiologic technologist by another state, the American Registry of Radiologic Technologists, the American Registry of Clinical Radiography Technologists, or a professional organization or association recognized by the board;

(2) enrolled in a continuing education program that meets the requirements adopted under Section 601.108; and

(3) performing a radiologic procedure as part of the continuing education program for not more than 10 days.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER E. MANDATORY TRAINING FOR CERTAIN AUTHORIZED PERSONS**

Sec. 601.201. MANDATORY TRAINING. (a) The minimum standards of the board for approval of a curriculum or an education program under Section 601.053 must include mandatory training guidelines for a person, other than a practitioner or a medical radiologic technologist, who intentionally uses radiologic technology, including a person who does not hold a certificate issued under this chapter and who is performing a radiologic procedure at a hospital or under the direction of a practitioner, other than a dentist.

(b) The training program approved by the board must contain an appropriate number of hours of education that must be completed before the person may perform a radiologic procedure.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.202. REGISTRY. The board by rule shall establish a registry of persons required to comply with this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.203. HARDSHIP EXEMPTION. (a) On application to the department by a hospital, a federally qualified health center as defined by 42 U.S.C. Section 1396d, or a practitioner, the department

shall exempt the applicant from the requirements of Section 601.201 in employing a person certified under this chapter or trained as required by Section 601.201 if the applicant shows a hardship in employing a person certified under this chapter or trained as required by Section 601.201.

(b) The following conditions are considered to be a hardship for the purposes of Subsection (a):

- (1) that the applicant reports an inability to attract and retain medical radiologic technologists;
- (2) that the applicant is located at a great distance from a school of medical radiologic technology;
- (3) that there is a list of qualified persons who have applied to a school of medical radiologic technology whose admissions are pending because of a lack of faculty or space;
- (4) that the school of medical radiologic technology produces an insufficient number of graduates in medical radiologic technology to meet the needs of the applicant; or
- (5) any other criteria determined by department rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER F. OTHER LICENSING AGENCIES; RULEMAKING AND REGISTRATION  
REQUIREMENTS**

Sec. 601.251. APPLICABILITY. This subchapter applies to the:

- (1) Texas Board of Nursing;
- (2) Texas Board of Chiropractic Examiners;
- (3) State Board of Dental Examiners;
- (4) Texas Medical Board; and
- (5) Texas State Board of Podiatric Medical Examiners.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 48, eff. September 1, 2007.

Sec. 601.252. REQUIREMENT TO ADOPT RULES. (a) Each agency subject to this subchapter, other than the Texas Board of Nursing, shall adopt rules to regulate the manner in which a person who holds a license issued by the agency may order, instruct, or direct another

authorized person in the performance of a radiologic procedure.

(b) Rules adopted under Subsection (a) must allow a practitioner the right to delegate certain designated radiologic procedures to a person not certified under this chapter if the delegation is allowed by the regulatory board that licenses the practitioner.

(c) Rules adopted under this section must:

(1) require an authorized person, other than a registered nurse, to register with the agency that licenses the practitioner under whom the person performs radiologic procedures;

(2) establish reasonable and necessary fees to cover the administrative costs incurred by the agency in administering a registration program created under this subsection;

(3) establish grounds for the suspension, revocation, or nonrenewal of a registration issued under this subsection; and

(4) establish standards, in addition to those required by this chapter, for training and supervising the operators of the equipment.

(d) In adopting rules under Subsection (c), an agency may take into account whether the radiologic procedure will be performed by a registered nurse.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 49, eff. September 1, 2007.

Sec. 601.253. TEXAS BOARD OF NURSING. (a) The Texas Board of Nursing may adopt rules governing registered nurses performing radiologic procedures under Section 601.151 or 601.154 and shall require registered nurses performing radiologic procedures under Section 601.151 to register with the Texas Board of Nursing and to identify the practitioner ordering the procedures.

(b) The Texas Board of Nursing shall notify the agency licensing the practitioner that the nurse has registered under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 50, eff.



September 1, 2007.

**SUBCHAPTER G. CERTIFICATE DENIAL AND DISCIPLINARY ACTION**

Sec. 601.301. CERTIFICATE DENIAL AND DISCIPLINARY ACTION. The department may, for a violation of this chapter or a rule adopted under this chapter:

- (1) suspend, revoke, or refuse to renew a certificate;
- (2) rescind approval of a curriculum, training program, or instructor;
- (3) deny an application for certification or approval;
- (4) issue a reprimand; or
- (5) place the offender's certificate on probation and require compliance with a requirement of the department, including requiring the offender to:
  - (A) submit to medical or psychological treatment;
  - (B) meet additional education requirements;
  - (C) pass an examination; or
  - (D) work under the supervision of a medical radiologic technologist or other practitioner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.302. GROUNDS FOR CERTIFICATE DENIAL OR DISCIPLINARY ACTION. The department may take action under Section 601.301 against a person subject to this chapter for:

- (1) obtaining or attempting to obtain a certificate issued under this chapter by bribery or fraud;
- (2) making or filing a false report or record made in the person's capacity as a medical radiologic technologist;
- (3) intentionally or negligently failing to file a report or record required by law;
- (4) intentionally obstructing or inducing another to intentionally obstruct the filing of a report or record required by law;
- (5) engaging in unprofessional conduct, including the violation of the standards of practice of radiologic technology established by the board;
- (6) developing an incapacity that prevents the practice of

radiologic technology with reasonable skill, competence, and safety to the public as the result of:

- (A) an illness;
  - (B) drug or alcohol dependency; or
  - (C) another physical or mental condition or illness;
- (7) failing to report to the department the violation of this chapter by another person;
- (8) employing, for the purpose of applying ionizing radiation to a person, a person who is not certified under or in compliance with this chapter;
- (9) violating this chapter, a rule adopted under this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department;
- (10) having a certificate revoked, suspended, or otherwise subjected to adverse action or being denied a certificate by another certification authority in another state, territory, or country; or
- (11) being convicted of or pleading nolo contendere to a crime directly related to the practice of radiologic technology.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.303. STUDENT PRACTICING WITHOUT DIRECT SUPERVISION. The department may take disciplinary action against a student for intentionally practicing radiologic technology without direct supervision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.304. ADMINISTRATIVE PROCEDURE. The procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by:

- (1) department rules for a contested case hearing; and
- (2) Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.305. REINSTATEMENT. (a) A person subject to

disciplinary action under Section 601.302(6) shall, at reasonable intervals, be given an opportunity to demonstrate that the person is able to resume the practice of radiologic technology.

(b) The board may not reinstate a certificate to a holder or issue a certificate to an applicant previously denied a certificate unless the board is satisfied that the holder or applicant has complied with requirements set by the board and is capable of engaging in the practice of radiologic technology.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.306. EMERGENCY SUSPENSION. (a) The department shall temporarily suspend the certificate of a certificate holder if the department determines from the evidence or information presented to it that continued practice by the certificate holder would constitute a continuing and imminent threat to the public welfare.

(b) A certificate may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 13, eff. Sept. 1, 2003.

#### **SUBCHAPTER H. ADMINISTRATIVE PENALTY**

Sec. 601.351. IMPOSITION OF PENALTY. The department may impose an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.352. AMOUNT OF PENALTY. (a) The amount of the administrative penalty may not exceed \$1,000 for each violation. Each day of a continuing violation is a separate violation.

- (b) The amount of the penalty shall be based on:
- (1) the seriousness of the violation;
  - (2) the history of previous violations;
  - (3) the amount necessary to deter a future violation;
  - (4) efforts made to correct the violation; and
  - (5) any other matter that justice may require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.353. NOTICE OF VIOLATION AND PENALTY. (a) If, after investigating a possible violation and the facts surrounding that possible violation, the department determines that a violation occurred, the department shall give written notice of the violation to the person alleged to have committed the violation.

- (b) The notice must:
- (1) include a brief summary of the alleged violation;
  - (2) state the amount of the proposed administrative penalty; and
  - (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.354. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person may:

- (1) accept the department's determination, including the proposed administrative penalty; or
- (2) make a written request for a hearing on that determination.

(b) If the person accepts the department's determination, the commissioner of public health or that commissioner's designee by order shall approve the determination and impose the proposed penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.355. HEARING. (a) If the person timely requests a hearing, the department shall:

- (1) set a hearing;
- (2) give written notice of the hearing to the person; and
- (3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and promptly issue to the commissioner of public health or that commissioner's designee a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.356. DECISION BY COMMISSIONER. (a) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner of public health or the commissioner's designee by order may determine that:

- (1) a violation has occurred and may impose an administrative penalty; or
- (2) a violation did not occur.

(b) The department shall give notice of the order to the person. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the amount of any penalty imposed; and
- (3) a statement of the right of the person to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.357. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date on which the order becomes final, the person shall:

- (1) pay the administrative penalty;
- (2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(c) If the department receives a copy of an affidavit as provided by Subsection (b)(2), the department may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.358. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.359. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may

uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.360. REMITTANCE OF PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order the appropriate amount, plus accrued interest, be remitted to the person by the department if the person paid the penalty under Section 601.357(a)(2); or

(2) if the person paid the penalty under Section 601.357(b)(1)(A) or posted a supersedeas bond, order the department to:

(A) execute a complete release of the escrow account or bond, as appropriate, if the penalty is not imposed; or

(B) release the escrow account or bond, as appropriate, after the reduced penalty has been paid from the account or by the person.

(b) The interest paid under Subsection (a)(1) is accrued at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.361. EXPENSES AND COSTS. (a) In this section, "reasonable expenses and costs" includes expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

(b) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person.

The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of the commissioner of public health or that commissioner's designee requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

(c) If the attorney general brings an action against a person to enforce an administrative penalty assessed under this chapter and the person is found liable for an administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.362. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER I. ENFORCEMENT AND OTHER PENALTY PROVISIONS**

Sec. 601.401. INJUNCTION; CIVIL PENALTY. (a) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted under this chapter, the board or the department may bring an action to enjoin the continued or threatened violation.

(b) A person who violates this chapter or a rule adopted under this chapter is subject to a civil penalty in an amount not to exceed \$1,000 for each day of violation.

(c) At the request of the board or the department, the attorney general shall bring an action in the name of the state for the injunctive relief, to recover the civil penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.402. CRIMINAL OFFENSES. (a) A person who is required to be certified under this chapter commits an offense if the person:

(1) knowingly administers a radiologic procedure to another person without holding a valid certificate issued by the department;



(2) practices radiologic technology without holding a certificate under this chapter;

(3) uses or attempts to use a suspended or revoked certificate;

(4) knowingly allows a student enrolled in an education program to perform a radiologic procedure without direct supervision;

(5) obtains or attempts to obtain a certificate through bribery or fraudulent misrepresentation;

(6) uses the title or name "certified medical radiologic technologist" or any other name or title that implies the person is certified to practice radiologic technology, unless the person is certified under this chapter;

(7) knowingly conceals information relating to enforcement of this chapter or a rule adopted under this chapter; or

(8) employs a person not certified by or in compliance with this chapter for the purpose of applying ionizing radiation to a person.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## **CHAPTER 602. MEDICAL PHYSICISTS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 602.001. SHORT TITLE. This chapter may be cited as the Medical Physics Practice Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Licensure for Professional Medical Physicists in the Texas Department of Health.

(2) "Department" means the Texas Department of Health.

(3) "Diagnostic radiological physics" means the branch of medical physics that deals with:

(A) the diagnostic application of:

(i) roentgen rays;

(ii) gamma rays from sealed sources;

(iii) ultrasonic radiation; or

(iv) radiofrequency radiation; and

(B) the use of equipment associated with the production and use of those types of radiation.

(4) "License" means a certificate issued by the board that authorizes the holder to engage in the practice of medical physics.

(5) "Licensed medical physicist" means a person who holds a license.

(6) "Medical health physics" means the branch of medical physics that deals with the safe use of roentgen rays, gamma rays, electron or other charged particle beams, neutrons, radionuclides, and radiation from sealed radionuclide sources for both diagnostic and therapeutic purposes in humans and the use of equipment required to perform appropriate radiation tests and measurements.

(7) "Medical nuclear physics" means the branch of medical physics that deals with:

(A) the therapeutic and diagnostic application of radionuclides, except those used in sealed sources for therapeutic purposes; and

(B) the use of equipment associated with the production and use of radionuclides.

(8) "Medical physics" means the branch of physics that is associated with the practice of medicine, including the field of radiological physics.

(9) "Practice of medical radiological physics" means the use of principles and accepted protocols of physics to assure the correct quality, quantity, and placement of radiation during the performance of a radiological procedure prescribed by a practitioner that will protect the patient and others from harmful excessive radiation. The term includes:

(A) radiation beam calibration and characterization;

(B) quality assurance;

(C) instrument specification;

(D) acceptance testing;

(E) shielding design;

(F) protection analysis on radiation-emitting equipment and radiopharmaceuticals; and

(G) consultation with a physician to assure accurate radiation dosage to a specific patient.

(10) "Practitioner" means a person who:

(A) is licensed in this state as a doctor of:

(i) medicine;

- (ii) osteopathy;
- (iii) podiatry;
- (iv) dentistry; or
- (v) chiropractic; and

(B) prescribes radiologic procedures for other persons.

(11) "Radiation" means ionizing or nonionizing radiation above background levels used to perform a diagnostic or therapeutic medical or dental radiological procedure.

(12) "Radiological physics" means the branch of medical physics that includes:

- (A) diagnostic radiological physics;
- (B) medical health physics;
- (C) medical nuclear physics; and
- (D) therapeutic radiological physics.

(13) "Radiological procedure" means a test, measurement, calculation, or radiation exposure that:

- (A) is used to diagnose or treat a disease or another human medical or dental condition; and
- (B) includes the use of:
  - (i) diagnostic radiation;
  - (ii) nuclear magnetic resonance;
  - (iii) nuclear medicine procedures; or
  - (iv) therapeutic radiation.

(14) "Therapeutic radiological physics" means the branch of medical physics that deals with:

- (A) the therapeutic application of:
  - (i) roentgen rays;
  - (ii) gamma rays;
  - (iii) electron and other charged particle beams;
  - (iv) neutrons; or
  - (v) radiation from a radionuclide source; and
- (B) the use of equipment associated with the production and use of those types of radiation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER B. TEXAS BOARD OF LICENSURE FOR PROFESSIONAL MEDICAL  
PHYSICISTS**

Sec. 602.051. BOARD. The Texas Board of Licensure for

Professional Medical Physicists is the division of the department responsible for regulating the practice of medical physics.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.052. APPOINTMENT OF BOARD MEMBERS. (a) The board consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) five licensed medical physicists, with at least one board certified representative of each of the following specialties:

- (A) diagnostic radiological physics;
- (B) medical health physics;
- (C) medical nuclear physics; and
- (D) therapeutic radiological physics;

(2) three physicians, with a board certified representative of each of the following specialties:

- (A) diagnostic radiology;
- (B) nuclear medicine; and
- (C) radiation therapy; and

(3) one member who represents the public.

(b) The governor shall appoint the board's medical physicist members from lists of candidates who have practiced medical physics for the period prescribed by Section 602.053(b) submitted by specialty from the following groups on the governor's request:

- (1) the Southwest Chapter of the American Association of Physicists in Medicine;
- (2) Region VIII of the American College of Medical Physics;
- (3) the South Texas Chapter of the Health Physics Society;
- (4) the Southwestern Chapter of the Society of Nuclear Medicine; and
- (5) the Texas Radiological Society.

(c) The governor shall appoint the board's physician members from lists of candidates who have practiced medicine in the designated specialties for the period prescribed by Section 602.053(c) submitted by specialty from the following groups on the governor's request:

- (1) the Southwestern Chapter of the Society of Nuclear Medicine; and
- (2) the Texas Radiological Society.

(d) Appointments to the board shall be made without regard to the race, color, disability, creed, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.326(a), eff. Sept. 1, 2001.

Sec. 602.053. BOARD MEMBERSHIP; ELIGIBILITY. (a) A board member must be a United States citizen.

(b) A medical physicist board member must be a resident of the state for a period of not less than four years before appointment and must have practiced medical physics for not less than six years preceding appointment.

(c) A physician board member must be licensed to practice medicine in the state and must have practiced a specialty listed by Section 602.052(a)(2) for not less than four years preceding appointment. The appropriate specialty boards for nuclear medicine are the American Board of Nuclear Medicine and the American Board of Radiology.

(d) A public board member must be a resident of the state for a period of not less than four years preceding appointment. A person may not be a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of medical physics;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.327(a), eff. Sept. 1, 2001.

Sec. 602.054. MEMBERSHIP RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of medicine; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of medicine.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.328(a), eff. Sept. 1, 2001.

Sec. 602.055. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms. The terms of three members expire on February 1 of each odd-numbered year.

(b) A person is not eligible to serve more than one consecutive six-year term. A person may serve consecutively one six-year term and a shorter term that arises because of filling an unexpired vacancy.

(c) If a vacancy occurs on the board, the governor shall appoint a person to serve for the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of appointment the qualifications required by Section 602.053 for appointment to the board;

(2) does not maintain during service on the board the qualifications required by Section 602.053 for appointment to the board;

(3) is ineligible for membership under Section 602.053(d) or Section 602.054;

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

(5) does not attend at least half of the regularly scheduled board meetings held in a calendar year, excluding meetings held while the person was not a board member, without an excuse approved by the board.

(b) A board action taken while a ground for removal of a member of the board exists is not invalid for that reason.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.329(a), eff. Sept. 1, 2001.

Sec. 602.057. COMPENSATION. A member of the board is entitled to a per diem in an amount set by the legislature for each day that the member engages in the business of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.058. BOARD OFFICERS; MEETINGS. (a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor. At the first regularly scheduled meeting of each calendar year, the board shall elect from its members an assistant presiding officer.

(b) The board shall hold a meeting at least once a year and at

other times in accordance with board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.330(a), eff. Sept. 1, 2001.

Sec. 602.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

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

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

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.328(b), eff. Sept. 1, 2001.



**SUBCHAPTER C. EXECUTIVE SECRETARY AND PERSONNEL**

Sec. 602.101. EXECUTIVE SECRETARY. The commissioner of health, after consulting with the board, shall designate an employee of the department to serve as the board's executive secretary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.102. EXECUTIVE SECRETARY POWERS AND DUTIES. (a) The executive secretary shall:

- (1) administer the board's licensing activities;
- (2) keep full and accurate minutes of the board's transactions and procedures;
- (3) act as custodian of the board's records;
- (4) prepare and recommend to the board plans and procedures necessary to implement this chapter, including rules and proposals on administrative procedures consistent with this chapter;
- (5) exercise general supervision over persons employed by the department in the administration of this chapter;
- (6) be responsible for complaint investigations and for presentation of formal complaints;
- (7) attend all board meetings;
- (8) manage the board's correspondence;
- (9) make or arrange for necessary inspections and investigations;
- (10) obtain or prepare reports and information as directed or authorized by the board; and
- (11) perform other duties prescribed by this chapter and the department.

(b) The executive secretary is not entitled to vote at board meetings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.103. PERSONNEL AND FACILITIES. (a) The department shall provide the basic personnel and facilities required to administer this chapter. The department personnel administering this chapter act as agents of the board.

(b) The department by agreement may secure services the department considers necessary and may provide for compensation for those services.

(c) Within available appropriations, the department may employ and compensate, on a full-time or part-time basis, the professional consultants, technical assistants, and employees necessary to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.104. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the commissioner of public health, the executive secretary, and the staff of the department.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.331(a), eff. Sept. 1, 2001.

Sec. 602.105. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The commissioner of public health or the commissioner's designee shall provide to members of the board, as often as necessary, information regarding the requirements for office under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.333(a), eff. Sept. 1, 2001.

#### **SUBCHAPTER D. BOARD POWERS AND DUTIES**

Sec. 602.151. GENERAL POWERS AND DUTIES. The board shall:

(1) adopt and revise, with the department's approval, rules reasonably necessary to properly perform its duties under this chapter;

(2) adopt an official seal;

(3) determine the qualifications and fitness of each applicant for a license or license renewal;

- (4) charge a fee, in an amount necessary to cover the costs incurred by the board in administering this chapter, for processing and issuing or renewing a license;
- (5) conduct examinations for licensure;
- (6) issue, deny, renew, revoke, and suspend licenses;
- (7) adopt and publish a code of ethics; and
- (8) conduct hearings on complaints concerning violations of this chapter or rules adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.152. CONSUMER INTEREST INFORMATION; COMPLAINTS. (a) The board shall prepare information of consumer interest describing the regulatory functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall maintain a file on each written complaint filed with the board. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the board;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint.

(c) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(d) The board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.332(a), eff. Sept. 1, 2001.

Sec. 602.1521. PUBLIC PARTICIPATION. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.330(b), eff. Sept. 1, 2001.

Sec. 602.1525. SUBPOENAS. (a) In an investigation of a complaint filed with the board, the board may request that the commissioner of public health or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The board may delegate the authority granted under Subsection (a) to the executive secretary of the board.

(f) The board shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the board may charge for copies of its records.

(g) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

(h) All information and materials subpoenaed or compiled by the board in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its agents or employees who are involved in

discipline of the holder of a license, except that this information may be disclosed to:

- (1) persons involved with the board in a disciplinary action against the holder of a license;
- (2) professional medical physics licensing or disciplinary boards in other jurisdictions;
- (3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges by the board against a holder of a license, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.332(b), eff. Sept. 1, 2001.

Sec. 602.153. CONTINUING EDUCATION. The board shall recognize, prepare, or administer continuing education programs for persons licensed by the board. A license holder must participate in the programs to the extent required by the board to keep the person's license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.331(b), eff. Sept. 1, 2001.

Sec. 602.154. RULES RELATING TO ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the board may not include a rule that:

- (1) restricts the use of any medium for advertising;
- (2) restricts the use of a license holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder; or

(4) restricts the license holder's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.332(c), eff. Sept. 1, 2001.

#### **SUBCHAPTER E. LICENSE REQUIREMENTS**

Sec. 602.201. LICENSE REQUIRED; SPECIALTY LICENSE. (a) A person may not practice medical physics without a license.

(b) A medical physicist may not practice the following specialties unless the person holds a license for that specialty:

- (1) diagnostic radiological physics;
- (2) medical health physics;
- (3) medical nuclear physics; or
- (4) therapeutic radiological physics.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.202. EXEMPTIONS FROM LICENSE REQUIREMENT. This chapter does not apply to:

- (1) a practitioner engaged in the performance of radiological procedures;
- (2) a person certified as a medical radiological technologist practicing under Chapter 601;
- (3) a person who performs radiological procedures under a practitioner's instruction or supervision;
- (4) a person performing beam calibration and characterization, quality assurance, instrument specification, acceptance testing, shielding design, or protection analysis on radiation-emitting equipment or radiopharmaceuticals for procedures not involved with the diagnosis or treatment of a disease or another human medical or dental condition; or
- (5) a person who is:
  - (A) employed by a state or federal regulatory agency;
 and
  - (B) performing duties in the scope of the person's employment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.203. LICENSE APPLICATION. (a) A person may apply for a license by filing an application with the board.

(b) An application must be on a form prescribed by the board and must include:

(1) evidence of relevant work experience, including a description of the duties performed;

(2) an official transcript from the college or university granting the applicant's degree;

(3) a statement of the medical physics specialty for which the application is submitted;

(4) three professional references; and

(5) any additional information required by board rule.

(c) The applicant must submit with the application the fee prescribed by the board.

(d) The board or the executive secretary may require an applicant to appear before the board or secretary to present additional information in support of the application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.204. BOARD CONSIDERATION OF APPLICATION. (a) The presiding officer of the board shall review each completed license application received by the board and shall prepare and circulate among board members a summary of the application and a recommendation for board action.

(b) The board may reject, approve, or withdraw, or suspend consideration of, the application until the board receives the results of an examination taken under Section 602.206.

(c) A license applicant may, before the board issues or renews a license, request in writing that the board withdraw its consideration of the application. The board shall retain the applicant's application and fee. To reapply, the applicant must submit a new application and fee.

(d) The board by rule shall establish procedures and requirements for an appeal to review the board's decision on a license application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.205. TEMPORARY LICENSE. The board may issue a temporary license to an applicant who has satisfied the educational requirements for a license but who has not yet completed the experience and examination requirements of Section 602.207.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.206. EXAMINATION. (a) The board shall administer a written examination for a license to qualified applicants at least two times each year.

(b) Each applicant shall take the examination for the medical physics specialty requested by the applicant in the license application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.207. ELIGIBILITY FOR EXAMINATION. (a) To be eligible to take an examination for a license, an applicant must:

(1) have a master's or doctoral degree from an accredited college or university that signifies the completion of courses approved by the board in physics, medical physics, biophysics, radiological physics, medical health physics, or equivalent courses;

(2) have demonstrated, to the board's satisfaction, completion of at least two years of full-time work experience in the five years preceding the date of application in the medical physics specialty for which application is made; and

(3) submit a completed application as required by Section 602.203.

(b) Work experience in more than one specialty must include six additional months for each additional specialty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.208. EXAMINATION RESULTS; REEXAMINATION. (a) The board shall notify each examinee of the results of the examination



not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national or state testing service, the board shall notify each examinee of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.

(b) If the board learns that the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay not later than the 90th day.

(c) If requested by a person who fails the examination, the board shall provide to the person an analysis of the person's performance on the examination.

(d) The board by rule shall establish procedures and requirements for reexamination of an applicant who fails the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.209. LICENSE ISSUANCE. (a) The board may issue a license to an eligible applicant who:

- (1) passes the examination under Section 602.206; and
- (2) meets all other license requirements.

(b) Not later than the 30th day after the date the board makes a decision on an application submitted under Section 602.203, the board shall notify the applicant of the decision.

(c) If the board approves the application, the board shall issue a license to the applicant. If the board denies the application, the board shall include in the notice of decision a description of the areas of deficiency.

(d) Each license issued under this chapter must be uniform, except that each license must indicate:

- (1) the license holder's name;
- (2) the serial number assigned to the license holder; and
- (3) the medical physics specialty the license holder may practice.

(e) A license certificate is the board's property and must be surrendered on demand.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.210. LICENSE TERM AND RENEWAL. (a) A license is valid for one year from the date granted and may be renewed annually.

(b) The board by rule may adopt a system under which licenses expire on various dates during the year.

(c) A person may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license.

(d) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the board the required renewal fee and a penalty fee in an amount equal to one-half of the amount of the renewal fee.

(e) If a person's license has been expired for longer than 90 days but less than two years, the person may renew the license by paying to the board the renewal fee that was due at expiration and a penalty fee in an amount equal to the amount of the renewal fee.

(f) If a person's license has been expired for two years or longer, the person may not renew the license. To obtain a new license, a person must comply with the application requirements of this chapter and must submit to the board:

(1) a supplemental experience record as required by the board;

(2) a description of professional activities undertaken during the expiration period;

(3) a list of current professional references; and

(4) a transcript for any degree or college credit earned since the person's previous license application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.211. LICENSE BY ENDORSEMENT OR RECIPROCITY. (a) On receipt of an application and fee under Section 602.203, the board may waive any prerequisite for obtaining a license to a person who holds a license to practice medical or radiological physics in another state, territory, or jurisdiction acceptable to the board that has requirements for the licensing of medical or radiological physicists that are substantially the same as the requirements of this chapter.

(b) The board may waive any prerequisite for obtaining a license to practice medical physics in this state for an applicant

who holds a license issued by another jurisdiction with which this state has a reciprocity agreement. The board may make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.334(a), eff. Sept. 1, 2001.

Sec. 602.212. LICENSE HOLDER DUTIES. A license holder shall:

- (1) publicly display the license holder's license in an appropriate manner; and
- (2) report immediately to the board any change in the license holder's address.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.213. PROVISIONAL LICENSE. (a) The board may issue a provisional license to an applicant currently licensed or certified in another jurisdiction who seeks a license in this state and who:

- (1) has been licensed or certified in good standing as a practitioner of medical or radiologic physics for at least two years in another jurisdiction, including a foreign country, that has licensing or certification requirements substantially equivalent to the requirements of this chapter;

- (2) has passed a national or other examination recognized by the board relating to the practice of medical or radiologic physics; and

- (3) is sponsored by a person licensed by the board under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The board may waive the requirement of Subsection (a)(3) for an applicant if the board determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this chapter to the provisional license holder if:

- (1) the provisional license holder is eligible to be

certified under Section 602.211; or

(2) the provisional license holder passes the part of the examination under Section 602.206 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of medical physics in this state and:

(A) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this chapter; and

(B) the provisional license holder satisfies any other licensing requirements under this chapter.

(d) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(e) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.335(a), eff. Sept. 1, 2001.

#### **SUBCHAPTER F. LICENSE DENIAL AND DISCIPLINARY ACTION**

Sec. 602.251. GROUND FOR LICENSE DENIAL OR DISCIPLINARY ACTION. The board shall refuse to issue or renew a license, suspend or revoke a license, or reprimand a license holder for:

(1) obtaining or renewing a license by means of fraud, misrepresentation, or concealment of a material fact;

(2) having previously applied for or held a license issued by the licensing authority of another state, territory, or jurisdiction that was denied, suspended, or revoked by that licensing authority;

(3) engaging in unprofessional conduct that endangered or is likely to endanger the health, safety, or welfare of the public as defined by board rule;

(4) violating this chapter, a lawful order or rule of the board, or the board's code of ethics; or

(5) being convicted of:

(A) a felony; or

(B) a misdemeanor involving moral turpitude or that directly relates to the person's duties as a licensed medical physicist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.336(a), eff. Sept. 1, 2001.

Sec. 602.252. ADMINISTRATIVE PROCEDURE. Chapters 2001 and 2002, Government Code, and board rules for a contested hearing apply to a proceeding by the board under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.253. PROBATION. The board may place on probation a person whose license is suspended. If a license suspension is probated, the board may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board;

or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.336(b), eff. Sept. 1, 2001.

Sec. 602.254. EMERGENCY SUSPENSION. (a) The board or a three-member committee of board members designated by the board shall temporarily suspend the license of a license holder if the board or committee determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously

with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 14, eff. Sept. 1, 2003.

#### **SUBCHAPTER G. ENFORCEMENT**

Sec. 602.301. INJUNCTION. The board shall prosecute or file suit to enjoin a violation of this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.3015. CIVIL PENALTY. (a) A person who violates this chapter or a rule or order adopted by the board under this chapter is liable for a civil penalty not to exceed \$5,000 a day.

(b) At the request of the board, the attorney general shall bring an action to recover a civil penalty authorized under this section.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 15, eff. Sept. 1, 2003.

Sec. 602.302. OFFENSE. (a) A person commits an offense if the person:

(1) practices medical physics without holding a license under this chapter;

(2) practices a specialty of medical physics without holding a license for the specialty;

(3) practices medical physics in violation of this chapter;  
or

(4) uses in any manner letters, terminology, symbols, or signs to indicate or imply that the person is qualified or licensed

to practice medical physics in a manner for which the person is not licensed under this chapter.

(b) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 326, Sec. 16, eff. Sept. 1, 2003.

#### **SUBCHAPTER H. ADMINISTRATIVE PENALTY**

Sec. 602.351. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The board may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

(b) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

(c) The amount of the penalty may not exceed \$500 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$2,500.

(d) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the threat to health or safety caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) whether the violator demonstrated good faith, including, when applicable, whether the violator made good faith efforts to correct the violation; and
- (6) any other matter that justice may require.

(e) If the executive secretary determines that a violation occurred, the executive secretary shall give written notice of the report by certified mail to the person.

(f) The notice under Subsection (e) must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) Within 20 days after the date the person receives the

notice under Subsection (e), the person in writing may:

(1) accept the determination and recommended penalty of the executive secretary; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the board by order shall approve the determination and impose the recommended penalty.

(i) If the person requests a hearing, the board shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(j) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(k) Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may determine that:

(1) a violation occurred and impose a penalty; or

(2) a violation did not occur.

(l) The notice of the board's order under Subsection (k) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.337(a), eff. Sept. 1, 2001.

Sec. 602.352. PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an order of the board under Section 602.351(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the board's order contesting the occurrence of the violation, the amount of the penalty, or both.



(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that is:

(i) for the amount of the penalty; and

(ii) effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the board by certified mail.

(c) If the board receives a copy of an affidavit under Subsection (b)(2), the board may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(d) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected. The attorney general may sue to collect the penalty.

(e) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(f) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

(g) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final. The interest accrues at the rate charged on loans to

depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(h) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.337(a), eff. Sept. 1, 2001.

## CHAPTER 603. PERFUSIONISTS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 603.001. SHORT TITLE. This chapter may be cited as the Licensed Perfusionists Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 603.002. DEFINITIONS. In this chapter:

- (1) "Commissioner" means the commissioner of state health services.
- (2) "Committee" means the Texas State Perfusionist Advisory Committee.
- (3) "Department" means the Department of State Health Services.
- (4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 1, eff. September 1, 2005.

Sec. 603.003. PRACTICE OF PERFUSION. (a) In this section:

- (1) "Extracorporeal circulation" means the diversion of a patient's blood through a heart-lung machine or a similar device that

assumes the functions of the patient's heart, lungs, or both.

(2) "Perfusion protocol" means a perfusion-related policy or protocol developed or approved by a licensed health facility or a physician through collaboration with administrators, licensed perfusionists, and other health professionals.

(b) A person practices perfusion under this chapter when the person performs activities necessary to:

(1) support, treat, measure, or supplement the cardiovascular, circulatory, or respiratory system, or a combination of those activities; or

(2) ensure the safe management of physiologic functions by monitoring the parameters of the systems under the order and supervision of a licensed physician.

(c) The practice of perfusion includes:

(1) using extracorporeal circulation, cardiopulmonary support techniques, and other therapeutic and diagnostic technologies;

(2) performing counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, administration of cardioplegia, and isolated limb perfusion;

(3) using techniques involving blood management, advanced life support, and other related functions; and

(4) in performing the acts described in this subdivision:

(A) administering:

(i) pharmacological and therapeutic agents; or

(ii) blood products or anesthetic agents through the extracorporeal circuit or through an intravenous line as ordered by a physician;

(B) performing and using anticoagulation analysis, physiologic analysis, blood gas and chemistry analysis, hematocrit analysis, hypothermia, hyperthermia, hemoconcentration, and hemodilution; and

(C) observing signs and symptoms related to perfusion services, determining whether the signs and symptoms exhibit abnormal characteristics, and implementing appropriate reporting, perfusion protocols, or changes in or the initiation of emergency procedures.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 603.004. APPLICATION OF CHAPTER. This chapter does not apply to:

(1) a qualified perfusionist employed by the United States government while discharging official duties;

(2) a person licensed by another health professional licensing board if the person:

(A) does not directly or indirectly represent to the public that the person is licensed under this chapter and does not use a name, title, or other designation indicating that the person is licensed under this chapter; and

(B) confines the scope of the person's practice to that authorized by the law under which the person is licensed as a health professional;

(3) a student enrolled in an accredited perfusion education program if the perfusion services performed by the student:

(A) are an integral part of the student's course of study; and

(B) are directly supervised by a licensed perfusionist who:

(i) is assigned to supervise the student; and

(ii) is on duty and immediately available in the assigned patient care area;

(4) a person who successfully completes an approved perfusion education program but has not been issued a provisional license under Section 603.259 if the person:

(A) complies with Section 603.259(c); and

(B) receives a provisional license not later than the 180th day after the date the person successfully completes the program; or

(5) a person performing autotransfusion or blood conservation techniques under the supervision of a licensed physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 2, eff. September 1, 2005.

Sec. 603.005. APPLICATION OF SUNSET ACT. The Texas State

Perfusionist Advisory Committee is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 3, eff. September 1, 2005.

Sec. 603.006. APPLICABILITY OF OTHER LAW. Chapter 2110, Government Code, does not apply to the committee.

Added by Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 4, eff. September 1, 2005.

**SUBCHAPTER B. TEXAS STATE PERFUSIONIST ADVISORY  
COMMITTEE**

Sec. 603.051. COMMITTEE MEMBERSHIP. (a) The Texas State Perfusionist Advisory Committee consists of five members appointed by the commissioner as follows:

(1) two licensed perfusionist members who have been licensed under this chapter for at least three years before the date of appointment;

(2) one physician member licensed by the Texas State Board of Medical Examiners who is certified by that board in cardiovascular surgery; and

(3) two members who represent the public.

(b) Appointments to the committee shall reflect the historical and cultural diversity of the inhabitants of this state.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 6, eff. September 1, 2005.

Sec. 603.0511. ELIGIBILITY OF PUBLIC MEMBERS. A person may not be a public member of the committee if the person or the person's spouse:

- (1) is registered, certified, or licensed by a regulatory agency in the field of health care;
- (2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the department;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the department; or
- (4) uses or receives a substantial amount of tangible goods, services, or money from the department other than compensation or reimbursement authorized by law for committee membership, attendance, or expenses.

Added by Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 7, eff. September 1, 2005.

Sec. 603.052. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

(b) A person may not be a committee member and may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

- (1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or
- (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) A person may not be a member of the committee or act as the general counsel to the committee or the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf

of a profession related to the operation of the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 8, eff. September 1, 2005.

Sec. 603.053. TERMS. Members of the committee serve staggered six-year terms. The terms of one or two members, as appropriate, expire on February 1 of each odd-numbered year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 9, eff. September 1, 2005.

Sec. 603.054. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the committee that a member:

- (1) does not have at the time of taking office the qualifications required by Section 603.051;
- (2) does not maintain during service on the committee the qualifications required by Section 603.051;
- (3) is ineligible for membership under Section 603.0511 or 603.052;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee.

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

(c) If the executive secretary has knowledge that a potential ground for removal exists, the executive secretary shall notify the presiding officer of the committee of the potential ground. The presiding officer shall then notify the commissioner and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive

secretary shall notify the next highest ranking officer of the committee, who shall then notify the commissioner and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 10, eff. September 1, 2005.

Sec. 603.055. REIMBURSEMENT. A member is entitled to reimbursement for expenses as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 11, eff. September 1, 2005.

Sec. 603.056. OFFICERS. (a) Not later than the 30th day after the date the commissioner appoints new committee members, the commissioner shall designate a presiding officer. The presiding officer serves at the pleasure of the commissioner.

(b) The committee may appoint additional officers as necessary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 12, eff. September 1, 2005.

Sec. 603.057. MEETINGS. The committee shall meet subject to the call of the commissioner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 13, eff. September 1, 2005.



Sec. 603.058. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the committee may not vote, deliberate, or be counted as a member in attendance at a meeting of the committee until the person completes a training program that complies with this section.

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

(1) this chapter and the committee's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the department;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the executive commissioner or the Texas Ethics Commission.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 14, eff. September 1, 2005.

#### **SUBCHAPTER C. EXECUTIVE SECRETARY AND OTHER PERSONNEL**

Sec. 603.101. EXECUTIVE SECRETARY. The commissioner shall designate a department employee to serve as executive secretary of the committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 15, eff. September 1, 2005.

Sec. 603.102. EXECUTIVE SECRETARY POWERS AND DUTIES. In addition to performing other duties prescribed by this chapter and by

the department, the executive secretary shall:

- (1) administer licensing activity for the department;
- (2) keep full and accurate minutes of the committee's transactions and proceedings;
- (3) serve as custodian of the committee's files and other records;
- (4) prepare and recommend to the department plans and procedures necessary to implement the objectives of this chapter, including rules and proposals on administrative procedure;
- (5) exercise general supervision over persons employed by the department in the administration of this chapter;
- (6) investigate complaints and present formal complaints;
- (7) attend all committee meetings as a nonvoting participant;
- (8) handle the committee's correspondence; and
- (9) obtain, assemble, or prepare reports and other information as directed or authorized by the committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 16, eff. September 1, 2005.

Sec. 603.103. OTHER PERSONNEL AND FACILITIES. (a) The department shall provide department personnel and department facilities as the basic personnel and necessary facilities required to administer this chapter.

(b) Repealed by Acts 2005, 79th Leg., Ch. 231, Sec. 66, eff. September 1, 2005.

(c) If necessary to administer this chapter, the department by agreement may:

- (1) obtain and provide compensation for services; and
- (2) employ professional consultants, technical assistants, or other persons on a full-time or part-time basis.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 66, eff. September 1, 2005.

Sec. 603.105. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The department shall provide, as often as necessary, to its employees information regarding their:

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 17, eff. September 1, 2005.

Sec. 603.106. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The commissioner shall develop an intra-agency career ladder program. The program must require intra-agency posting of all nonentry level positions concurrently with any public posting.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 18, eff. September 1, 2005.

Sec. 603.107. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

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

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion, that are in compliance with Chapter 21, Labor Code;

(2) a comprehensive analysis of the committee workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of

significant underuse in the committee workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 19, eff. September 1, 2005.

#### **SUBCHAPTER D. POWERS AND DUTIES**

Sec. 603.151. GENERAL POWERS AND DUTIES OF COMMISSIONER. The commissioner shall:

(1) establish the qualifications and fitness of applicants for licenses, including renewed and reciprocal licenses;

(2) revoke, suspend, or deny a license, probate a license suspension, or reprimand a license holder for a violation of this chapter, a rule adopted by the executive commissioner, or the code of ethics adopted by the executive commissioner;

(3) spend money necessary to administer the department's duties;

(4) request and receive necessary assistance from another state agency, including a state educational institution;

(5) adopt an official seal; and

(6) adopt and publish a code of ethics.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 20, eff. September 1, 2005.

Sec. 603.152. GENERAL RULEMAKING AUTHORITY. The executive

commissioner may adopt rules necessary to:

- (1) regulate the practice of perfusion;
- (2) enforce this chapter; and
- (3) perform department duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 21, eff. September 1, 2005.

Sec. 603.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The executive commissioner may not adopt a rule restricting advertising or competitive bidding by a person regulated by the department except to prohibit a false, misleading, or deceptive practice.

(b) The executive commissioner may not include in rules to prohibit a false, misleading, or deceptive practice by a person regulated by the department a rule that:

- (1) restricts the person's use of any medium for advertising;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of any advertisement by the person; or
- (4) restricts the use by the person of a trade name in advertising.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 22, eff. September 1, 2005.

Sec. 603.1535. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.

(a) The executive commissioner shall adopt rules necessary to comply with Chapter 53.

(b) In rules under this section, the executive commissioner shall list the specific offenses for which a conviction would constitute grounds for the commissioner to take action under Section 53.021.

Added by Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 23, eff. September 1, 2005.

Sec. 603.154. FEES. After consulting the commissioner or the department, the executive commissioner shall set fees in amounts reasonable and necessary to cover the costs of administering this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 24, eff. September 1, 2005.

Sec. 603.155. EXECUTIVE COMMISSIONER AND DEPARTMENT DUTIES REGARDING COMPLAINTS. (a) The executive commissioner by rule shall:

(1) adopt a form to standardize information concerning complaints made to the department; and

(2) prescribe information to be provided to a person when the person files a complaint with the department.

(b) The department shall provide reasonable assistance to a person who wishes to file a complaint with the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 25, eff. September 1, 2005.

Sec. 603.156. REGISTRY. The department shall prepare a registry of licensed perfusionists and provisionally licensed perfusionists that is available to the public, license holders, and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 26, eff. September 1, 2005.

Sec. 603.158. USE OF TECHNOLOGY. The executive commissioner shall implement a policy requiring the department to use appropriate technological solutions to improve the department's ability to perform its functions. The policy must ensure that the public is able to interact with the department on the Internet.

Added by Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 28, eff. September 1, 2005.

Sec. 603.159. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The executive commissioner shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the department's jurisdiction.

(b) The department's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commissioner shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the department.

Added by Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 28, eff. September 1, 2005.

#### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 603.201. PUBLIC INTEREST INFORMATION. (a) The department shall prepare information of consumer interest describing the profession of perfusion, the regulatory functions of the department, and the procedures by which consumer complaints are filed with and resolved by the department.

(b) The department shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 29, eff. September 1, 2005.

Sec. 603.202. COMPLAINTS. (a) The executive commissioner by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The department may provide for that notice:

(1) on each license form, application, or written contract for services of a person licensed under this chapter;

(2) on a sign prominently displayed in the place of business of each person licensed under this chapter; or

(3) in a bill for services provided by a person licensed under this chapter.

(b) The department shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 30, eff. September 1, 2005.

Sec. 603.203. RECORDS OF COMPLAINTS. (a) The department shall maintain a system to promptly and efficiently act on complaints filed with the department. The department shall maintain:

(1) information about the parties to the complaint and the subject matter of the complaint;

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

(3) information about the disposition of the complaint.

(b) The department shall make information available describing its procedures for complaint investigation and resolution.

(c) The department shall periodically notify the parties of the



status of the complaint until final disposition of the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 31, eff. September 1, 2005.

Sec. 603.204. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The executive commissioner shall adopt rules concerning the investigation of a complaint filed with the department. The rules shall:

- (1) distinguish among categories of complaints;
- (2) ensure that a complaint is not dismissed without appropriate consideration;
- (3) require that the commissioner be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
- (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and
- (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the department to obtain the services of a private investigator.

(b) The department shall:

- (1) dispose of each complaint in a timely manner; and
- (2) establish, not later than the 30th day after the date the department receives a complaint, a schedule for conducting each phase of the complaint resolution process that is under the control of the department.

(c) Each party to the complaint shall be notified of the projected time requirements for pursuing the complaint. Each party shall be notified of any change in the schedule established under Subsection (b)(2) not later than the seventh day after the date the change is made.

(d) The executive secretary shall notify the commissioner of a complaint that is not resolved within the time prescribed by the commissioner for resolving the complaint so that the commissioner may take necessary action on the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 32, eff. September 1, 2005.

Sec. 603.2041. SUBPOENAS. (a) In an investigation of a complaint filed with the department, the department may request that the commissioner or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the department may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the department, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the department may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The commissioner may delegate the authority granted under Subsection (a) to the executive secretary of the committee.

(f) The department shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the department may charge for copies of its records.

(g) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

(h) All information and materials subpoenaed or compiled by the department in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the department or its agents or employees involved in discipline of the holder of a license, except that this information may be disclosed to:

(1) persons involved with the department in a disciplinary action against the holder of a license;

(2) professional perfusionist licensing or disciplinary boards in other jurisdictions;

(3) peer assistance programs approved by the department under Chapter 467, Health and Safety Code;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges by the department against a holder of a license, the nature of those charges, disciplinary proceedings of the department, and final disciplinary actions, including warnings and reprimands, by the department are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.338(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 33, eff. September 1, 2005.

Sec. 603.205. PUBLIC PARTICIPATION. (a) The State Health Services Council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the State Health Services Council and to speak on any issue related to the practice of perfusion.

(b) The commissioner shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the department's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 34, eff. September 1, 2005.

#### **SUBCHAPTER F. LICENSE REQUIREMENTS**

Sec. 603.251. LICENSE REQUIRED. (a) A person may not engage or offer to engage in perfusion for compensation unless the person holds an appropriate license issued under this chapter.

(b) A person may not, unless the person holds an appropriate license issued under this chapter:

(1) use the title or represent or imply that the person has the title "licensed perfusionist" or "provisional licensed perfusionist" or use the letters "LP" or "PLP"; or

(2) use a facsimile of those titles to represent or imply that the person is a licensed perfusionist or provisionally licensed perfusionist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 603.252. LICENSE APPLICATION. (a) An applicant for a perfusionist license must submit a sworn application accompanied by the application fee.

(b) The executive commissioner shall prescribe the application form and by rule may establish dates by which applications and fees must be received.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 35, eff. September 1, 2005.

Sec. 603.253. COMPETENCY EXAMINATION. (a) An applicant must pass a competency examination to qualify for a license under this chapter.

(b) The department shall prepare or approve an examination. The department may prescribe an examination that consists of or includes a written examination given by the American Board of Cardiovascular Perfusion or by a national or state testing service.

(c) The department shall have any written portion of the examination validated by an independent testing professional.

(d) The department shall administer an examination to qualified applicants at least once each calendar year.

(e) On receipt of an application and application fee, the department shall waive the examination requirement for an applicant who, at the time of application:

(1) is licensed or certified by another state that has licensing or certification requirements the department determines to be substantially equivalent to the requirements of this chapter; or

(2) holds a certificate as a certified clinical

perfusionist issued by the American Board of Cardiovascular Perfusion before January 1, 1994, authorizing the holder to practice perfusion in a state that does not license or certify perfusionists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 36, eff. September 1, 2005.

Sec. 603.2535. JURISPRUDENCE EXAMINATION. (a) An applicant must pass a jurisprudence examination to qualify for a license under this chapter.

(b) The department shall develop and administer at least twice each calendar year a jurisprudence examination to determine an applicant's knowledge of this chapter, rules adopted by the executive commissioner, and any other applicable laws of this state affecting the applicant's practice of perfusion.

(c) The executive commissioner shall adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results.

Added by Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 37, eff. September 1, 2005.

Sec. 603.254. QUALIFICATION FOR EXAMINATION. (a) To qualify for the licensing examinations under this chapter, an applicant must have successfully completed a perfusion education program approved by the department.

(b) The department may approve a perfusion education program only if the program has educational standards that are:

(1) at least as stringent as those established by the Accreditation Committee for Perfusion Education of the American Medical Association or its successor; and

(2) approved by the Commission on Accreditation of the Allied Health Education Program of the American Medical Association or its successor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 38, eff. September 1, 2005.

Sec. 603.255. INVESTIGATION OF APPLICANT. (a) The department shall notify an applicant in writing of the receipt and investigation of the applicant's application and any other relevant evidence relating to qualifications established by an executive commissioner rule not later than:

(1) the 45th day after the date a properly submitted and timely application is received; and

(2) the 30th day before the next examination date.

(b) The notice must state whether the applicant has qualified for examination based on the application and other submitted evidence. If the applicant is not qualified, the notice must state the reasons for the applicant's failure to qualify.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 39, eff. September 1, 2005.

Sec. 603.256. EXAMINATION RESULTS. (a) The department shall notify each examinee of the examination results not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national or state testing service, the department shall notify each examinee of the examination results not later than the 14th day after the date the department receives the results from the testing service.

(b) If the notice of the results of an examination graded or reviewed by a national or state testing service will be delayed for longer than 90 days after the examination date, the department shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the examination, the department shall provide to the person an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## Sec. 603.257. REEXAMINATION AND ALTERNATIVES TO EXAMINATION.

The executive commissioner by rule shall establish:

- (1) a limit on the number of times an applicant who fails an examination may retake the examination;
- (2) requirements for retaking an examination; and
- (3) alternative methods of examining competency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 40, eff. September 1, 2005.

Sec. 603.258. ISSUANCE OF LICENSE. A person who meets the qualifications for a license under this chapter is entitled to a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 603.259. PROVISIONAL LICENSE. (a) The department may issue a provisional license to an applicant who files an application, pays an application fee, and submits evidence satisfactory to the department of successful completion of the education requirement under Section 603.254.

(b) A person who meets the qualifications for a provisional license under this chapter is entitled to a provisional license.

(c) A provisionally licensed perfusionist must practice under the supervision and direction of a licensed perfusionist while performing perfusion. If the department finds that a licensed perfusionist is not reasonably available to provide supervision and direction and if the department approves an application submitted to the department by the provisionally licensed perfusionist, supervision and direction may be provided by a physician who is licensed by the Texas State Board of Medical Examiners and certified by the American Board of Thoracic Surgeons, Inc., or certified in cardiovascular surgery by the American Osteopathic Board of Surgery.

(d) The executive commissioner may not adopt a rule governing supervision and direction that requires the immediate physical

presence of the supervising person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 41, eff. September 1, 2005.

#### **SUBCHAPTER G. LICENSE RENEWAL**

Sec. 603.301. LICENSE RENEWAL. (a) A license is valid for two years from the date of issuance and may be renewed biennially.

(b) The executive commissioner by rule may adopt a system under which licenses expire on various dates during the year.

(c) A person may renew an unexpired license by paying the required renewal fee to the department before the license expiration date.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the department a fee that is equal to 1-1/4 times the amount of the renewal fee. If a license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the department a fee that is equal to 1-1/2 times the amount of the renewal fee.

(e) Except as provided by Section 603.303, a person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(f) Before the 30th day before a person's license expiration date, the department shall send written notice of the impending license expiration to the person at the person's last known address according to department records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 42, eff. September 1, 2005.

Sec. 603.302. PROVISIONAL LICENSE RENEWAL. A provisional license expires on the first anniversary of the date of issuance and, if the supervising licensed perfusionist or physician described by



Section 603.259(c) signs the renewal application, the license may be renewed annually not more than five times by complying with the renewal procedures under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 603.303. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The department may renew without reexamination an expired license of a person who was licensed as a perfusionist in this state, moved to another state, and is licensed or certified and has been in practice in the other state for the two years preceding the date the person applies for renewal.

(b) The person must pay to the department a fee that is equal to the amount of the renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 43, eff. September 1, 2005.

Sec. 603.304. CONTINUING EDUCATION. (a) To renew a license under this chapter, a person must submit proof satisfactory to the department that the person has complied with the continuing education requirements prescribed by the department.

(b) The executive commissioner shall establish continuing education programs for licensed perfusionists and provisionally licensed perfusionists under this chapter. The standards of the programs must be at least as stringent as the standards of the American Board of Cardiovascular Perfusion or its successor.

(c) The executive commissioner shall:

(1) establish a minimum number of hours of continuing education required for license renewal under this chapter; and

(2) develop a process to evaluate and approve continuing education courses.

(d) The executive commissioner shall identify key factors for a license holder's competent performance of professional duties. The executive commissioner shall adopt a procedure to assess a license holder's participation in continuing education programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 44, eff. September 1, 2005.

Sec. 603.305. GROUND FOR REFUSING RENEWAL. The department may refuse to renew the license of a person who fails to pay an administrative penalty imposed under Subchapter K unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 45, eff. September 1, 2005.

#### **SUBCHAPTER H. PRACTICE BY LICENSE HOLDER**

Sec. 603.351. DISPLAY OF LICENSE. A person licensed under this chapter shall:

- (1) display the person's license certificate in an appropriate and public manner; or
- (2) maintain a copy of the person's license certificate in the appropriate records of any health care facility in which the license holder provides services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 603.352. LICENSE HOLDER INFORMATION. A person licensed under this chapter shall keep the department informed of any change in the license holder's address.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 603.353. SURRENDER OF LICENSE. A license certificate issued by the department is the property of the department and shall be surrendered on demand.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 46, eff. September 1, 2005.

Sec. 603.354. CERTIFICATION FROM AMERICAN BOARD OF CARDIOVASCULAR PERFUSION. Unless a person holds a certificate as a certified clinical perfusionist issued by the American Board of Cardiovascular Perfusion, the person may not:

(1) use the title or represent or imply that the person has the title "certified clinical perfusionist" or use the letters "CCP"; or

(2) use a facsimile of that title to represent or imply that the person is a clinical perfusionist certified by that board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER I. DISCIPLINARY PROCEDURES**

Sec. 603.401. GROUNDS FOR DISCIPLINARY ACTION. If a license holder violates this chapter or a rule or code of ethics adopted by the executive commissioner, the department shall:

(1) revoke or suspend the license;

(2) place on probation the person if the person's license has been suspended;

(3) reprimand the license holder; or

(4) refuse to renew the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 47, eff. September 1, 2005.

Sec. 603.402. HEARING. (a) If the department proposes to revoke, suspend, or refuse to renew a person's license, the person is entitled to a hearing before a hearings officer appointed by the State Office of Administrative Hearings.

(b) The executive commissioner shall prescribe procedures for appealing to the commissioner a decision to revoke, suspend, or refuse to renew a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 48, eff. September 1, 2005.

Sec. 603.403. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter to suspend, revoke, or refuse to renew a license is governed by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 49, eff. September 1, 2005.

Sec. 603.404. SANCTIONS. (a) The executive commissioner by rule shall adopt a broad schedule of sanctions for a violation of this chapter.

(b) The State Office of Administrative Hearings shall use the schedule of sanctions for a sanction imposed as the result of a hearing conducted by that office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 50, eff. September 1, 2005.

Sec. 603.405. PROBATION. The department may require a person whose license suspension is probated to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to areas prescribed by the department;

or

(3) continue the person's professional education until the license holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 51, eff. September 1, 2005.

Sec. 603.406. MONITORING OF LICENSE HOLDER. (a) The executive commissioner by rule shall develop a system for monitoring a license holder's compliance with the requirements of this chapter.

(b) Rules adopted under this section must include procedures to:

(1) monitor for compliance a license holder who is ordered by the department to perform certain acts; and

(2) identify and monitor license holders who represent a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 52, eff. September 1, 2005.

Sec. 603.407. INFORMAL PROCEDURES. (a) The executive commissioner by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under Subsection (a) must:

(1) provide the complainant and the license holder an opportunity to be heard; and

(2) require the presence of a representative of the attorney general or the department's legal counsel to advise the department or the department's employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 53, eff. September 1, 2005.

Sec. 603.408. EMERGENCY SUSPENSION. (a) The department shall temporarily suspend the license of a license holder if the department

determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 17, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 54, eff. September 1, 2005.

Sec. 603.409. REFUND. (a) Subject to Subsection (b), the department may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The department may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 55, eff. September 1, 2005.

#### **SUBCHAPTER J. PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 603.451. INJUNCTION. (a) The department may request the attorney general or the appropriate county or district attorney to

commence an action to enjoin a violation of this chapter.

(b) The remedy provided by this section is in addition to any other action authorized by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 56, eff. September 1, 2005.

Sec. 603.4515. CIVIL PENALTY. (a) A person who violates this chapter, a rule adopted by the executive commissioner, or an order adopted by the commissioner under this chapter is liable for a civil penalty not to exceed \$5,000 a day.

(b) At the request of the department, the attorney general shall bring an action to recover a civil penalty authorized under this section.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 18, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 57, eff. September 1, 2005.

Sec. 603.452. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates Section 603.251 or 603.354.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 603.453. CEASE AND DESIST ORDER. (a) If it appears to the commissioner that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of perfusion, the commissioner after notice and an opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

Added by Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 58, eff. September 1, 2005.

#### **SUBCHAPTER K. ADMINISTRATIVE PENALTY**

Sec. 603.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 59, eff. September 1, 2005.

Sec. 603.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the administrative penalty may not be less than \$50 or more than \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

(c) The executive commissioner by rule shall adopt an administrative penalty schedule based on the criteria listed in Subsection (b) for violations of this chapter or applicable rules to ensure that the amounts of penalties imposed are appropriate to the violation. The executive commissioner shall provide the administrative penalty schedule to the public on request.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 60, eff. September 1, 2005.



Sec. 603.503. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the commissioner or the commissioner's designee determines that a violation occurred, the commissioner or the designee may issue to the department a report stating:

(1) the facts on which the determination is based; and  
(2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the commissioner or the commissioner's designee shall give written notice of the report to the person. The notice must:

(1) include a brief summary of the alleged violation;  
(2) state the amount of the recommended administrative penalty; and  
(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 61, eff. September 1, 2005.

Sec. 603.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty of the commissioner or the commissioner's designee; or  
(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the commissioner or the commissioner's designee, the commissioner by order shall approve the determination and impose the recommended penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 62, eff. September 1, 2005.

Sec. 603.505. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the commissioner or the commissioner's designee shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 63, eff. September 1, 2005.

Sec. 603.506. DECISION BY COMMISSIONER. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the commissioner by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the commissioner's order given to the person must include a statement of the right of the person to judicial review of the order.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 64, eff. September 1, 2005.

Sec. 603.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Within 30 days after the date the commissioner's order becomes final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner or the commissioner's designee by certified mail.

(c) If the commissioner or the commissioner's designee receives a copy of an affidavit under Subsection (b)(2), the commissioner or the designee may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 65, eff. September 1, 2005.

Sec. 603.508. COLLECTION OF PENALTY. (a) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.

Sec. 603.509. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may

uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.

Sec. 603.510. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.

Sec. 603.511. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is a contested case under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.

## **CHAPTER 604. RESPIRATORY CARE PRACTITIONERS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 604.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.
- (3) "Respiratory care" means the treatment, management,

control, diagnostic evaluation, or care of a patient who has a deficiency or abnormality associated with the cardiorespiratory system.

(4) "Respiratory care practitioner" means a person who holds a certificate or temporary permit under this chapter to practice respiratory care.

(5) "Respiratory care procedure" means respiratory care provided by the therapeutic and diagnostic use of medical gases, humidifiers, and aerosols, the administration of drugs and medications to the cardiorespiratory system, ventilatory assistance and ventilatory control, postural drainage, chest drainage, chest percussion or vibration, breathing exercises, respiratory rehabilitation, cardiopulmonary resuscitation, the maintenance of natural airways, and the insertion and maintenance of artificial airways. The term includes a technique used to assist in diagnosis, monitoring, treatment, and research, as ordered by a patient's physician, including:

- (A) the measurement of ventilatory volumes, pressures, and flows;
- (B) the specimen collection of blood and other materials;
- (C) pulmonary function testing; and
- (D) hemodynamic and other related physiological forms of monitoring or treating the cardiorespiratory system.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.002. INTERPRETATION: PRACTICE OF MEDICINE. This chapter does not permit the practice of medicine, as defined by Subtitle B, by a respiratory care practitioner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.003. EFFECT OF CHAPTER. This chapter does not prohibit:

- (1) the practice of respiratory care as an integral part of the program of study by a student enrolled in a respiratory care education program approved by the department;
- (2) the employment by a health care facility of a person to

deliver limited respiratory care support services under the supervision of another person who holds a certificate issued under this chapter, if the person delivering the services does not perform an invasive procedure related to critical respiratory care, including a therapeutic, diagnostic, or palliative procedure, as part of the person's employment and if that person:

(A) is enrolled for credit in the clinical portion of an approved respiratory care education program; or

(B) has completed all of the clinical portion of an approved respiratory care education program within the preceding 12 months and is actively pursuing a course of study leading to graduation from the program;

(3) the care of an ill person provided without charge by a friend or family member;

(4) care provided in an emergency by a person who does not claim to be a respiratory care practitioner;

(5) the performance by a respiratory care practitioner of an advance in the art and techniques of respiratory care learned through formal or specialized training;

(6) the practice of respiratory care by health care personnel who have been formally trained in the care used and who are:

(A) licensed under the law regulating their professions; or

(B) acting under the delegated authority of a licensed physician;

(7) the practice of a legally qualified respiratory care practitioner who is discharging the practitioner's official duties as an employee of the United States government; or

(8) the practice by a person of a profession or occupation for which the person is licensed, registered, or certified under another law of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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

Sec. 604.051. CERTIFICATION AND PERMITTING PROGRAM. (a) The department's bureau of licensing and compliance shall administer the certification and permitting program under this chapter.

(b) The department shall maintain a list of each person who holds a certificate or temporary permit under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.052. RULES. (a) The board by rule shall establish minimum standards for issuing, denying, renewing, suspending, suspending on an emergency basis, or revoking a certificate or temporary permit under this chapter.

(b) The board may adopt rules necessary to implement this chapter.

(c) The board may adopt rules relating to certifying, examining, or disciplining a person under this chapter only if necessary to protect the public health by ensuring that only a qualified person practices respiratory care.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.339(a), eff. Sept. 1, 2001.

Sec. 604.053. FEES. (a) The board shall set fees for an application, examination, certificate, temporary permit, permit and certificate renewal, and certificate reinstatement.

(b) The board shall set fees in reasonable amounts that are sufficient to cover the costs of administering this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.054. APPROVAL OF EDUCATION PROGRAMS. In determining whether to approve a respiratory care education program, the department shall consider relevant information about the quality of the program, including accreditation of the program by a professional medical association, such as the Commission on Accreditation of Allied Health Education Programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.055. PEER ASSISTANCE PROGRAM. The department may establish, approve, and fund a peer assistance program in accordance with Section 467.003, Health and Safety Code, and board rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.056. PERSONNEL. The department shall employ personnel as necessary to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.057. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a temporary permit or certificate holder except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the board may not include a rule that:

- (1) restricts the use of any medium for advertising;
- (2) restricts the use of a temporary permit or certificate holder's personal appearance or voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the temporary permit or certificate holder; or
- (4) restricts the temporary permit or certificate holder's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.339(b), eff. Sept. 1, 2001.

#### **SUBCHAPTER C. CERTIFICATE AND TEMPORARY PERMIT REQUIREMENTS**

Sec. 604.101. CERTIFICATE OR TEMPORARY PERMIT REQUIRED; SUPERVISION. (a) A person may not represent that the person is able to practice respiratory care or that the person is a respiratory care practitioner unless the person holds a certificate or temporary permit issued under this chapter.

(b) A person may not practice respiratory care other than under the direction of a qualified medical director or other physician licensed by the Texas State Board of Medical Examiners.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.102. USE OF TITLE. (a) A person who does not hold a certificate or temporary permit under this chapter as a respiratory care practitioner or whose certificate or permit has been suspended or revoked may not:

(1) use in connection with the person's practice:

(A) the words "respiratory care," "respiratory therapist," "respiratory care practitioner," "certified respiratory care practitioner," or "respiratory therapy technician";

(B) the letters "R.C.P."; or

(C) any other words, letters, abbreviations, or insignia indicating or implying that the person is a respiratory care practitioner; or

(2) directly or by implication represent in any way that the person is a respiratory care practitioner.

(b) A person who holds a certificate or temporary permit to practice respiratory care under this chapter may use the title "respiratory care practitioner" and the abbreviation "R.C.P."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.103. APPLICATION; APPLICATION FEE. An applicant for a certificate or temporary permit must:

(1) apply to the department on a form and under rules prescribed by the board; and

(2) submit a nonrefundable application fee with the application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.104. REQUIREMENT FOR CERTIFICATE. An applicant for a certificate must submit to the department written evidence, verified by oath, that the applicant has completed:

(1) an approved four-year high school course of study or the equivalent as determined by the appropriate educational agency; and

(2) a respiratory care education program approved by the

department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.1041. EXAMINATION. The board by rule shall establish examination requirements for a certificate under this chapter. The board may use the entry level examination prepared by the National Board for Respiratory Care or an equivalent examination.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.339(c), eff. Sept. 1, 2001.

Sec. 604.1042. NOTIFICATION OF EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes a certification examination under this chapter, the department shall notify the person of the results of the examination.

(b) If the examination is graded or reviewed by a testing service, the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service. If notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails a certification examination administered under this chapter, the department shall furnish the person with an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.339(c), eff. Sept. 1, 2001.

Sec. 604.105. ISSUANCE OF CERTIFICATE. The department shall issue a certificate to an applicant who meets the minimum standards adopted under Section 604.052(a) and pays the certificate fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.106. ISSUANCE OF CERTIFICATE BY RECIPROCITY. The department may issue a certificate to a person who is licensed or certified to practice respiratory care by another state whose requirements for licensure or certification were on the date the license or certificate was issued substantially equal to the requirements of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.107. REQUIREMENTS FOR TEMPORARY PERMIT. An applicant for a temporary permit to practice respiratory care must submit to the department written evidence, verified by oath, that the applicant is:

(1) practicing or has within the 12-month period preceding the application date practiced respiratory care in another state or country and is licensed to practice respiratory care in that state or country;

(2) a student in an approved respiratory care education program who expects to graduate from the program not later than the 30th day after the date the temporary permit is issued; or

(3) a graduate of an approved respiratory care education program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.108. ISSUANCE OF TEMPORARY PERMIT; RENEWAL. (a) The department shall issue a temporary permit to an applicant who meets the requirements of Sections 604.103 and 604.107 and pays the permit fee.

(b) A temporary permit is valid for the period set by board rule. The period may not be less than six months or more than 12 months.

(c) A person whose certificate or temporary permit has expired may not engage in activities that require a certificate or temporary permit until the certificate or temporary permit has been renewed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1420, Sec. 14.340(a), eff. Sept. 1, 2001.

Sec. 604.109. TRANSFER OF CERTIFICATE OR TEMPORARY PERMIT PROHIBITED. A certificate or temporary permit issued under this chapter may not be transferred.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER D. RENEWAL OF CERTIFICATE OR TEMPORARY PERMIT**

Sec. 604.151. CERTIFICATE RENEWAL. (a) A certificate to practice respiratory care must be renewed biennially.

(b) The board by rule may adopt a system under which certificates expire on various dates during the year. For the year in which the certificate expiration date is changed, the department shall prorate certificate fees on a monthly basis so that each certificate holder pays only that portion of the certificate fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.341(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 167 (H.B. 102), Sec. 1, eff. May 27, 2005.

Acts 2005, 79th Leg., Ch. 167 (H.B. 102), Sec. 2, eff. May 27, 2005.

Sec. 604.152. NOTICE OF CERTIFICATE RENEWAL. (a) Not later than the 30th day before the expiration date of a person's certificate, the department shall mail a renewal notice to the person at the person's last known address.

(b) To renew a certificate, the certificate holder must complete the renewal notice and return the notice with the renewal fee to the department on or before the expiration date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.1521. PROCEDURE FOR RENEWAL. (a) A person whose certificate has been expired for 90 days or less may renew the certificate by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(b) A person whose certificate has been expired for more than 90 days but less than one year may renew the certificate by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(c) A person whose certificate has been expired for one year or more may not renew the certificate. The person may obtain a new certificate by complying with the requirements and procedures, including the examination requirements, for obtaining an original certificate.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.340(b), eff. Sept. 1, 2001.

Sec. 604.1522. RENEWAL OF CERTIFICATE BY OUT-OF-STATE PRACTITIONER. (a) A person who was certified in this state, moved to another state, and is currently certified and has been in practice in the other state for the two years preceding the date of application may obtain a new certificate without reexamination.

(b) The person must pay to the department a fee that is equal to two times the normally required renewal fee for the certificate.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.340(b), eff. Sept. 1, 2001.

Sec. 604.153. ISSUANCE OF RENEWAL CERTIFICATE. (a) The department shall issue to the certificate holder a certificate for the renewal period on receipt of the completed renewal notice and payment of the renewal fee.

(b) The renewal is valid for the period stated on the renewal certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.154. CONTINUING EDUCATION REQUIREMENTS. (a) The board shall establish for the renewal of a certificate uniform continuing education requirements of not less than 12 or more than 24 continuing education hours for each renewal period.

(b) The board may adopt rules relating to meeting the continuing education requirements in a hardship situation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 167 (H.B. 102), Sec. 3, eff. May 27, 2005.

Sec. 604.156. INACTIVE STATUS. (a) A respiratory care practitioner who does not practice respiratory care during a renewal period and who notifies the department that the practitioner is not practicing respiratory care is not required to pay the renewal fee until the practitioner resumes practice.

(b) To resume the practice of respiratory care, the practitioner must:

- (1) notify the department;
- (2) satisfy requirements adopted by the board; and
- (3) pay the reinstatement fee and the renewal fee for the renewal period in which the practitioner will resume practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.157. RENEWAL OF TEMPORARY PERMIT. (a) Before the expiration of a temporary permit, the permit holder may apply for renewal of the temporary permit.

(b) The department may renew a temporary permit for not more than one additional period, pending compliance with this chapter and board rules. The additional period may not be less than six months or more than 12 months.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER E. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES**

Sec. 604.201. DISCIPLINARY ACTION. (a) For a violation of this chapter or a rule adopted under this chapter, the department may:

(1) deny, suspend, suspend on an emergency basis, revoke, or refuse to renew a certificate or temporary permit;

(2) place the certificate or permit holder on probation under conditions set by the department; or

(3) reprimand the certificate or permit holder.

(b) The department shall take disciplinary action authorized under Subsection (a) if the department determines that a person who holds a certificate or temporary permit:

(1) is guilty of fraud or deceit in procuring, renewing, or attempting to procure a certificate or temporary permit;

(2) is unfit or incompetent because of negligence or another cause of incompetency;

(3) is addicted to or has improperly obtained, possessed, used, or distributed a habit-forming drug or narcotic or is habitually intemperate in the use of alcoholic beverages;

(4) is guilty of dishonest or unethical conduct as determined by the department;

(5) has practiced respiratory care after the person's certificate or temporary permit has expired;

(6) has practiced respiratory care under a certificate or temporary permit illegally or fraudulently obtained or issued;

(7) has practiced respiratory care without the direction of a qualified medical director or other licensed physician; or

(8) has violated this chapter or aided or abetted another in violating this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.202. EMERGENCY SUSPENSION. (a) The department may suspend a certificate or temporary permit issued under this chapter on a determination that the health and safety of a person is threatened and may make the suspension effective immediately.

(b) A person whose certificate or temporary permit is suspended under this section is entitled to a hearing before the department not later than the 10th day after the effective date of the emergency

suspension.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.203. DISCIPLINARY PROCEDURE. The procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by:

- (1) board rules for a contested case hearing; and
- (2) Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.204. EFFECT OF DENIAL OF APPLICATION OR REVOCATION OF CERTIFICATE OR TEMPORARY PERMIT. A person whose application for a certificate or temporary permit is denied or whose certificate or permit is revoked is ineligible for a certificate or permit under this chapter until the first anniversary of the date of the denial or revocation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. ADMINISTRATIVE PENALTIES**

Sec. 604.301. IMPOSITION OF PENALTY. The department may impose an administrative penalty on a person who violates this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.302. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$1,000 for each violation. Each day a violation continues is a separate violation.

- (b) The amount of the penalty shall be based on:
- (1) the seriousness of the violation;
  - (2) the history of previous violations;
  - (3) the amount necessary to deter a future violation;
  - (4) efforts made to correct the violation; and
  - (5) any other matter that justice requires.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.303. NOTICE OF VIOLATION AND PENALTY. If, after investigation of a possible violation and the facts surrounding the possible violation, the department determines that a violation occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the proposed administrative penalty based on the factors set forth in Section 604.302(b); and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice under Section 604.303, the person may:

- (1) accept the department's determination and proposed administrative penalty; or
- (2) make a written request for a hearing on that determination.

(b) If the person accepts the department's determination, the commissioner of public health or the commissioner's designee by order shall approve the determination and assess the proposed penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.305. HEARING. (a) If the person requests a hearing in a timely manner, the department shall:

- (1) set a hearing;
- (2) give written notice of the hearing to the person; and
- (3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall:

- (1) make findings of fact and conclusions of law; and
- (2) promptly issue to the commissioner of public health or the commissioner's designee a proposal for decision as to the

occurrence of the violation and the amount of any proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.306. DECISION BY COMMISSIONER OR DESIGNEE. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the commissioner of public health or the commissioner's designee by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The department shall give notice of the order to the person. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty imposed; and

(3) a statement of the person's right to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and  
(ii) is effective until judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay enforcement of the penalty on finding that the alleged facts are true. The person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.308. COLLECTION OF PENALTY. If the person does not pay the penalty and enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.309. DETERMINATION OF COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.310. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty;

(2) order the release of the escrow account in full if the penalty is not imposed or order that the amount of a reduced penalty be paid from the escrow account and that the remainder of the account be released if the person paid the penalty into an escrow account;  
or

(3) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.311. ADMINISTRATIVE PENALTY EXPENSES AND COSTS. (a) In this section, "reasonable expenses and costs" includes expenses incurred by the department or the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

(b) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of the commissioner of public health or the commissioner's designee requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

(c) If the attorney general brings an action against a person to enforce an administrative penalty assessed under this subchapter

and the person is found liable for an administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.312. ADMINISTRATIVE PROCEDURES. A proceeding relating to the assessment of an administrative penalty under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. CRIMINAL PENALTIES**

Sec. 604.351. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates Section 604.101 or 604.102.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.352. OTHER CRIMINAL OFFENSES. (a) A person commits an offense if the person knowingly:

(1) sells, fraudulently obtains, or furnishes a respiratory care diploma, certificate, temporary permit, or record;

(2) practices respiratory care under a respiratory care diploma, certificate, temporary permit, or record illegally or fraudulently obtained or issued;

(3) impersonates in any manner a respiratory care practitioner;

(4) practices respiratory care while the person's certificate or temporary permit is suspended, revoked, or expired;

(5) conducts a formal respiratory care education program to prepare respiratory care personnel other than a program approved by the department;

(6) employs a person as a respiratory care practitioner who does not hold a certificate or temporary permit in the practice of respiratory care; or

(7) otherwise practices medicine in violation of Section

604.002.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## CHAPTER 605. ORTHOTISTS AND PROSTHETISTS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 605.001. SHORT TITLE. This chapter may be cited as the Orthotics and Prosthetics Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.002. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Orthotics and Prosthetics.
- (2) "Commissioner" means the commissioner of public health.
- (3) "Custom-fabricated" means an orthosis or prosthesis designed, prescribed, fabricated, fitted, and aligned for a specific individual in accordance with sound biomechanical principles.
- (4) "Custom-fitted" means an orthosis or prosthesis adjusted, prescribed, fitted, and aligned for a specific individual in accordance with sound biomechanical principles.
- (5) "Department" means the Texas Department of Health.
- (6) "Licensed orthotist" or "LO" means a person licensed under this chapter who practices orthotics and represents the person to the public by a title or description of services that includes the term "orthotics," "orthotist," "brace," "orthoses," "orthotic," or a similar title or description of services.
- (7) "Licensed orthotist assistant" or "LOA" means a person licensed under this chapter who assists at an orthotic or prosthetic facility and is under the supervision of a licensed orthotist responsible for the acts of the assistant.
- (8) "Licensed prosthetist" or "LP" means a person licensed under this chapter who practices prosthetics and represents the person to the public by a title or description of services that includes the term "prosthetics," "prosthetist," "prostheses," "prosthetic," "artificial limb," or a similar title or description of services.
- (9) "Licensed prosthetist assistant" or "LPA" means a

person licensed under this chapter who assists at an orthotic or prosthetic facility and is under the supervision of a licensed prosthetist responsible for the acts of the assistant.

(10) "Licensed prosthetist orthotist" or "LPO" means a person licensed under this chapter who practices both orthotics and prosthetics and represents the person to the public by a title or description of services that includes the terms "prosthetics orthotics," "prosthetist orthotist," "prosthetic orthotic," "artificial limb," "brace," or a similar title or description of services.

(11) "Licensed prosthetist orthotist assistant" or "LPOA" means a person licensed under this chapter who assists at an orthotic or prosthetic facility and is under the supervision of a licensed prosthetist orthotist or a licensed prosthetist and licensed orthotist responsible for the acts of the assistant.

(12) "Orthosis" means a custom-fabricated or custom-fitted medical device designed to provide for the support, alignment, prevention, or correction of a neuromuscular or musculoskeletal disease, injury, or deformity. The term does not include a fabric or elastic support, corset, arch support, low-temperature plastic splint, truss, elastic hose, cane, crutch, soft cervical collar, orthosis for diagnostic or evaluation purposes, dental appliance, or any other similar device carried in stock and sold by a drugstore, department store, or corset shop.

(13) "Orthotic or prosthetic facility" means a location, including a building or office, where the profession and practice of orthotics or prosthetics normally takes place.

(14) "Orthotics" means the science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under an order from a licensed physician, chiropractor, or podiatrist, or an advanced practice nurse or physician assistant acting under the delegation and supervision of a licensed physician as provided by Subchapter B, Chapter 157, and rules adopted by the Texas Medical Board, for the correction or alleviation of a neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

(15) "Person" means an individual, corporation, partnership, association, or other organization.

(16) "Profession of orthotics or prosthetics" means allied health care medical services used to identify, prevent, correct, or

alleviate acute or chronic neuromuscular or musculoskeletal dysfunctions of the human body that support and provide rehabilitative health care services concerned with the restoration of function, prevention, or progression of disabilities resulting from disease, injury, or congenital anomalies. Orthotic and prosthetic services include direct patient care, including consultation, evaluation, treatment, education, and advice to maximize the rehabilitation potential of disabled individuals.

(17) "Prosthesis" means a custom-fabricated or custom-fitted medical device used to replace a missing limb, appendage, or other external human body part but that is not surgically implanted. The term includes an artificial limb, hand, or foot. The term does not include:

- (A) an artificial eye, ear, finger, or toe;
- (B) a dental appliance;
- (C) a cosmetic device, including an artificial breast, eyelash, or wig; or
- (D) another device that does not have a significant impact on the musculoskeletal functions of the body.

(18) "Prosthetics" means the science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under an order from a licensed physician, chiropractor, or podiatrist, or an advanced practice nurse or physician assistant acting under the delegation and supervision of a licensed physician as provided by Subchapter B, Chapter 157, and rules adopted by the Texas Medical Board.

(19) "Registered orthotic technician" means a person registered under this chapter who fabricates, assembles, or services orthoses under the direction of a licensed orthotist or licensed orthotist assistant responsible for the acts of the technician.

(20) "Registered prosthetic orthotic technician" means a person registered under this chapter who fabricates, assembles, or services prostheses and orthoses under the direction of a licensed orthotist and licensed prosthetist, a licensed prosthetist orthotist, or a licensed orthotist assistant, licensed prosthetist assistant, or licensed prosthetist orthotist assistant responsible for the acts of the technician.

(21) "Registered prosthetic technician" means a person registered under this chapter who fabricates, assembles, or services prostheses under the direction of a licensed prosthetist or licensed



prosthetist assistant responsible for the acts of the technician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 545 (H.B. 2703), Sec. 1, eff. September 1, 2011.

Sec. 605.003. APPLICATION OF SUNSET ACT. The Texas Board of Orthotics and Prosthetics is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 4.08, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 3.10, eff. June 17, 2011.

#### **SUBCHAPTER B. TEXAS BOARD OF ORTHOTICS AND PROSTHETICS**

Sec. 605.051. TEXAS BOARD OF ORTHOTICS AND PROSTHETICS; AFFILIATION WITH DEPARTMENT. The Texas Board of Orthotics and Prosthetics is part of the department and shall perform its duties as a board with the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.052. APPOINTMENT OF BOARD; MEMBERSHIP. (a) The board consists of seven members appointed by the governor with the advice and consent of the senate as follows:

- (1) one licensed orthotist member who has practiced orthotics for the five years preceding the date of appointment;
- (2) one licensed prosthetist member who has practiced prosthetics for the five years preceding the date of appointment;
- (3) one licensed prosthetist orthotist member who has practiced orthotics and prosthetics for the five years preceding the date of appointment;

(4) one member who is a representative of the public who uses an orthosis;

(5) one member who is a representative of the public who uses a prosthesis; and

(6) two members who are representatives of the public who do not use an orthosis or prosthesis.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 30.01, eff. Sept. 1, 2003.

Sec. 605.053. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the board if the person or person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the board;

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.054. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

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

employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a member of the board and may not be an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.055. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms. The terms of two or three members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a person to serve for the remainder of the term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 30.02, eff. Sept. 1, 2003.

Sec. 605.056. OFFICERS. The members of the board shall elect from the board's membership a presiding officer, a secretary, and other officers as required to conduct the board's business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.057. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of appointment the qualifications required for appointment to the board;

(2) does not maintain during service on the board the qualifications required for appointment to the board;

(3) violates a prohibition established by this chapter;

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

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

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

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.058. COMPENSATION; REIMBURSEMENT. A board member is entitled to compensation and reimbursement of travel expenses incurred, as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.059. MEETINGS. (a) The board may adopt rules necessary to govern its proceedings.

(b) A special meeting of the board shall be called by the presiding officer or on the written request of any three members.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.060. CIVIL LIABILITY. A board member is not liable for damages in a civil action for an act performed in good faith while performing duties as a board member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.061. TRAINING. Each board member shall comply with the board member training requirements established by any other state agency authorized to establish the requirements for the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL**

Sec. 605.101. EXECUTIVE DIRECTOR. With the advice of the board, the commissioner shall appoint an executive director to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.102. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly define the respective responsibilities of the governing body of the board and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.103. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide, as often as necessary, to its members and employees information regarding their:

- (1) qualifications for office or employment under this chapter; and
- (2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.104. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on

measurable job tasks. All merit pay for board employees must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.105. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

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

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel, that are in compliance with Chapter 21, Labor Code;

(2) a comprehensive analysis of the board workforce that meets federal and state laws, rules, and regulations and instructions adopted directly under those laws, rules, and regulations;

(3) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom federal or state laws, rules, and regulations and instructions adopted directly under those laws, rules, and regulations encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.106. RECORDS AND REGISTER. (a) The executive director shall keep a record of each board meeting and maintain a register containing the name of each person holding a license under this chapter. The record and register shall be open at all times to public inspection.

(b) A certified copy of the register is admissible as evidence in any court of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.342(a), eff. Sept. 1, 2001.

#### **SUBCHAPTER D. POWERS AND DUTIES**

Sec. 605.151. GENERAL POWERS OF BOARD. The board may:

- (1) investigate complaints;
- (2) issue, suspend, deny, and revoke licenses;
- (3) reprimand license holders and place license holders on probation;
- (4) in connection with a hearing under Section 605.353, issue subpoenas;
- (5) hold hearings; and
- (6) use personnel, facilities, furniture, equipment, and other items supplied by the department to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.343(a), eff. Sept. 1, 2001.

Sec. 605.152. FEES. (a) The board may collect license application fees, renewal fees, examination fees, and other fees for administrative expenses.

(b) If the General Appropriations Act does not set the amount of the fees, the board shall set the fees in amounts reasonable and necessary for the administration of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.153. FUNDS RECEIVED BY DEPARTMENT. The department

shall receive and account for funds obtained under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.154. RULEMAKING. (a) The board shall propose rules consistent with this chapter to carry out its duties in administering this chapter.

(b) The board shall submit the proposed rules to the attorney general for review and shall adopt rules consistent with the advice of the attorney general.

(c) In adopting rules, the board shall consider the applicable policies and procedures of the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.155. EXAMINATIONS. The board must approve any examination required for a license under this chapter. Each examination shall be offered at least once each year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 605.201. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.202. COMPLAINTS. (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

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



contract for services of a person regulated by the board;

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

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

(b) The board shall keep an information file about each complaint filed with the board relating to a person regulated by the board.

(c) If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(d) The board shall list with its regular telephone number any toll-free telephone number established under other state law for presenting a complaint about a person regulated or required to be regulated under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.2021. SUBPOENAS. (a) In an investigation of a complaint filed with the board, the board may request that the commissioner or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The board may delegate the authority granted under Subsection (a) to the executive director of the board.

(f) The board shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the board may charge for copies of its records.

(g) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

(h) All information and materials subpoenaed or compiled by the board in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in discipline of the holder of a license, except that this information may be disclosed to:

- (1) persons involved with the board in a disciplinary action against the holder of a license;
- (2) professional orthotist or prosthetist disciplinary boards in other jurisdictions;
- (3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges by the board against a holder of a license, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.344(a), eff. Sept. 1, 2001.

Sec. 605.203. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER F. LICENSE, REGISTRATION, AND ACCREDITATION REQUIREMENTS**

Sec. 605.251. LICENSE REQUIRED. A person may not practice, attempt to practice, or offer to practice orthotics or prosthetics, act as an assistant to a person who practices orthotics or prosthetics, or in any way hold the person out as being able to practice orthotics or prosthetics unless the person holds a license issued by the board under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.2515. ADDITIONAL LICENSE: DEVICE MANUFACTURER. A person licensed to practice orthotics or prosthetics who measures, designs, fabricates, fits, assembles, adjusts, or services an orthosis or a prosthesis under an order from a licensed physician, chiropractor, or podiatrist, or an advanced practice nurse or physician assistant acting under the delegation and supervision of a licensed physician as provided by Subchapter B, Chapter 157, and rules adopted by the Texas Medical Board, for a specific patient is exempt from licensing as a device manufacturer under Subchapter L, Chapter 431, Health and Safety Code. A person licensed to practice orthotics or prosthetics who fabricates or assembles an orthosis or a prosthesis without an order from a licensed physician, chiropractor, or podiatrist, or an advanced practice nurse or physician assistant acting under the delegation and supervision of a licensed physician as provided by Subchapter B, Chapter 157, and rules adopted by the Texas Medical Board, for a specific patient is required to be licensed as a device manufacturer under Subchapter L, Chapter 431, Health and Safety Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 220 (S.B. [1271](#)), Sec. 1, eff. May 27, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 545 (H.B. [2703](#)), Sec. 2, eff. September 1, 2011.

Sec. 605.252. LICENSE ELIGIBILITY. (a) To be eligible for a license to practice orthotics or prosthetics in this state, a person must:

- (1) file a written application with the board on the form

prescribed by the board;

(2) pay the nonrefundable application fee;

(3) be a resident of this state;

(4) have completed formal training, including the required hours of classroom education and clinical practice, in an area of study the board by rule determines to be necessary and appropriate;

(5) have completed a clinical residency in the professional area for which a license is sought that complies with the standards, guidelines, or procedures established by the board for a clinical residency that is offered in this state or another state; and

(6) have passed each written and practical examination approved and required by the board.

(b) The requirements for a license established by board rule must include the requirement that the applicant hold:

(1) a bachelor's or graduate degree in orthotics and prosthetics from:

(A) an education program recognized and accredited by the Commission on Accreditation of Allied Health Education Programs that is offered at an institution of higher education; or

(B) a practitioner education program that has education standards that are equivalent to or exceed the standards adopted by the Commission on Accreditation of Allied Health Education Programs; or

(2) a bachelor's degree in another subject and an orthotic or prosthetic certificate issued by a practitioner education program:

(A) recognized and accredited by the Commission on Accreditation of Allied Health Education Programs; or

(B) that has education standards that are equivalent to or exceed the standards adopted by the Commission on Accreditation of Allied Health Education Programs.

(c) To meet the clinical residency requirements for a license, the applicant must complete a professional clinical residency that meets the requirements established by board rule and is conducted under the direct supervision of a licensed orthotist, licensed prosthetist, or a licensed prosthetist orthotist in the discipline for which licensure is sought. The clinical residency requirements adopted by the board must be equivalent to or exceed the standards set by the National Commission on Orthotic and Prosthetic Education.

(d) The board may accept as a substitute for the examination requirement proof that the license applicant holds a license in a

state that has licensing requirements that are equal to or exceed the requirements of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 511 (S.B. 141), Sec. 1, eff. June 14, 2013.

Sec. 605.253. REVIEW OF LICENSE APPLICATIONS. The board shall review applications for a license at least once each year at reasonable times and places designated by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.254. EXEMPTIONS FROM OR SUBSTITUTES FOR LICENSE REQUIREMENTS. (a) A person is entitled to an exemption from the license requirements established by the board under Section 605.252 if the person is a resident of this state who:

(1) applies for the exemption not later than the 181st day after the date on which the board's initial rules are finally adopted and:

(A) has provided comprehensive orthotic or prosthetic care for at least three years before the date of the application, including practicing orthotics or prosthetics in this state for the year preceding that date; or

(B) has provided comprehensive orthotic and prosthetic care for at least six years, including practicing orthotics and prosthetics in this state for the year preceding the application date; or

(2) presents evidence satisfactory to the board that the person possesses unique qualifications to practice orthotics, prosthetics, or orthotics and prosthetics.

(b) A person who has provided comprehensive orthotic, prosthetic, or orthotic and prosthetic care in this state for a term shorter than the number of years required by Subsection (a)(1) may obtain a license to practice in this state by passing each written and practical examination approved and required by the board. The person must:

(1) apply for examination on a form prescribed by the board

not later than the 181st day after the date the board's initial rules are finally adopted; and

(2) pay the nonrefundable application fee.

(c) The board shall issue a license to a person who is determined to be eligible for a license under Subsection (a) or (b). A person to whom a license is issued under this subsection is entitled to the same license privileges as if the person met the educational and vocational requirements of Section 605.252. The license holder is subject to the license renewal requirements established by the board, other than the academic, clinical training, and examination requirements, which the board may not impose as a condition of the person's license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.255. ASSISTANT LICENSE. (a) An applicant for a license as an orthotist assistant or prosthetist assistant must:

(1) file a written application with the board on a form provided by the board;

(2) pay the nonrefundable application fee prescribed by the board; and

(3) present evidence satisfactory to the board that the applicant has completed an education program, including courses in the anatomical, biological, and physical sciences, and a clinical residency as prescribed and adopted by the board.

(b) An assistant licensed under this section may provide only ancillary patient care services, as defined by the board, in the discipline in which the assistant's supervisor is licensed under this chapter.

(c) A person is eligible for an exemption from the license requirements established by the board under this section if the person:

(1) applies for the exemption not later than the 181st day after the date on which the board's initial rules are finally adopted;

(2) is a resident of this state; and

(3) has practiced in this state within the scope of practice of an assistant, as defined by the board, for three consecutive years.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.256. ISSUANCE OF LICENSE OR REGISTRATION CERTIFICATE; TERM. (a) The board may issue a license or registration certificate under this chapter only to an individual.

(b) The board shall issue a license in orthotics or prosthetics to an applicant who meets the requirements provided under this chapter. A license may be granted in either orthotics or prosthetics, or in both, if the person meets the requirements established by the board.

(c) A license is valid for two years from the date issued and may be renewed before expiration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.257. TEMPORARY LICENSE. (a) The board may issue a temporary license to an individual who:

(1) has recently become a resident of this state;  
(2) has applied for a license as an orthotist, prosthetist, or both; and

(3) has:  
(A) practiced orthotics regularly since January 1, 1996; or

(B) been licensed by the state in which the person formerly resided if that state has license requirements that are equal to or exceed the requirements of this chapter.

(b) A temporary license is valid for one year from the date issued. A temporary license may be renewed for not more than one additional year if the applicant presents evidence sufficient to the board of good cause for renewal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.258. STUDENT REGISTRATION CERTIFICATE. (a) The board may issue a student registration certificate to an individual who is working toward fulfilling the requirements for a license as an orthotist, prosthetist, or prosthetist orthotist and:

(1) holds either:

(A) a bachelor's or graduate degree in orthotics and prosthetics from:

(i) an education program recognized and accredited by the Commission on Accreditation of Allied Health Education Programs that is offered at an institution of higher education; or

(ii) a practitioner education program that has education standards that are equivalent to or exceed the standards adopted by the Commission on Accreditation of Allied Health Education Programs; or

(B) a bachelor's degree in another subject and an orthotic or prosthetic certificate issued by a practitioner education program:

(i) recognized and accredited by the Commission on Accreditation of Allied Health Education Programs; or

(ii) that has education standards that are equivalent to or exceed the standards adopted by the Commission on Accreditation of Allied Health Education Programs; or

(2) is a student who:

(A) is currently enrolled in a graduate program in this state in orthotics and prosthetics that:

(i) is recognized and accredited by the Commission on Accreditation of Allied Health Education Programs; and

(ii) incorporates a professional clinical residency that meets the requirements of rules adopted under Section 605.252(c); and

(B) submits to the board a written certification from the graduate program in which the student is enrolled that the student has successfully completed the academic prerequisites to enter a professional clinical residency.

(b) A student registrant may work only under the direct supervision of a licensed orthotist, licensed prosthetist, or licensed prosthetist orthotist who is responsible for the acts of the student registrant and licensed in the discipline of the student registrant's clinical residency.

(c) A student registration certificate is valid for two years from the date issued and may be renewed once for an additional two years.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:



Acts 2013, 83rd Leg., R.S., Ch. 511 (S.B. 141), Sec. 2, eff. June 14, 2013.

Sec. 605.259. ORTHOTIC OR PROSTHETIC TECHNICIAN REGISTRATION CERTIFICATE. (a) The board may issue a registered orthotic technician or registered prosthetic technician certificate to an applicant who:

(1) files a written application with the board on a form provided by the board;

(2) pays the nonrefundable application fee; and

(3) presents evidence satisfactory to the board that the applicant has completed an education program and laboratory experience as prescribed by the board.

(b) A person is eligible for an exemption from the registration requirements adopted by the board under this section if the person:

(1) applies for the exemption not later than the 181st day after the date on which the board's initial rules under this chapter are finally adopted;

(2) is a resident of this state; and

(3) has practiced in this state as an orthotic or prosthetic technician for three consecutive years.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.260. ACCREDITATION OF FACILITIES. (a) The board by rule shall establish requirements for the accreditation and the renewal of an accreditation of an orthotic or prosthetic facility in which orthotics or prosthetics are conducted. The board may issue an accreditation only to an orthotic or prosthetic facility.

(b) If a person owns more than one facility, the board may require only one application for the accreditation of each of the person's facilities. Each orthotic or prosthetic facility must meet the requirements established by the board.

(c) An orthotic or prosthetic facility must be under the on-site direction of an orthotist or prosthetist licensed by the board in the discipline for which accreditation is sought.

(d) The rules adopted under this section may not prohibit a licensed individual from practicing in an orthotic or prosthetic

facility within the scope of the individual's license.

(e) This section does not apply to a facility licensed under Subtitle B, Title 4, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.261. CONTINUING EDUCATION. (a) The board shall:

(1) adopt rules that require a license holder to participate in an approved continuing education program to renew a license issued under this chapter; and

(2) prepare or approve continuing education programs for license holders.

(b) To renew a license under this chapter, an applicant must submit to the board evidence of satisfactory completion of the continuing education requirements required by the board.

(c) The board shall notify a license holder who has failed to comply with the board's continuing education requirements of the license holder's failure to comply and that failure to obtain the required continuing education before the expiration of three months after the date the notice is given constitutes grounds for the board to suspend or revoke the license holder's license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. EXEMPTIONS**

Sec. 605.301. EXEMPTION FOR LICENSE HOLDERS OF OTHER STATE AGENCIES. This chapter does not restrict a person who holds a license issued by another state agency from performing health care services within the scope of the license holder's applicable licensing act if the license holder:

(1) practices in conformance with the applicable laws and rules relating to the person's license; and

(2) does not:

(A) violate Section 605.251;

(B) represent to others that the license holder practices orthotics or prosthetics; or

(C) use the terms "prosthetist," "prosthesis," "prosthetic," "artificial limb," "orthotist," "orthosis," "orthotic," or "brace" or the letters "LP," "LPA," "LO," "LOA," "LPO," or "LPOA"

or any derivative of those terms or letters in connection with the license holder's name or practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.302. EXEMPTION FOR STUDENTS IN ORTHOTICS OR PROSTHETICS. This chapter does not apply to the activities and services of a student in orthotics or prosthetics who is:

(1) pursuing a course of study in:

(A) an orthotic or prosthetic program at a college or university recognized and accredited by the Commission on Accreditation of Allied Health Education Programs; or

(B) an orthotic or prosthetic education program having education standards that are equivalent to or exceed the standards adopted by the Commission on Accreditation of Allied Health Education Programs; or

(2) working in a recognized training center or research facility, if the activities and services provided by the person at the training center or research facility constitute a part of the person's course of study in the discipline in which the person's supervisor is licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.303. EXEMPTION FOR CERTAIN LICENSE HOLDERS. This chapter does not apply to:

(1) a podiatrist practicing under Chapter 202;

(2) a chiropractor practicing under Chapter 201;

(3) an occupational therapist practicing under Chapter 454;

or

(4) a physical therapist practicing under Chapter 453.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.304. EXEMPTION FOR PEDORTHISTS. (a) In this section:

(1) "Certified pedorthist" means a person certified by the Board for Certification in Pedorthics in the design, manufacture, fit, and modification of shoes and related foot orthoses below the

anatomical ankle joint as prescribed by a licensed doctor of medicine or a doctor of podiatry for the amelioration of a painful or disabling condition of the foot; and

(2) "Foot orthosis" includes prosthetic toe fillers or orthoses for use below the ankle.

(b) This chapter does not apply to a certified pedorthist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.305. EXEMPTION FOR PHARMACISTS. A pharmacist licensed by the Texas State Board of Pharmacy or a person who is working under the direct supervision of a pharmacist may practice orthotics. This chapter does not preclude a pharmacist from being reimbursed by a state-funded program for providing orthotic services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER H. PROHIBITED PRACTICES, DISCIPLINARY PROCEDURES, AND PENALTIES**

Sec. 605.351. USE OF TITLE. A person or an employee, agent, or representative of the person may not use in connection with the person's name or business activities the terms or a combination of the terms or letters described in Section 605.301(2), indicate orally or in writing, directly or by implication, that an orthotic or prosthetic service is provided or supplied, or extend or provide orthotic or prosthetic services unless the person is an orthotist or prosthetist or an assistant to an orthotist or prosthetist licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.352. VIOLATION OF SECTION 102.001. A person licensed under this chapter is considered to have violated this chapter if the person violates Section 102.001.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.827, eff. Sept. 1, 2001.

Sec. 605.353. DISCIPLINARY ACTIONS. (a) After notice and opportunity for a hearing, the board may revoke, suspend, or refuse to renew a license issued under this chapter on a finding that:

- (1) the license was obtained by fraud, misrepresentation, or concealment of a material fact;
  - (2) the person engaged in fraud or deceit in connection with services provided by the person;
  - (3) the person engaged in unprofessional or unethical conduct;
  - (4) the person engaged in gross negligence or malpractice;
- or
- (5) the person violated this chapter or a rule adopted under this chapter.

(b) The board may reinstate a license revoked under Subsection (a) after the first anniversary of the date of the revocation on terms the board determines to be necessary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.3535. EMERGENCY SUSPENSION. (a) The board or a three-member committee of board members designated by the board shall temporarily suspend the license of a license holder if the board or committee determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

- (1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and
- (2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 20, eff. Sept. 1, 2003.

Sec. 605.354. CIVIL PENALTY. (a) A person who violates this chapter is subject to a civil penalty of \$200 for the first violation and \$500 for each subsequent violation.

(b) Each day a violation of Section 605.351 continues is a separate violation for the purpose of this section.

(c) The attorney general shall bring an action in the name of the state at the board's request to collect a civil penalty under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.355. ASSISTANCE IN PROSECUTION. The board shall assist legal authorities in the prosecution of any person violating this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.356. CRIMINAL PENALTY. (a) A person required to hold a license under this chapter commits an offense if the person knowingly practices, attempts to practice, or offers to practice orthotics or prosthetics without holding a license issued under this chapter.

(b) An offense under Subsection (a) is a Class A misdemeanor.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 21, eff. Sept. 1, 2003.

#### **SUBCHAPTER I. ADMINISTRATIVE PENALTY**

Sec. 605.401. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 22, eff. Sept. 1, 2003.

Sec. 605.402. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The

amount of the administrative penalty may not be less than \$50 or more than \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 22, eff. Sept. 1, 2003.

Sec. 605.403. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the commissioner or the commissioner's designee determines that a violation occurred, the commissioner or the designee may issue to the board a report stating:

- (1) the facts on which the determination is based; and
- (2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the commissioner or the commissioner's designee shall give written notice of the report to the person. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended administrative penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 22, eff. Sept. 1, 2003.

Sec. 605.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

- (1) accept the determination and recommended administrative penalty of the commissioner or the commissioner's designee; or
- (2) make a request for a hearing on the occurrence of the

violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the commissioner or the commissioner's designee, the board by order shall approve the determination and impose the recommended penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 22, eff. Sept. 1, 2003.

Sec. 605.405. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the commissioner or the commissioner's designee shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 22, eff. Sept. 1, 2003.

Sec. 605.406. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the board by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 22, eff. Sept. 1, 2003.

Sec. 605.407. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Within 30 days after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the



occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner or the commissioner's designee by certified mail.

(c) If the commissioner or the commissioner's designee receives a copy of an affidavit under Subsection (b)(2), the commissioner or the designee may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 22, eff. Sept. 1, 2003.

Sec. 605.408. COLLECTION OF PENALTY. (a) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 22, eff. Sept. 1, 2003.

Sec. 605.409. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may

uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 22, eff. Sept. 1, 2003.

Sec. 605.410. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 22, eff. Sept. 1, 2003.

Sec. 605.411. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is a contested case under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 22, eff. Sept. 1, 2003.

**SUBTITLE L. CEMETERY AND CREMATORY SERVICES, FUNERAL DIRECTING, AND  
 EMBALMING  
 CHAPTER 651. CEMETERY AND CREMATORY SERVICES, FUNERAL DIRECTING, AND  
 EMBALMING  
 SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 651.001. DEFINITIONS. In this chapter:

(1) "Cemetery" means a place that is used or intended to be used for interment, and includes a graveyard, burial park, or mausoleum.

(2) "Commission" means the Texas Funeral Service Commission.

(3) "Crematory" means a structure containing a furnace used or intended to be used for the cremation of human remains.

(4) "Embalmer" means a person licensed under this chapter who for compensation, wholly or partly, disinfects or preserves a dead human body by:

(A) using chemical substances, fluids, or gases, including by introducing those substances, fluids, or gases into the body by:

(i) vascular or hypodermic injection; or

(ii) direct application into the organs or cavities; or

(B) another method intended to disinfect or preserve a dead human body or to restore body tissues and structures.

(5) "First call" means the beginning of the relationship and duty of a funeral director to take charge of a dead human body and have the body prepared for burial or disposition by embalming, cremation, or another method. The term does not include an ambulance call if the person dispatching the ambulance does not know whether a dead human body is to be picked up.

(6) "Funeral director" means a person licensed under this chapter who engages in for compensation, or represents to the public as being engaged in for compensation, the preparation, other than by embalming, of a dead human body for burial or other disposition.

(7) "Funeral directing" means acts associated with or arranging for the disposition of a dead human body, performed by a person for compensation, from the time of first call until:

(A) inurnment, interment, or entombment services are complete; or

(B) the body is permanently transported out of this state.

(8) "Funeral establishment" means:

(A) a place of business used in the care and preparation for burial or transportation of a dead human body; or

(B) any other place in which a person engages in, or represents the person to be engaged in, the business of embalming or

funeral directing.

(9) "Funeral merchandise" means merchandise sold primarily for use in:

(A) a funeral ceremony;

(B) embalming; or

(C) the care and preparation of a dead human body for burial, cremation, or other disposition.

(10) "Funeral service" means a service performed incident to a funeral ceremony or for the care and preparation of a dead human body for burial, cremation, or other disposition. The term includes embalming.

(11) "Mortuary science" means the scientific, professional, and practical aspects, with consideration given to accepted practices, of the care, preparation for burial, or transportation of a dead human body. The term includes the preservation and sanitation of a dead human body and restorative art.

(12) "Outer enclosure" means an enclosure or container placed in a grave above or around the casket. The term includes a burial vault, grave box, or grave liner.

(12-a) "Perpetual care cemetery" means a cemetery regulated under Chapter 712, Health and Safety Code.

(13) "Prospective customer" means a consumer who enters a funeral establishment and inquires about a funeral service, cremation, or merchandise.

(14) "Provisional license holder" means a person who:

(A) is engaged in learning the practice of funeral directing or embalming under the instruction, direction, and personal supervision of a funeral director or embalmer; and

(B) holds a provisional license issued by the commission under this chapter.

(15) "Purchase agreement" means a written statement that itemizes the cost of funeral services or merchandise selected by a customer from the retail price list.

(16) "Solicitation" means a direct or indirect contact by a funeral director, embalmer, or employee, agent, or representative of a licensed funeral establishment or any other entity with a person near death or the family of, next of kin of, or person responsible for making funeral arrangements for a person who is deceased or near death, if the contact is not initiated by the person near death or the family, next of kin, or person responsible for making funeral

arrangements and the contact is to secure the right to provide funeral services or merchandise or occurs in a situation that might influence the contacted person to choose a particular funeral establishment. The term does not include:

(A) except in the case of contact with a person near death or the person responsible for making funeral arrangements for a person near death, an attempt to secure funeral business under a permit issued under Chapter 154, Finance Code; or

(B) any method of advertising by publication or broadcasting.

(17) "Unit pricing" means a method of pricing that offers a discount to a purchaser who buys various funeral services and merchandise as a package.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.03, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 562, Sec. 1, eff. Sept. 1, 2003.

Sec. 651.002. APPLICATION OF SUNSET ACT. The Texas Funeral Service Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.04, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 562, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 4.06, eff. June 17, 2011.

Sec. 651.003. CONSTRUCTION WITH OTHER LAW. (a) This chapter does not affect the authority of the Texas Department of Banking to enforce Chapter 154, Finance Code, or to regulate perpetual care cemeteries.

(b) The authority of the commission under Chapter 154, Finance Code, is limited to:

- (1) imposing an administrative penalty;
- (2) issuing a reprimand; or

(3) suspending, revoking, or probating a license issued by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 3, eff. Sept. 1, 2003.

Sec. 651.004. REGULATION OF CEMETERY AND CREMATORY SERVICES.

(a) The commission shall regulate cemetery and crematory services as provided by this chapter and Chapter 716, Health and Safety Code.

(b) The commission may not regulate cemetery or crematory services that occur after burial or inurnment unless the services relate to the care and treatment of the remains in an urn, casket, or outer enclosure.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 4, eff. Sept. 1, 2003.

**SUBCHAPTER B. TEXAS FUNERAL SERVICE COMMISSION**

Sec. 651.051. COMMISSION MEMBERSHIP. (a) The Texas Funeral Service Commission consists of seven members appointed by the governor, with the advice and consent of the senate as follows:

(1) two members who are licensed as both an embalmer and a funeral director for at least the five years preceding appointment to the commission;

(2) one member who is a registered cemetery owner or operator; and

(3) four members who represent the public and who:

(A) are not regulated under this chapter; and

(B) have consistently shown an interest in supporting consumer protection.

(b) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(c) Each member of the commission must be a United States citizen.

(d) Before entering on the duties of office, each commissioner shall take and subscribe to the oath of office prescribed for other state officials. The oath shall be filed in the office of the secretary of state after having been administered under proper authority.

(e) Each person appointed to the commission shall be furnished with a certificate of appointment by the governor that evidences that the person took the official oath of office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.05, eff. Sept. 1, 2001.

Sec. 651.0511. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

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

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

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

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.06, eff. Sept. 1,

2001.

Sec. 651.052. ELIGIBILITY OF PUBLIC MEMBERS. (a) A person may not be a public member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the funeral service industry;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the commission;

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

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

(b) A public member of the commission may not, except as a consumer:

(1) have a financial interest in a funeral establishment;  
or

(2) be related to a person within the second degree by affinity or third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, who has a financial interest in a funeral establishment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.07, eff. Sept. 1, 2001.

Sec. 651.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for



purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

- (1) the person is an officer, employee, or paid consultant of a Texas trade association in the funeral service industry; or
- (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the funeral service industry.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.08, eff. Sept. 1, 2001.

Sec. 651.054. TERMS; VACANCY. (a) Members of the commission serve staggered six-year terms, with the terms of one-third of the members expiring in each odd-numbered year.

(b) The governor shall appoint a person to fill a vacancy on the commission to serve for the remainder of the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.374(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 514 (S.B. [221](#)), Sec. 1, eff. June 14, 2013.

Sec. 651.055. GROUNDS FOR REMOVAL. (a) The governor shall remove from the commission a commissioner whose license to practice funeral directing or embalming has been revoked or suspended.

(b) The governor may remove a commissioner for neglect of duty, incompetence, or fraudulent or dishonest conduct.

(c) It is a ground for removal from the commission that a member:

- (1) does not have at the time of appointment the qualifications required by Sections 651.051(a) and (c) and

651.052(a);

(2) does not maintain during service on the commission the qualifications required by Sections 651.051(a) and (c) and 651.052(a);

(3) violates a prohibition established by Sections 651.053(a)-(e) or 651.506(h);

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

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

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

(e) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.056. REIMBURSEMENT; PER DIEM. (a) A commissioner shall be reimbursed for necessary travel expenses incurred in performing the business of the commission.

(b) In addition to reimbursement under Subsection (a), a commissioner shall receive a per diem allowance for each day spent by the commissioner on business of the commission not to exceed 60 days in any calendar year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.057. OFFICERS. (a) The governor shall designate one member of the commission as the presiding officer of the commission to serve in that capacity for three years. In designating presiding officers, the governor shall alternate between public and nonpublic members.

(b) After 30 days' written notice is given to the commissioners, the commission shall elect from its public members an assistant presiding officer. The assistant presiding officer serves in that capacity for one year.

(c) The presiding officer shall preside at all meetings of the commission, unless otherwise ordered, and shall exercise all duties and performances incident to the office of presiding officer. In the absence of the presiding officer, the assistant presiding officer shall preside.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.375(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 562, Sec. 5, eff. Sept. 1, 2003.

Sec. 651.058. OFFICE LOCATION. The commission's offices are located in Austin, Texas.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.059. MEETINGS; NOTICE. (a) The commission shall meet in regular session in Austin at least once each calendar quarter to transact business.

(b) The commission may hold a special meeting or hearing on the call of the presiding officer, assistant presiding officer, or three members. The person calling the special meeting or hearing shall determine the time and place of the meeting or hearing.

(c) Notice of the time, place, and purpose of a regular meeting of the commission must be filed with the Texas Register at least seven days before the date of the meeting. All meetings, including meetings of the committees of the members, are open and public.

(d) The commission's duties under Chapter 551, Government Code, include the requirement under Sections 551.021 and 551.022 of that code to prepare and maintain the minutes of each open meeting.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.376(a), eff. Sept. 1, 2001.

Sec. 651.060. LEGAL REPRESENTATION. (a) The attorney general shall designate at least one employee of the attorney general's office to advise the commission and to represent the commission in legal proceedings.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 514, Sec. 2, and Ch. 364, Sec. 1, eff. June 14, 2013.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.377(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 364 (H.B. 2710), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 514 (S.B. 221), Sec. 2, eff. June 14, 2013.

#### **SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL**

Sec. 651.101. EXECUTIVE DIRECTOR; BOND. (a) The commission shall employ and supervise an executive director to manage the administrative affairs of the commission under this chapter. The commission shall determine the terms and conditions of the executive director's employment and set the executive director's salary at an amount not to exceed the maximum salary for the position as set in the General Appropriations Act. In the absence of an executive director, the commission may appoint an acting executive director.

(b) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(38).

(c) The commission may delegate the commissioners' duties to the executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.377(b), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 285, Sec. 31(38), eff. Sept. 1, 2003.

Sec. 651.102. PERSONNEL. The commission may employ inspectors and clerical and technical assistants as the commission determines to be necessary to administer this chapter. The commission shall determine the terms and expenses of its employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1420, Sec. 14.377(c), eff. Sept. 1, 2001.

Sec. 651.103. INVESTIGATORS. The commission shall employ one or more persons to investigate complaints received by the commission, including consumer interest complaints.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.378(a), eff. Sept. 1, 2001.

Sec. 651.104. DIVISION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and staff of the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.09, eff. Sept. 1, 2001.

Sec. 651.105. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The commission shall provide to its members and employees, as often as necessary, information regarding their:

- (1) qualifications for office or employment under this chapter; and
- (2) responsibilities under applicable laws relating to the standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.106. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all nonentry-level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit

pay for commission employees must be based on the system established under this subsection.

(c) The programs required under Subsections (a) and (b) must cover an annual period, be updated at least annually, and be filed with the governor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.379(a), eff. Sept. 1, 2001.

Sec. 651.107. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

(a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the commission's personnel is in accordance with federal and state law and a description of reasonable methods to achieve compliance with federal and state law.

(c) The policy statement must:

(1) be updated at least annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.10, eff. Sept. 1, 2001.

**SUBCHAPTER D. COMMISSION POWERS AND DUTIES**

Sec. 651.151. GENERAL POWERS AND DUTIES. (a) The commission shall establish proficiency, professionalism, ethics, and qualification standards for individuals issued a license under this

chapter.

(b) The commission shall examine each applicant for a funeral director's license, embalmer's license, or provisional license and shall issue the appropriate license to a person who meets the licensing requirements.

(c) The commission may appoint a committee from its members to consider and make a recommendation on a matter referred to the committee by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 6, eff. Sept. 1, 2003.

Sec. 651.152. RULES; PROCEDURES; FORMS. The commission shall adopt rules, establish procedures, and prescribe forms necessary to administer and enforce this chapter and Chapters 714 and 715, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 7, eff. Sept. 1, 2003.

Sec. 651.1525. EARLY PARTICIPATION IN RULEMAKING PROCESS; GUIDELINES. (a) Before publishing a proposed rule for public comment, the commission shall seek advice and opinions from persons who will be most affected by the rule. At a minimum, those persons must include consumer groups and trade associations that represent persons from each group regulated by the commission, including funeral directors and cemetery and crematory operators.

(b) The commission shall develop guidelines to implement this section. The guidelines must establish a method to determine who will be most affected by a proposed rule.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 8, eff. Sept. 1, 2003.

Sec. 651.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commission may not adopt rules restricting advertising or competitive bidding by a person regulated by the commission except to prohibit false, misleading, or deceptive practices by the person.

(b) The commission may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the commission a rule that:

- (1) restricts the use of any medium for advertising;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.154. FEES. (a) The commission shall set the following fees in amounts reasonable and necessary to administer this chapter:

- (1) the funeral director's and embalmer's application fee, license fee, duplicate license fee, and reciprocal license fee; and
- (2) the cemetery, crematory, or funeral establishment license fee, renewal fee, and late renewal penalty.

(b) The commission shall set the provisional license fee, examination fee, renewal fee, and late renewal penalty in amounts reasonable and necessary to administer the provisional license program.

(c) The commission may not charge a fee to a perpetual care cemetery, including a fee for issuing or renewing a license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 9, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 19, eff. September 1, 2009.

Sec. 651.155. FEE EXEMPTION FOR MILITARY SERVICE. (a) On presentation to the commission of evidence as prescribed by the commission, a license holder or provisional license holder actively engaged in the military service of the United States is exempt from the payment of license fees for the duration of the holder's military



service or from the amount of fees and for the time the commission considers advisable.

(b) The commission may not consider the period of military service in determining whether a funeral director's license or embalmer's license is revoked, suspended, or lapsed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.156. SUBPOENA. (a) The commission may issue a subpoena or subpoena duces tecum.

(b) The subpoena or subpoena duces tecum must be served by personal service or certified mail, return receipt requested.

(c) The commission by rule shall establish standards that enable the executive director to issue subpoenas and subpoenas duces tecum in connection with a complaint under investigation by the commission.

(d) A subpoena or subpoena duces tecum issued under this section is not effective unless it is issued in compliance with:

- (1) state and federal law; and
- (2) commission rules adopted under Subsection (c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.380(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 20, eff. September 1, 2009.

Sec. 651.157. INSPECTION OF CEMETERY, CREMATORY, OR FUNERAL ESTABLISHMENT. (a) Except as provided by Subsection (b), a licensed cemetery, crematory, or funeral establishment shall be inspected at least once every two years by an agent of the commission or by an agent of the state or a political subdivision authorized by the commission to make inspections on its behalf.

(b) If the commission finds a violation of this chapter or of Chapter 193, 361, 711, 714, 715, or 716, Health and Safety Code, the commission shall inspect the cemetery, crematory, or funeral establishment annually until the commission determines that the establishment is free of violations.

(c) A report of each inspection made under this section shall be filed with the commission.

(d) The commission by rule shall establish:

(1) procedures for the inspection of a cemetery, crematory, or funeral establishment required by this section; and

(2) criteria, including consideration of the establishment's inspection and complaint history, regarding when the commission should inspect an establishment based on the risk of a violation at an establishment.

(e) A premises on which funeral directing, interment, cremation, or embalming is practiced shall be open at all times to inspection for any violation of this chapter or of Chapter 193, 361, or 716, Health and Safety Code, by:

(1) an agent of the commission;

(2) an authorized agent of the state; or

(3) an authorized agent of the county or municipality in which the premises is located.

(f) Before a commission agent inspects a cemetery, crematory, or funeral establishment, the agent shall review the inspection reports filed with the commission on the establishment. During the inspection, the agent shall determine whether previously identified problems have been corrected and whether a pattern of violations exists. The commission shall consider the information from the inspection reports in determining whether a penalty should be imposed against an establishment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.11, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 562, Sec. 10, eff. Sept. 1, 2003.

Sec. 651.1571. INSPECTION REQUIREMENTS FOR CERTAIN CEMETERIES; EXCEPTION FOR PERPETUAL CARE CEMETERIES. (a) This section and Section 651.157 do not apply to perpetual care cemeteries.

(b) Except as provided by Section 651.157(b):

(1) a cemetery may not be inspected unless:

(A) an interment has occurred in the cemetery within the two years preceding the inspection; or

(B) the commission has received a complaint about the cemetery; and

(2) the commission shall give lower priority to an inspection of a cemetery than to an inspection of a crematory or funeral establishment.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 11, eff. Sept. 1, 2003.

Sec. 651.158. INSPECTION OF CERTAIN FACILITIES. (a) The commission may require a funeral establishment that has solid waste disposal and sanitation facilities that have not been inspected by the Texas Department of Health to obtain inspection of those facilities by an entity other than the Texas Department of Health.

(b) The commission by rule shall establish procedures for an inspection required under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.159. MEMORANDUM OF UNDERSTANDING: PREPAID FUNERAL SERVICES. (a) The commission, the Texas Department of Insurance, and the Texas Department of Banking shall adopt a joint memorandum of understanding relating to prepaid funeral services and transactions. The memorandum must:

- (1) outline the responsibilities of each agency in regulating prepaid funeral services and transactions;
- (2) establish procedures to be used by each agency in:
  - (A) referring a complaint to one of the other agencies;
  - (B) investigating a complaint; and
  - (C) notifying the other agencies of a complaint or a complaint investigation;
- (3) specify:
  - (A) an action the agencies regard as a deceptive trade practice; and
  - (B) the information the agencies provide consumers and when that information is to be provided; and
- (4) set the administrative penalty each agency imposes for a violation.

(b) Not later than the last month of each state fiscal year, the commission and the other agencies shall review and update the memorandum of understanding.

(c) Each agency by rule shall adopt the memorandum of

understanding and any revision to the memorandum.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.160. MEMORANDUM OF UNDERSTANDING: FUNERAL ESTABLISHMENT REQUIREMENTS. (a) The commission and the Texas Department of Health shall adopt a joint memorandum of understanding that:

(1) outlines the responsibilities of each agency in enforcing requirements under Chapters 193 and 361, Health and Safety Code, that affect funeral establishments;

(2) establishes procedures by which each agency:

(A) may refer a complaint to the other; and

(B) will notify the other of a violation by a funeral establishment of Chapter 193 or 361, Health and Safety Code; and

(3) coordinates inspection and enforcement efforts by both agencies for measures that a funeral establishment is required to implement under Chapters 193 and 361, Health and Safety Code.

(b) Not later than the last month of each state fiscal year, the commission and the Texas Department of Health shall review and update the memorandum of understanding.

(c) Each agency by rule shall adopt the memorandum of understanding and any revision to the memorandum.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.162. BIENNIAL REPORT. The commission shall file biennially with the governor a written description of the activities of the commission during the two preceding fiscal years.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.382(a), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(154), eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 89, eff. September 1, 2013.

Sec. 651.163. REQUEST FOR ATTORNEY GENERAL'S OPINION. A request for an opinion under Subchapter C, Chapter 402, Government Code, must be approved by the commissioners.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.383(a), eff. Sept. 1, 2001.

Sec. 651.164. LICENSE EXPIRATION. The commission by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the commission shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Renumbered from Sec. 651.262 and amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.17, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 562, Sec. 12, eff. Sept. 1, 2003.

Sec. 651.165. RENEWAL OR REINSTATEMENT OF LICENSE. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the commission before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the commission a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the commission a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may renew the license by:

- (1) retaking and passing the applicable examination;
- (2) paying any applicable fees, including a renewal fee that is equal to two times the normally required renewal fee; and

(3) completing any continuing education required under Section 651.266.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the commission a fee that is equal to two times the normally required renewal fee for the license.

(f) At least 30 days before the expiration of a person's license, the commission shall send written notice of the impending license expiration to the person at the person's last known address according to the records of the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Renumbered from Sec. 651.263 and amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.18, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 21, eff. September 1, 2009.

Sec. 651.1655. REINSTATEMENT OF SUSPENDED LICENSE. A person whose license has been suspended may renew the license by paying to the commission a renewal fee that is equal to two times the normally required renewal fee in addition to any penalty assessed by the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 22, eff. September 1, 2009.

Sec. 651.166. USE OF TECHNOLOGY. The commission shall develop and implement a policy requiring the executive director and commission employees to research and propose appropriate technological solutions to improve the commission's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to easily find information about the commission on the Internet;

(2) ensure that persons who want to use the commission's services are able to:

(A) interact with the commission through the Internet;

and

(B) access any service that can be provided effectively through the Internet; and

(3) be cost-effective and developed through the commission's planning processes.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 13, eff. Sept. 1, 2003.

Sec. 651.167. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 13, eff. Sept. 1, 2003.

#### **SUBCHAPTER E. PUBLIC INTEREST AND COMPLAINT INFORMATION**

Sec. 651.201. PUBLIC INTEREST INFORMATION. (a) The commission shall prepare a brochure with information of public interest:

(1) explaining matters relating to funerals; and

(2) describing:

(A) the functions of the commission; and

(B) the commission's procedures for filing and resolving a public complaint.

(b) The commission shall:

- (1) provide each licensed funeral establishment with the number of brochures the commission considers appropriate; and
- (2) make the brochure available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.202. COMPLAINTS. (a) The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. The commission may provide for that notice:

- (1) on each license form, application, or written contract for services of a person regulated under this chapter;
- (2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or
- (3) in a bill for service provided by a person regulated under this chapter.

(b) The commission shall adopt rules concerning a complaint filed under this section. The rules adopted under this subsection must:

- (1) establish procedures regarding the receipt, investigation, and disposition of complaints;
- (2) allow for an informal hearing process;
- (3) establish a formal hearing process;
- (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;
- (5) ensure that the license holder who is the subject of the complaint has an opportunity to be heard regarding the complaint; and
- (6) establish procedures by which a commission employee may dismiss a complaint, subject to approval by the executive director or the executive director's designee, if the investigation does not reveal a violation.

(c) The commission shall investigate each complaint received by the commission relating to a funeral director, embalmer, provisional license holder, funeral establishment, or other person licensed or registered under this chapter.



(d) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution, including an explanation of the remedies that are available to the person under this chapter and information about other appropriate state or local agencies or officials with which the person may file a complaint.

(e) The commission, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

(f) The person who filed the complaint is entitled to attend any proceeding resulting from the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.13, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 562, Sec. 14, eff. Sept. 1, 2003.

Sec. 651.203. RECORD OF COMPLAINTS. (a) The commission shall maintain a file on each written complaint filed with the commission. The file must include:

- (1) the subject matter of the complaint;
- (2) the date the complaint is received by the commission;
- (3) the name of the person who filed the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) Information in a file maintained under this section, other than information relating to a complaint that has not reached a final disposition, is public information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.14, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.378(b), eff. Sept. 1, 2001.

Sec. 651.204. PUBLIC PARTICIPATION. (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the commission's jurisdiction.

(b) The commission shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the commission's programs.

(c) A member of the public is not required to provide notice to the commission before appearing and speaking before the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.376(b), eff. Sept. 1, 2001.

#### **SUBCHAPTER F. LICENSE REQUIREMENTS: FUNERAL DIRECTORS AND EMBALMERS**

Sec. 651.251. LICENSE REQUIRED. (a) Funeral directing may be performed only by a funeral director or a provisional license holder or qualified mortuary student under the supervision and direction of a funeral director. A person may not engage or profess to be engaged in the business of funeral directing or hold the person out to the public as a funeral director unless the person is licensed as a funeral director.

(b) Embalming may be performed only by an embalmer or a provisional license holder or qualified mortuary student under the supervision and direction of an embalmer. A person may not engage or profess to be engaged in the business of embalming or hold the person out to the public as an embalmer unless the person is licensed as an embalmer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.252. LICENSE APPLICATION. (a) An applicant for a funeral director's license or an embalmer's license must submit a written license application to the commission and pay the application fee.

(b) The commission may require an applicant to appear before at least one member of the commission for approval of the person's application. The approval is subject to review by the entire

commission.

(c) The commission shall keep a permanent, alphabetical record of each license application and the action taken on the application. The record must indicate the current status of each application and license issued.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.253. GENERAL LICENSE REQUIREMENTS. (a) To be eligible for a funeral director's license or an embalmer's license, an applicant must:

- (1) be at least 18 years of age;
- (2) have graduated from an accredited high school or passed an examination prescribed by the Texas Education Agency;
- (3) have graduated from an accredited school or college of mortuary science;
- (4) unless the applicant holds a reciprocal embalmer's license, have served as a provisional license holder for not less than one year under the personal supervision and instruction of a funeral director or embalmer, as applicable; and
- (5) have successfully completed the applicable written examination described by Section 651.255 or 651.256.

(b) An applicant for a funeral director's license or an embalmer's license may not be considered for that license until the applicant:

- (1) completes all of the requirements of the provisional license program; and
- (2) attains a grade of at least 75 percent on the written examination given by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.254. LICENSE EXAMINATIONS; RESULTS. (a) The examinations for a funeral director's license and an embalmer's license shall be held at least annually. The examinations shall be given at the time and place designated by the commission. The commission shall give notice of the examinations.

(b) Not later than the 30th day after the date a person takes a licensing examination under this chapter, the commission shall notify

the person of the results of the examination.

(c) If the examination is graded or reviewed by a testing service:

(1) the commission shall notify the person of the results of the examination not later than the 14th day after the date the commission receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the commission shall notify the person of the reason for the delay before the 90th day.

(d) The commission may require a testing service to notify a person of the results of the person's examination.

(e) If requested in writing by a person who fails a licensing examination administered under this chapter, the commission shall furnish the person with an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.15, eff. Sept. 1, 2001.

Sec. 651.255. EXAMINATIONS REQUIRED FOR FUNERAL DIRECTOR'S LICENSE. The commission shall administer or arrange for the administration of:

(1) a written professionally prepared examination on:

- (A) the art and technique of funeral directing;
- (B) the signs of death;
- (C) the manner by which death may be determined;
- (D) sanitation and hygiene;
- (E) mortuary management and mortuary law;
- (F) business and professional ethics; and
- (G) other subjects that may be taught in a recognized

school or college of mortuary science; and

(2) a written examination developed by the commission or developed for the commission by contract on:

(A) laws applicable to vital statistics pertaining to dead human bodies; and

(B) local and state rules and laws relating to the preparation, transportation, care, and disposition of dead human bodies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.256. EXAMINATIONS REQUIRED FOR EMBALMER'S LICENSE.

The commission shall administer or arrange for the administration of:

- (1) a written professionally prepared examination on:
  - (A) the anatomy of the human body, including:
    - (i) the cavities of the human body; and
    - (ii) the arterial and venous system of the human body;
  - (B) blood and discoloration;
  - (C) bacteriology and hygiene;
  - (D) pathology;
  - (E) chemistry and embalming;
  - (F) arterial and cavity embalming;
  - (G) restorative art;
  - (H) disinfecting;
  - (I) embalming special cases;
  - (J) contagious and infectious diseases;
  - (K) mortuary management;
  - (L) care, preservation, transportation, and disposition of dead human bodies;
  - (M) sanitary science; and
  - (N) other subjects that may be taught in a recognized school or college of mortuary science; and
- (2) a written examination developed by the commission or developed for the commission by contract on:
  - (A) laws applicable to vital statistics pertaining to dead human bodies; and
  - (B) local and state rules and laws relating to the care and disposition of dead human bodies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.257. FOREIGN STUDENTS; CERTIFICATE OF MERIT. (a) A citizen of a country other than the United States who has completed a full course of mortuary science at a commission-approved college in this state may take the commission examination in embalming, funeral directing, or both after:

(1) applying to the commission; and  
(2) paying the examination fee required of other applicants.

(b) The commission may award the applicant a certificate of merit if the applicant successfully makes the minimum grades required of other applicants. The certificate of merit does not authorize the holder of the certificate to practice embalming or funeral directing in this state unless the holder is otherwise licensed as an embalmer or funeral director under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.258. LICENSE ISSUANCE. On issuance of a funeral director's license or an embalmer's license under this chapter, a majority of the commission members shall sign the license. The license authorizes the license holder to practice embalming, funeral directing, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.259. APPLICATION BY OUT-OF-STATE LICENSE HOLDER. (a) The commission shall waive any requirement for a funeral director's license or an embalmer's license for an applicant who holds a license issued by another state, country, or territory that has license requirements substantially equivalent to the requirements of this state and who meets the requirements of this section. The commission may waive any license requirement for an applicant who holds a license issued by another state that does not have license requirements substantially equivalent to those of this state and who meets the requirements of this section. The applicant shall pay a license fee in an amount set by the commission.

(b) Any applicant for a license under this section shall file a sworn application that includes:

(1) a statement that:

(A) the applicant is the person to whom the license was issued;

(B) no proceeding has been instituted against the applicant for the cancellation, suspension, or revocation of the license in the state, country, or territory that issued the license;

and

(C) no prosecution is pending against the applicant in a state or federal court for an offense that, under the laws of this state, is a felony, or is a misdemeanor related to the practice of embalming or funeral directing; and

(2) an affidavit of a person described by Subsection (c) verifying that:

(A) the accompanying license has not been canceled, suspended, or revoked; and

(B) the statement of the qualifications made in the application for licensure in this state is correct.

(c) The affidavit must be made by:

(1) the presiding officer or secretary of the governmental entity that issued the license; or

(2) a registration officer of the state, country, or territory that issued the license.

(d) The applicant must affirm in the statement that the license under which the applicant practiced as a funeral director or embalmer in the state, country, or territory from which the applicant moved was, at the time the applicant left, in effect.

(e) The commission shall conduct a criminal background check on each applicant. An applicant is not eligible for a license under this section if the applicant has, in the 10 years preceding the date of the application, been finally convicted of a misdemeanor involving moral turpitude or a felony.

(f) An applicant for a license under this section must:

(1) provide proof that:

(A) the license is in good standing;

(B) the applicant has practiced under the license for

at least:

(i) one year in the state that issued the license if that state has license requirements substantially equivalent to those of this state; or

(ii) five years in the state that issued the license if that state does not have license requirements substantially equivalent to those of this state; and

(C) the applicant has graduated from an accredited college of mortuary science; and

(2) pass a written examination of not more than 50 questions on applicable state laws and commission rules.

(g) The commission shall conduct the examination under Subsection (f)(2) at each regularly scheduled meeting of the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.384(a), eff. Sept. 1, 2001.

Sec. 651.2595. PROVISIONAL LICENSE. (a) The commission may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as a funeral director or embalmer for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the commission relating to the practice of funeral director or embalmer; and

(3) is sponsored by a person licensed by the commission under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The commission may waive the requirement of Subsection (a)(3) for an applicant if the commission determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the commission approves or denies the provisional license holder's application for a license. The commission shall issue a license under this chapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 651.259; or

(2) the provisional license holder:

(A) passes the part of the examination under Subsection (a) that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of funeral directing or embalming in this state;

(B) meets the academic and experience requirements for a license under this chapter; and

(C) satisfies any other licensing requirements under this chapter.



(d) The commission shall approve or deny a provisional license holder's application for a license not later than the second anniversary of the date on which the provisional license is issued. The commission may extend the two-year period if the results of an examination have not been received by the commission before the end of that period.

(e) The commission may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.16, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 15, eff. Sept. 1, 2003.

Sec. 651.260. DUPLICATE LICENSE. (a) If a license issued under this chapter is lost or destroyed, the license holder may apply to the commission for a duplicate license.

(b) The license holder must submit the application on a form prescribed by the commission and must submit with the application an affidavit verifying:

(1) the loss or destruction of the license;

(2) that the license holder is the person to whom the license was issued; and

(3) any other information concerning the loss or destruction of the license the commission requires.

(c) The commission shall issue a duplicate license after receipt of the information and payment of the fee set by the commission for the duplicate license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.261. POSTING OF LICENSE. A license holder shall conspicuously display the holder's license in each place of business at which the license holder practices.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 16, eff. Sept. 1, 2003.

Sec. 651.264. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The commission may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is licensed and has been in practice in the other state for the two years before the person applied for a renewal license.

(b) The person must pay to the commission a fee equal to the renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.265. RENEWAL FOR CERTAIN RETIRED APPLICANTS; INACTIVE STATUS. (a) A license holder who is at least 65 years of age or who has a disability of 75 percent or greater at the time an application for renewal is submitted may apply for renewal of the license in the category of retired, inactive status, or the category of retired, active status.

(b) On application, the commission may renew the license of a retired license holder who does not provide funeral or embalming services in the category of retired, inactive status. The commission may not charge a fee for the renewal of a license for retired, inactive status.

(c) On application, the commission may renew in the category of retired, active status, the license of a retired license holder who participates in any manner, nominal or otherwise, in the provision of funeral or embalming services. The commission shall charge a fee equal to one-half of the amount of the license renewal fee charged other active license holders.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.266. CONTINUING EDUCATION. The commission by rule may require continuing education as a condition for license renewal except for a license holder described by Section 651.155 or an applicant for renewal described by Section 651.265. If the commission requires continuing education, the commission shall require completion of a minimum number of hours of ethics training as a required part of that education.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.19, eff. Sept. 1, 2001.

Sec. 651.267. REISSUANCE OF REVOKED LICENSE. (a) On application, the commission may reissue a license issued under this subchapter to a person whose license has been revoked. An application to reissue a license may not be made before the third anniversary of the date of the revocation.

(b) The application shall be made in the manner and form required by the commission.

(c) A hearing to determine whether to reissue a license shall be held before the commission unless the commission requires the hearing to be held before a hearings officer.

(d) A license that has been revoked may be reinstated only after the applicant:

(1) retakes and passes the applicable examination;

(2) pays a fee that is equal to two times the normally required renewal fee; and

(3) satisfies any other commission requirements, including any continuing education requirements under Section 651.266.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 17, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 23, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 24, eff. September 1, 2009.

#### **SUBCHAPTER G. LICENSE REQUIREMENTS: PROVISIONAL LICENSE HOLDERS**

Sec. 651.301. PROVISIONAL LICENSE REQUIRED. A person must obtain a provisional license before the person may engage in learning the practice of funeral directing or embalming under the instruction, direction, and personal supervision in this state of a licensed funeral director or embalmer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## Sec. 651.302. APPLICATION; ISSUANCE OF PROVISIONAL LICENSE.

(a) The commission shall issue a provisional license to practice funeral directing to an applicant who:

(1) is at least 18 years of age;

(2) has completed the educational requirements of Section 651.253 or is enrolled in an accredited school or college of mortuary science;

(3) is employed by a funeral director to learn funeral directing or embalming under the instruction and supervision of the funeral director;

(4) files an application for a provisional license on a form provided by the commission and verified under oath by the applicant; and

(5) pays any required application or license fee.

(b) The commission shall issue a provisional license to practice embalming to an applicant who:

(1) is at least 18 years of age;

(2) has completed the educational requirements of Section 651.253 or is enrolled in an accredited school or college of mortuary science;

(3) files an application for a provisional license;

(4) pays any required application or license fee; and

(5) complies with the requirements of this chapter and of the commission.

(c) Repealed by Acts 2003, 78th Leg., ch. 562, Sec. 42(2).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 18, 42(2), eff. Sept. 1, 2003.

Sec. 651.303. PROVISIONAL LICENSE PROGRAM. (a) The commission shall prescribe and supervise the course of instruction received by a provisional license holder while participating in a provisional license program.

(b) The commission by rule shall define the terms of employment of a provisional license holder. The terms of employment must include service by the provisional license holder under actual working conditions and under the personal supervision of a funeral director or embalmer.

(c) The term of the provisional license program must be at

least 12 consecutive months but not more than 24 consecutive months.

(d) The provisional license program must include assisting with at least 60 cases. Not more than two provisional license holders may receive credit for work done on any one body. The commission by rule shall:

(1) define the standards for a case;

(2) set the number of cases a provisional license holder is required to complete during the program; and

(3) establish guidelines for supervision under which a provisional license holder is granted increased responsibilities during the course of the provisional license program.

(e) The standards required for a complete case include:

(1) for an embalmer, all the duties and activities necessary for embalming; and

(2) for a funeral director, all the activities necessary from the time the body is obtained until final disposition.

(f) The funeral director provisional license program may be served concurrently with the embalmer provisional license program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 19, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 634 (S.B. 864), Sec. 1, eff. September 1, 2011.

Sec. 651.3035. MORTUARY COLLEGE CREDIT FOR PROVISIONAL LICENSE PROGRAM. (a) A case completed under Section 651.303(d) may serve as credit for both mortuary school or college and the provisional license holder program.

(b) A mortuary school or college may designate a funeral director or embalmer who is supervising a provisional license holder under Section 651.303 as a clinical instructor for the provisional license holder.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 20, eff. Sept. 1, 2003.

Sec. 651.304. EMPLOYMENT REPORTS. (a) On entering employment with a funeral director or embalmer, a provisional license holder shall immediately notify the commission of the name and place of

business of the funeral director or embalmer under whom the provisional license holder will train. The funeral director or embalmer shall sign the notification.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 263, Sec. 33(2), eff. September 1, 2009.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 263, Sec. 33(2), eff. September 1, 2009.

(d) If a provisional license holder leaves the employment of a funeral director or embalmer, the funeral director or embalmer shall prepare an affidavit showing the length of time the provisional license holder was employed and the number of cases handled while employed by the funeral director or embalmer. The original affidavit shall be filed with the commission and made a matter of record. A copy of the affidavit shall be furnished to the provisional license holder.

(e) The commission by rule shall prescribe reporting requirements for provisional license holders. The commission shall furnish report forms to be used by a provisional license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 21, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 25, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 33(2), eff. September 1, 2009.

Sec. 651.305. RENEWAL OR REINSTATEMENT OF PROVISIONAL LICENSE.

(a) , (b) Repealed by Acts 2001, 77th Leg., ch. 682, Sec. 3.01(a), eff. Sept. 1, 2001.

(c) If a provisional license holder fails to timely pay the renewal fee, the commission shall:

(1) impose a late payment penalty equal to the amount of the license renewal fee;

(2) suspend the license for nonpayment; and

(3) notify the provisional license holder of the suspension.

(d) If the renewal fee and penalty are not paid before the 91st day after the date of the notice of suspension, the commission shall

cancel the license. If the license is canceled under this subsection, the provisional license holder may apply for reinstatement not later than 18 months after the date of cancellation. The commission may reinstate the canceled license if:

(1) all other commission requirements are satisfied; and  
 (2) the license fee and a late payment penalty equal to the amount of the license fee for the period of the cancellation are paid.

(e) A provisional license may be renewed after the second anniversary of the date of its issuance only if the person requests and receives from the commission an extension based on hardship.

(f) A provisional license that has been canceled or suspended or has lapsed for a period of at least five years may be reinstated only if the applicant passes the written embalming or funeral directing examination.

(g) The commission may adopt rules relating to the reinstatement of a provisional license under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 3.01(a), eff. Sept. 1, 2001.

Sec. 651.306. PERSONAL SUPERVISION. For the purposes of this chapter, personal supervision requires the physical presence of a funeral director or embalmer at the specified place and time a funeral service is provided.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER H. LICENSE REQUIREMENTS: CEMETERY, FUNERAL, AND COMMERCIAL EMBALMER ESTABLISHMENTS**

Sec. 651.351. FUNERAL ESTABLISHMENT LICENSE REQUIREMENTS. (a) A funeral establishment may not conduct a funeral business unless it is licensed by the commission.

(b) This chapter does not require a funeral establishment to be owned by a person licensed under this chapter.

(c) To obtain an initial funeral establishment license, an applicant must apply for a license and pay the licensing fee. The commission shall issue an initial funeral establishment license on determining that the applicant satisfies the requirements of this

section.

(d) A funeral establishment must:

(1) meet the building, fire safety, and health standards and health ordinances of this state and of the municipality in which the establishment is located;

(2) except as provided by Subsection (i), be located at a fixed place that is not tax-exempt property or a cemetery;

(3) include facilities in which funeral services may be conducted;

(4) have access to rolling stock consisting of at least one motor hearse;

(5) include a preparation room containing the facilities, equipment, and supplies required by commission rule to ensure the provision of adequate embalming services;

(6) include other facilities as necessary to comply with the sanitary codes of this state and of the municipality in which the room is located; and

(7) include a display containing sufficient merchandise to permit reasonable selection, including at least five adult caskets, two of which must be full-size and displayed in a casket showroom.

(e) Each funeral establishment must have sufficient licensed personnel to conduct the operation of the funeral establishment.

(f) The least expensive casket displayed under Subsection (d)(7) must be a full-size casket displayed in the same general manner as the other full-size caskets are displayed. The three adult caskets that are not required to be full-size under Subsection (d)(7) may be displayed:

(1) in a partial panel display; or

(2) by video or brochure, online, or in any other manner.

(g) The commission may exempt a funeral establishment from the requirements of Subsection (d)(5) if:

(1) the majority owner or designated agent of record of a funeral establishment submits a written petition to the commission requesting an exemption and stating:

(A) the establishment's name and address;

(B) that the establishment is located within 50 miles of a facility owned by the establishment requesting the exemption and at which embalming services may be performed; and

(C) that no embalming services will be performed at the establishment; and



(2) the commission determines that the criteria in Subdivision (1) have been met.

(h) The executive director shall notify the petitioner of the commission's decision. The exemption remains in effect until:

(1) the establishment is no longer located within 50 miles of a facility owned by the exempt establishment or at which embalming services may be performed; or

(2) an embalming service has been performed at the establishment.

(i) Subsection (d)(2) does not apply to a funeral establishment that is:

(1) located on the real property of a public junior college; and

(2) operated in connection with an accredited educational program in funeral services offered by the public junior college.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.385(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 26, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 492 (S.B. 755), Sec. 1, eff. June 19, 2009.

Sec. 651.352. COMMERCIAL EMBALMERS ESTABLISHMENT LICENSE REQUIREMENTS. (a) In this section, "commercial embalmers establishment" means an establishment that:

(1) embalms for licensed funeral establishments;

(2) does not sell services or merchandise directly or at retail to the public; and

(3) meets the requirements for an embalmers license.

(b) An establishment that functions solely as a commercial embalmers establishment is required to hold a commercial embalmers establishment license but is not required to comply with the requirements for a funeral establishment license under Sections 651.351(d)(3), (d)(6), and (f).

(c) A commercial embalmers establishment may employ an embalmer only if the embalmer is licensed under this chapter.

(d) An embalming service, whether provided at a funeral establishment or other embalming facility licensed under this chapter, must comply with this chapter or a rule adopted under this chapter.

(e) A licensed commercial embalmers establishment that meets the licensing requirements under Subchapter N may hold a crematory establishment license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.385(b), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 596 (H.B. 56), Sec. 2, eff. September 1, 2007.

Sec. 651.353. CEMETERY ESTABLISHMENT REQUIREMENTS. (a) A cemetery may not conduct a cemetery business unless the facility is licensed by the commission.

(b) This chapter does not require a cemetery to be owned by a person licensed under this chapter.

(c) To obtain an initial cemetery license, an applicant must apply for a license and pay the licensing fee. The commission shall issue an initial cemetery license on determining that the applicant satisfies the requirements of this chapter.

(d) This section does not apply to:

(1) a family, fraternal, or community cemetery that is not larger than 10 acres;

(2) an unincorporated association of plot owners not operated for profit;

(3) a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination;

(4) a public cemetery owned by this state, a county, or a municipality; or

(5) a perpetual care cemetery.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 23, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 27, eff. September 1, 2009.

Sec. 651.354. RENEWAL OF CEMETERY OR FUNERAL ESTABLISHMENT LICENSE. (a) The commission shall mail written notice to a cemetery or funeral establishment of the impending expiration of the establishment's license not later than the 30th day before the expiration date of the license. The notice must state that:

(1) to renew the license, the cemetery or funeral establishment must pay the renewal fee not later than the license expiration date; and

(2) the license is automatically renewed on receipt of the renewal fee.

(b) A cemetery or funeral establishment that fails to pay the license renewal fee by the due date is subject to a late payment penalty equal to the amount charged for the license renewal fee.

(c) If the license is expired for longer than 30 days, the cemetery or funeral establishment may not operate as a cemetery or funeral establishment until the renewal fee and the late payment penalty are paid.

(d) This section does not apply to a perpetual care cemetery.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 24, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 28, eff. September 1, 2009.

Sec. 651.355. PERPETUAL CARE CEMETERY REGISTRATION. (a) The Texas Department of Banking shall provide annually to the commission a list of perpetual care cemeteries, including the address and other contact information for each cemetery. The commission shall annually register each perpetual care cemetery on that list.

(b) A perpetual care cemetery is not required to pay a registration fee or renewal fee under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 29, eff. September 1, 2009.

#### SUBCHAPTER I. PRACTICE BY LICENSE HOLDER

Sec. 651.401. FIRST CALL. (a) A funeral director or embalmer must direct and personally supervise the pickup of a dead human body on first call.

(b) A dead human body may be transferred without a funeral director personally making the transfer:

- (1) from one funeral establishment to another;
- (2) from a funeral establishment to and from a morgue in which an autopsy is performed;
- (3) to and from an airport, crematory, or both; or
- (4) in circumstances in which there is no reasonable probability that an unlicensed person will encounter a family member or other person with whom funeral arrangements are normally made by a funeral director or embalmer.

(c) If an unlicensed person inadvertently encounters a family member or other person with whom funeral arrangements are normally made, the unlicensed person shall restrict communication with the family member or other person to:

- (1) identifying the unlicensed person's employer;
- (2) arranging an appointment with the unlicensed person's employer for a family member or other person who indicates a desire to make funeral arrangements for the deceased; and
- (3) making any disclosure to the family member or other person that is required by federal or state law or regulation.

(d) A funeral director or embalmer who directs the removal or transfer of a dead human body without personally supervising the transfer is strictly accountable for compliance with the requirements of first call as provided by this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.386(a), eff. Sept. 1, 2001.

Sec. 651.402. RELATIONSHIP OF FUNERAL DIRECTOR TO FUNERAL ESTABLISHMENT. A person may act as a funeral director in directly or indirectly providing funeral services for compensation only if the person:

- (1) is acting as a licensed employee of a licensed funeral establishment that has contracted to provide those funeral services; or

(2) is a licensed agent, subcontractor, or assignee of the licensed funeral establishment that has contracted to provide those funeral services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.403. DESIGNATION OF FUNERAL DIRECTOR IN CHARGE; EFFECT OF VIOLATION. (a) A funeral establishment shall:

(1) designate to the commission a funeral director in charge; and

(2) promptly notify the commission of any change in that designation.

(b) The funeral director in charge is directly responsible for the funeral directing and embalming business of the funeral establishment.

(c) The funeral director in charge is ultimately responsible for compliance with the mortuary laws. The funeral director in charge may be charged with a violation of this chapter if a violation occurs in the funeral establishment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.404. CONSUMER BROCHURE. When funeral services are discussed, a funeral director or agent of the funeral establishment shall provide each prospective customer with a copy of the brochure prepared by the commission under Section 651.201. The funeral establishment shall print additional copies of the brochure if the commission is unable to provide the number of brochures needed by the funeral establishment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.405. RETAIL PRICE LIST; FUNERAL ESTABLISHMENT. (a) "Retail price list" means a printed or typewritten list of the retail price of items or services provided by a funeral establishment and must include the retail price of:

(1) transferring a deceased person to the funeral establishment;

- (2) embalming;
- (3) using a funeral establishment facility for viewing the deceased;
- (4) using a funeral establishment facility for funeral services;
- (5) using a hearse;
- (6) using a limousine;
- (7) caskets;
- (8) outer enclosures;
- (9) filing a claim seeking life insurance proceeds on behalf of the beneficiaries; and
- (10) other itemized services provided by the funeral establishment staff.

(b) A retail price list must contain the name, address, and telephone number of the funeral establishment, the effective date for the stated prices, and the following printed notice: "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. However, any funeral arrangements you select will include a charge for our basic services and overhead. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.20, eff. Sept. 1, 2001. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 634 (S.B. 864), Sec. 2, eff. September 1, 2011.

Sec. 651.4055. RETAIL PRICE LIST; CEMETERY OR CREMATORY. (a) In this section, "retail price list" means a printed or typewritten list of the retail price of items or services provided by a cemetery or crematory.

- (b) A retail price list must contain:
- (1) the name, address, and telephone number of the cemetery or crematory;
  - (2) the effective date for the stated prices;
  - (3) notice required by Subsection (c); and

(4) any other items that the commission may by rule require.

(c) The retail price list must contain the following printed notice: "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the goods and services you selected."

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.21, eff. Sept. 1, 2001.

Sec. 651.406. PURCHASE AGREEMENT; FUNERAL ESTABLISHMENT. (a) A purchase agreement must state:

(1) the name, address, and telephone number of the funeral establishment;

(2) the amount paid or owed to another person by the funeral establishment on behalf of the customer and each fee charged the customer for the cost of advancing funds or becoming indebted to another person on behalf of the customer;

(3) the printed notice required by Subsection (b);

(4) the name, mailing address, and telephone number of the commission; and

(5) a statement that complaints may be directed to the commission.

(b) The purchase agreement must contain the following printed notice: "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."

(c) The purchase agreement shall be signed by the funeral director making the arrangements.

(d) If the customer selects a package arrangement based on unit pricing, the itemization requirement is satisfied by providing a purchase agreement that itemizes the discount provided by the package arrangement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.22, eff. Sept. 1, 2001.

## Sec. 651.4065. PURCHASE AGREEMENT; CEMETERY OR CREMATORY. (a)

A purchase agreement must state:

(1) the name, address, and telephone number of the cemetery or crematory;

(2) the amount paid or owed to another person by the cemetery or crematory on behalf of the customer and each fee charged the customer for the cost of advancing funds or becoming indebted to another person on behalf of the customer;

(3) the printed notice required by Subsection (b);

(4) the name, mailing address, and telephone number of the commission;

(5) a statement that complaints may be directed to the commission; and

(6) any other items that the commission may by rule require.

(b) The purchase agreement must contain the following printed notice: "Charges are only for those items that you selected or that are required. If we are required by law to use any items, we will explain the reasons in writing below."

(c) The operator of a cemetery shall sign a purchase agreement for a cemetery.

(d) If the customer selects a package arrangement based on unit pricing, the itemization requirement is satisfied by providing a purchase agreement that itemizes the discount provided by the package arrangement.

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.23, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 25, eff. Sept. 1, 2003.

## Sec. 651.407. USE OF BODY BY SCHOOL OF MORTUARY SCIENCE. (a)

A school or college of mortuary science may not use a dead human body for educational or instructional purposes without the written consent of a person authorized to consent to the use.

(b) A funeral director or embalmer may not release a dead human body for delivery to a school or college of mortuary science, and a school or college of mortuary science may not accept a dead human body, without possession of the written consent required by Subsection (a).



(c) The funeral establishment shall retain a copy of the written consent for at least two years and shall make the records of the funeral establishment reasonably available for inspection by:

- (1) the commission;
- (2) the person who provided the consent; and
- (3) the next of kin of the deceased person.

(d) The school or college of mortuary science shall retain a copy of the written consent permanently and shall make the records of the school or college of mortuary science reasonably available for inspection by the commission.

(e) A written consent form used under this section must contain, in the same size print as the remainder of the form, the following statement immediately above the signature line for the form:

"The undersigned authorizes and directs the funeral establishment, including apprentices, and mortuary students under the direct supervision of a licensed embalmer, and the funeral establishment's employees, independent contractors, and agents to care for, embalm, and prepare the body of the decedent. The undersigned acknowledges that this authorization encompasses permission to embalm at the funeral establishment or at another facility equipped for embalming, including a school or college of mortuary science."

(f) This section does not apply to a dead human body obtained by a school or college of mortuary science under Chapter 691 or 692A, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. [2027](#)), Sec. 10, eff. September 1, 2009.

Sec. 651.408. USE OF CEMETERY AND CREMATORY SERVICES. The fact that a funeral director contracts for cemetery or crematory services, including as part of a package arrangement, does not limit the director's liability to the customer for those services.

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.24, eff. Sept. 1, 2001.

Sec. 651.4085. INTERMENT OR ENTOMBMENT. (a) A funeral director who contracts with a customer to perform funeral directing under this chapter, or an agent of the funeral establishment, shall be present when the casket containing the human body to which the contract applies is placed in a grave, crypt, or burial vault unless interment or entombment takes place at a location outside this state.

(b) The funeral directing duties related to interment or entombment services are complete when the casket is placed in a grave, crypt, or burial vault.

Added by Acts 2011, 82nd Leg., R.S., Ch. 312 (H.B. 2286), Sec. 1, eff. June 17, 2011.

Sec. 651.409. NOTICE TO NEXT OF KIN OF DECEASED PEACE OFFICER. A funeral director who prepares a deceased peace officer for burial or other disposition shall make every effort to advise the next of kin of the officer that the next of kin of a person who at the time of death was a peace officer or an honorably retired peace officer who voluntarily terminated employment with a law enforcement agency of this state or a political subdivision of this state is eligible on request to receive a state flag from the Texas Commission on Law Enforcement at no cost to the next of kin.

Added by Acts 2001, 77th Leg., ch. 476, Sec. 4, eff. Sept. 1, 2001. Renumbered from Occupations Code Sec. 651.408 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(115), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 744 (H.B. 2769), Sec. 3, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.58, eff. May 18, 2013.

Sec. 651.410. AUTHORIZED RELEASE OF INFORMATION. Nothing in this chapter prohibits a funeral director or establishment from releasing information under Chapter 696, Health and Safety Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 373 (H.B. 3064), Sec. 2, eff. September 1, 2013.

**SUBCHAPTER J. PROHIBITED PRACTICES**

Sec. 651.451. CERTAIN FRAUDULENT AND DECEPTIVE ACTS. A person violates this chapter if the person:

- (1) presents to the commission a license, certificate, registration, or diploma that was illegally or fraudulently obtained;
- (2) uses fraud or deception in passing the examination, including impersonating or acting as a proxy for another person in the examination;
- (3) purchases, sells, barter, or uses, or offers to purchase, sell, barter, or use, a license, registration, certificate, or transcript of a license, registration, or certificate in or incident to an application to the commission for a license or registration issued under this chapter;
- (4) alters, with fraudulent intent, a license, registration, or certificate issued under this chapter or a transcript of a license, registration, or certificate;
- (5) uses a license, registration, certificate, or diploma issued under this chapter or a transcript of a license, registration, certificate, or diploma that has been fraudulently purchased, issued, counterfeited, or materially altered;
- (6) impersonates a funeral director, embalmer, or other person regulated under this chapter;
- (7) permits another to use the person's license or registration to perform an activity regulated under this chapter; or
- (8) presents false certification of work done as a provisional license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.25, eff. Sept. 1, 2001.

Sec. 651.452. LACK OF FITNESS TO PRACTICE. A person violates this chapter if the person is:

- (1) convicted of:
  - (A) a misdemeanor related to the practice of embalming, funeral directing, or another activity regulated under this chapter; or
  - (B) a felony;
- (2) unfit to practice as a funeral director or embalmer because of insanity and determined by a court to be of unsound mind;

or

- (3) unfit to practice because of current substance abuse.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.26, eff. Sept. 1, 2001.

Sec. 651.453. UNETHICAL ADVERTISING. A person violates this chapter if the person uses an advertising statement of a character that misleads or deceives the public or uses, in connection with an advertisement, the name of a person who is falsely represented to be a license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.454. OTHER UNETHICAL CONDUCT IN SOLICITING CUSTOMERS.

(a) A person violates this chapter if the person, in arranging for funeral services or merchandise, fails to:

(1) provide a prospective customer at the beginning of the arrangement process with a copy of the brochure required by Section 651.404;

(2) provide to a prospective customer inquiring in person about any funeral service or merchandise a retail price list for the prospective customer to keep;

(3) explain to a prospective customer that a contractual agreement for funeral services or merchandise may not be entered into before a retail price list is provided to the prospective customer;

or

(4) provide general price information by telephone within a reasonable time.

(b) A person violates this chapter if the person restricts, hinders, or attempts to restrict or hinder:

(1) advertising or disclosure of prices and other information regarding the availability of funeral services and funeral merchandise that is not unfair or deceptive to consumers; or

(2) an agreement for funeral services between a consumer and a funeral director or embalmer.

(c) A person associated with a funeral establishment violates this chapter if the person solicits business or offers an inducement to secure or attempt to secure business for the funeral establishment

unless the solicitation is made under a permit issued under Chapter 154, Finance Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.455. FALSE OR MISLEADING STATEMENTS REGARDING FUNERAL MERCHANDISE OR FUNERAL, CEMETERY, OR CREMATORY SERVICES. (a) A person violates this chapter if the person uses a statement that misleads or deceives the public, including a fraudulent statement or any other type of a false or misleading statement regarding:

- (1) a legal, religious, or cemetery requirement for funeral merchandise or funeral, cemetery, or crematory services;
- (2) the preservative qualities of funeral merchandise or funeral, cemetery, or crematory services in preventing or substantially delaying natural decomposition of human remains;
- (3) the airtight or watertight properties of a casket or outer enclosure;
- (4) the licenses held by the personnel in the operation of the cemetery, crematory, or funeral establishment; or
- (5) an activity regulated under this chapter, including the sale of funeral-related goods or services.

(b) Repealed by Acts 2003, 78th Leg., ch. 562, Sec. 42(3).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.27, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 562, Sec. 26, 42(3), eff. Sept. 1, 2003.

Sec. 651.456. UNETHICAL CONDUCT REGARDING CUSTODY OF DEAD HUMAN BODY. A person violates this chapter if the person:

- (1) takes custody of a dead human body without the permission of:
  - (A) the person or the agent of the person authorized to make funeral arrangements for the deceased; or
  - (B) a medical examiner or a justice of the peace who has jurisdiction over the body under Articles 49.02-49.05, Code of Criminal Procedure;
- (2) refuses to promptly surrender a dead human body to a person or agent authorized to make funeral arrangements for the deceased; or

(3) violates any state law governing the transportation, storage, refrigeration, inurnment, interment, or disinterment of a dead human body.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 27, eff. Sept. 1, 2003.

Sec. 651.457. UNETHICAL CONDUCT REGARDING EMBALMING. (a) A person violates this chapter if the person:

(1) embalms a body without:

(A) receiving the express written or oral permission of a person authorized to make funeral arrangements for the deceased; or

(B) making a documented reasonable effort over a period of at least three hours to obtain the permission;

(2) embalms or attempts to embalm a dead human body without proper authority, evidence of which includes making an incision on the body, raising a circulatory vessel of the body, or injecting a chemical into the body;

(3) allows the presence or participation of a student for credit or satisfaction of academic requirements during the embalming of a dead human body without complying with Section 651.407; or

(4) places a chemical or substance on or in a dead human body to disinfect or preserve the body or to restore body tissues and structures without holding an embalmer's license.

(b) Notwithstanding Subsection (a)(4), a provisional license holder does not violate this chapter if the provisional license holder places a chemical or substance on or in a dead human body to disinfect or preserve the body or to restore body tissues and structures under the supervision of an embalmer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.458. UNETHICAL CONDUCT BY FUNERAL ESTABLISHMENT. A person violates this chapter if the person makes a distinction in providing funeral information to a customer regardless of any affiliation of the customer or whether the customer has a present need for the services or merchandise.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.459. OTHER UNETHICAL CONDUCT IN PROVIDING FUNERAL SERVICES. (a) A person violates this chapter if the person:

(1) wilfully makes a false statement on:

(A) a death certificate, including forgery of a physician's signature; or

(B) a document required by this chapter or a rule adopted under this chapter;

(2) engages in fraudulent, unprofessional, or deceptive conduct in providing funeral services or merchandise to a customer;

(3) engages in dishonest conduct, wilful conduct, or negligence in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public;

(4) causes the execution of a document by the use of fraud, deceit, or misrepresentation;

(5) directly or indirectly employs a person to solicit individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director, embalmer, or funeral establishment;

(6) misappropriates funds held by a license holder, a funeral establishment, an employee or agent of the funeral establishment, or another depository, that create an obligation to provide a funeral service or merchandise, including retaining for an unreasonable time excess funds paid by or on behalf of the customer for which the customer is entitled to a refund; or

(7) performs acts of funeral directing or embalming that are outside the licensed scope and authority of the license holder, or performs acts of funeral directing or embalming in a capacity other than that of an employee, agent, subcontractor, or assignee of a licensed funeral establishment that has contracted to perform those acts.

(b) A funeral director or embalmer violates this chapter if the funeral director or embalmer states or implies that a customer's concern with the cost of any funeral service or funeral merchandise is improper or indicates a lack of respect for the deceased.

(c) A funeral director in charge violates this chapter if the funeral director in charge fails to provide a funeral director or an embalmer for direction or personal supervision for a first call.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 28, eff. Sept. 1, 2003.

Sec. 651.460. PROHIBITED PRACTICES RELATED TO FAILURE TO COMPLY WITH OTHER LEGAL REQUIREMENTS. (a) A person violates this chapter if the person:

(1) arranges for funeral services or merchandise and fails to provide a customer with a purchase agreement as required by Section 651.406;

(2) fails to retain and make available to the commission, on request, copies of all price lists, written notices, embalming documents, and memoranda of agreement required by this chapter for two years after the date of distribution or signing;

(3) violates this chapter, a rule adopted under this chapter, an order by the commission revoking, suspending, or probating a license, an order assessing an administrative penalty, or an agreement to pay an administrative penalty;

(4) allows the use of a dead human body by an embalming establishment for research or educational purposes without complying with Section 651.407; or

(5) is associated with a funeral establishment, whether as an employee, agent, subcontractor, assignee, owner, or otherwise, and fails to comply with this chapter or a rule adopted under this chapter.

(b) A funeral establishment violates this chapter if:

(1) the funeral establishment fails to substantially comply with Section 651.351;

(2) the funeral establishment or a person acting on behalf of the funeral establishment violates Chapter 193 or 361, Health and Safety Code; or

(3) the funeral establishment, a person acting on behalf of the funeral establishment, or a person directly or indirectly connected with the funeral establishment violates Chapter 154, Finance Code, or a rule adopted under that chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.385(c), eff. Sept. 1, 2001.



Sec. 651.461. DEFENSE TO VIOLATION. A person licensed under this chapter does not violate this chapter by engaging in conduct regarding funeral arrangements under the direction of a person who:

- (1) represents to the license holder that the person is authorized to make funeral arrangements for the deceased; and
- (2) provides written directions to the license holder in the manner provided by Section 711.002, Health and Safety Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 30, eff. September 1, 2009.

#### **SUBCHAPTER K. DISCIPLINARY ACTIONS AND PROCEDURES AND LICENSE DENIALS**

Sec. 651.501. GENERAL DISCIPLINARY POWERS OF COMMISSION. (a) After a hearing as provided by this subchapter, the commission may issue a reprimand, assess an administrative penalty, revoke, suspend, or probate the suspension of a license or provisional license, or impose any combination of those penalties for a violation of this chapter or a rule adopted under this chapter.

(b) With respect to a violation of Section 651.453, 651.454(c), 651.459(c), 651.460(a)(5), 651.460(b)(2), or 651.460(b)(3), the commission may not initiate action against a funeral establishment if the complaint is based on the conduct of an employee, agent, or representative of the establishment:

- (1) performed outside the scope and authority of employment; or
- (2) contrary to the instructions of the funeral establishment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.5011. CHARGING FUNERAL DIRECTOR IN CHARGE WITH VIOLATION. In determining whether to charge a funeral director in charge with a violation based on conduct for which a licensed employee of the funeral establishment was directly responsible, the commission may consider:

- (1) the nature and seriousness of the violation;
- (2) the extent to which the licensed employee of the funeral establishment whose conduct is the basis of the violation was under the direct supervision of the funeral director in charge or

another person at the time the licensed employee engaged in the conduct; and

(3) the causal connection between the supervision of the licensed employee of the funeral establishment by the funeral director in charge and the conduct engaged in by the licensed employee that is the basis of the violation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 634 (S.B. 864), Sec. 3, eff. September 1, 2011.

Sec. 651.502. LICENSE DENIAL; EFFECT OF CRIMINAL CONVICTION.

(a) The commission may, before a hearing or a waiver of a right to a hearing, refuse to issue:

(1) a license or provisional license to a person who has violated this chapter or a rule adopted under this chapter; or

(2) an establishment license to an individual, partnership, or corporation if the individual, a partner, or an officer or director of the corporation:

(A) has violated this chapter or a rule adopted under this chapter;

(B) previously held an establishment license that was suspended or revoked; or

(C) attempts to avoid a revocation, suspension, or license refusal by subterfuge or other evasive means.

(b) A person to whom the commission refuses to issue a license under Subsection (a) may appeal the decision by submitting a written request for a hearing in accordance with Chapter 2001, Government Code, not later than the 30th day after the date of the refusal.

(c) The commission and the person to whom the commission refuses to issue a license may agree to the issuance of a probationary license, or the commission may, after a hearing, order that a license be issued on a probationary basis.

(d) A person applying for a funeral director's or embalmer's license who has a criminal conviction described by Section 651.452 may request a hearing on whether the conviction prevents the commission from issuing a license or a provisional license. A hearing under this subsection must be requested before the person enters mortuary school and shall be conducted as required by Section 651.506. A decision made in a hearing under this subsection, unless

modified on appeal, is binding on the commission and on the person who requests the hearing when the person applies to the commission for the license or provisional license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.385(d), eff. Sept. 1, 2001.

Sec. 651.5025. IMMEDIATE LICENSE REVOCATION; EFFECT OF CERTAIN FELONY CONVICTIONS. (a) The commission may revoke the license of a license holder without a hearing if the commission determines from the information presented to it that the license holder has been convicted of a felony related to the practice of embalming, funeral directing, or another activity regulated by the commission under this chapter. The commission shall notify the license holder if it decides to revoke the license.

(b) The license holder may appeal the decision by submitting a written request for a hearing in accordance with this chapter and Chapter 2001, Government Code, not later than the 30th day after the date of the revocation.

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.28, eff. Sept. 1, 2001.

Sec. 651.5026. TEMPORARY LICENSE SUSPENSION OR RESTRICTION; DISCIPLINARY PANEL. (a) The presiding officer of the commission shall appoint a three-member disciplinary panel composed of two funeral industry members and one public member of the commission to determine whether a funeral director's or embalmer's license should be temporarily suspended or restricted.

(b) Chapter 551, Government Code, does not prohibit the disciplinary panel from holding a meeting by telephone conference call if convening the panel at one location is inconvenient for any member of the panel.

(c) The disciplinary panel shall temporarily suspend or restrict the license if the panel determines from the information presented to it with or without a hearing, that the license holder has violated this chapter or a rule adopted under this chapter and would, by the license holder's continued unrestricted activity,

constitute a continuing threat to the public welfare.

(d) The suspension or restriction may be without notice or hearing if:

(1) the commission immediately provides notice of the suspension or restriction to the funeral director or embalmer;

(2) proceedings for a hearing under Section 651.506 are initiated simultaneously with the suspension or restriction; and

(3) the hearing is held as required by Chapter 2001, Government Code, and this chapter not later than 48 hours after the suspension or restriction.

(e) If the disciplinary panel affirms the temporary suspension or restriction at a hearing, the commission shall schedule an informal compliance meeting that meets the requirements of Section 2001.054(c), Government Code, and this chapter to be held as soon as practicable unless:

(1) it is evident from the determination of the panel that the funeral director or embalmer would be unable to show compliance at the informal meeting regarding the issues that are the basis for the temporary suspension or restriction; or

(2) an informal meeting has already been held regarding the issues that are the basis for the temporary suspension or restriction.

(f) If the funeral director or embalmer is unable to show compliance at the informal meeting under Subsection (e), the commission shall file a formal complaint under this chapter as soon as practicable.

(g) If the disciplinary panel does not temporarily suspend or restrict the license after considering the information presented to it at a hearing under Subsection (c), the facts that were the basis for the temporary suspension or restriction may not be the sole basis of another proceeding to temporarily suspend or restrict the funeral director's or embalmer's license. The commission may use those same facts in a later investigation to obtain new information that may be the basis for the temporary suspension or restriction of a funeral director's or embalmer's license, including facts presented to the disciplinary panel and facts known to the commission at the time evidence was presented to the disciplinary panel.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 29, eff. Sept. 1, 2003.

Sec. 651.503. WARNING; REPORT BY LICENSE HOLDER. (a) The commission shall issue a written warning to a license holder if the commission:

(1) conducts an investigation that identifies a violation of this chapter by the license holder; and

(2) does not issue a reprimand, assess an administrative penalty, or impose any other penalty against the license holder.

(b) The warning must:

(1) describe the identified violation; and

(2) state the date by which the license holder must file with the commission a written report that describes:

(A) the measures implemented by the license holder to correct the violation; and

(B) the dates those measures were implemented.

(c) The commission shall assess an administrative penalty against a license holder who fails to timely file the report.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.504. REPRIMAND. The commission may, after a hearing as provided by Section 651.506 or without a hearing if the person waives a hearing, reprimand a person regulated under this chapter if the commission determines that the person violated this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.387(a), eff. Sept. 1, 2001.

Sec. 651.505. PROBATION. (a) If the commission places on probation a person whose license has been suspended, the commission may impose conditions on the probation that are reasonable and related to the violation for which the license was suspended. If the commission orders probation, the commission may require the license holder to:

(1) report regularly to the commission on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the commission; or

(3) continue or renew professional education until the license holder attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

(b) The commission shall notify in writing a license holder placed on probation of the probation. The commission shall furnish the license holder with written probationary orders that detail the actions required by the commission of the license holder during the probation period.

(c) The commission shall develop and adopt a system to:

(1) monitor the actions of a license holder during the probation period; and

(2) determine whether the license holder has complied with the probationary orders.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.506. DISCIPLINARY PROCEEDINGS; HEARING PROCEEDINGS.

(a) A proceeding conducted by the commission relating to the denial of a license or provisional license, the suspension or revocation of a license, the issuance of a reprimand, or the imposition of an administrative penalty assessed after a hearing as provided by Section 651.551 and judicial review of the proceeding are governed by Chapter 2001, Government Code.

(b) A proceeding brought under Subsection (a) shall be held before an administrative law judge employed by the State Office of Administrative Hearings.

(c) In the course of a proceeding, the administrative law judge may:

(1) administer an oath;

(2) take testimony;

(3) rule on a question of evidence;

(4) make a determination of fact; or

(5) order compliance with a proper discovery request.

(d) The commission shall provide the administrative law judge with a written statement of all commission rules or policies that govern the proceeding.

(e) At the conclusion of the proceeding, the administrative law judge shall make a ruling on the matter accompanied by written findings of fact and conclusions of law.

(f) The commission shall review the findings of fact, conclusions of law, and ruling of the administrative law judge before making its final ruling in the proceeding. The commission may also review a transcript of the proceeding before making its final ruling. The commission shall adopt the ruling of the administrative law judge as its ruling unless it finds good cause to issue a different ruling. The commission shall explain in writing the reasons for adopting a ruling other than the one issued by the administrative law judge.

(g) The commission shall inform each interested person, including a person filing the complaint, of the right to obtain at that person's cost a tape or transcript of a hearing or proceeding under this section.

(h) A member or agent of the commission who carries out the functions of the commission and is assigned to make a decision, finding of fact, or conclusion of law in a proceeding pending before the commission may not communicate directly or indirectly with a party to the proceeding or a party's representative unless notice and an opportunity to participate is given to all parties to the proceeding.

(i) Repealed by Acts 2001, 77th Leg., ch. 682, Sec. 3.01(a), eff. Sept. 1, 2001.

(j) Repealed by Acts 2003, 78th Leg., ch. 562, Sec. 42(4).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 3.01(a), eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.388, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 562, Sec. 42(4), eff. Sept. 1, 2003.

Sec. 651.5061. WAIVER OF HEARING BY FUNERAL OR CREMATORY ESTABLISHMENT. A funeral or crematory establishment alleged to have violated this chapter or a rule adopted under this chapter may waive the right to a hearing as provided by Section 651.506 by written notification to the commission.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.388(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 178, Sec. 3, eff. Sept. 1, 2003.

Sec. 651.507. EFFECT OF MULTIPLE VIOLATIONS. (a) The

commission or an administrative law judge employed by the State Office of Administrative Hearings shall review each disciplinary proceeding to determine whether the license holder has previously violated the same provision of this chapter or rule adopted under this chapter. If it is determined that the license holder has previously violated the same provision of this chapter or rule adopted under this chapter, the commission or administrative law judge shall impose a disciplinary action that is more severe than that imposed on the previous occasion.

(b) In a disciplinary proceeding involving multiple violations of this chapter, the commission or the administrative law judge shall impose a disciplinary action that is more severe than the disciplinary action that would be imposed cumulatively for each of the individual violations.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.390(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 31, eff. September 1, 2009.

Sec. 651.508. ENFORCEMENT OF LAW REGULATING CREMATORIES. For purposes of this subchapter, a person regulated under this chapter that violates Chapter 716, Health and Safety Code, violates this chapter.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 4, eff. Sept. 1, 2003.

#### **SUBCHAPTER L. ADMINISTRATIVE PENALTIES**

Sec. 651.551. ASSESSMENT OF ADMINISTRATIVE PENALTY. (a) The commission may assess an administrative penalty against a person regulated under this chapter if the commission determines that the person has violated this chapter or a rule adopted under this chapter.

(b) The penalty may be assessed in the manner provided by this subchapter or after a hearing under Section 651.506. If an administrative penalty is assessed after a hearing under Section 651.506, the commission shall follow the procedures described in



Sections 651.555 through 651.558.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.5515. PENALTY GUIDELINES. (a) The commission by rule shall adopt guidelines that define and summarize the violations that occur under this subchapter to assist the commission in maintaining consistency in determining the amount of an administrative penalty assessed under Section 651.552. Using those guidelines and the summary, the commission shall establish and maintain a chart that lists:

- (1) the most common violations;
- (2) the penalty amounts assessed for those violations; and
- (3) the factors used to grade each type of violation before determining the penalty amount under Section 651.552.

(b) The commission shall consider using focus groups to obtain business and consumer input to match appropriate penalties to violations before proposing the rules under this section.

(c) The commission shall post the guidelines on the commission's Internet site.

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 651.552. AMOUNT OF PENALTY. (a) The amount of the administrative penalty shall be not less than \$100 or more than \$5,000 for each violation.

(b) In determining the amount of the penalty, the commission shall base its decision on:

- (1) the seriousness of the violation;
- (2) the threat the violation poses to health and safety;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts made to correct the violation;
- (6) the guidelines adopted under Section 651.5515; and
- (7) any other matter that justice requires.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.30, eff. Sept. 1, 2001.

Sec. 651.553. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If, after examining a possible violation and the facts relating to that violation, the commission determines that a violation has occurred, the commission shall issue a preliminary report stating:

- (1) the facts on which the determination is based;
- (2) that an administrative penalty is to be imposed; and
- (3) the amount of the penalty.

(b) Not later than the 10th day after the date the report is issued, the commission shall send to the person charged with the violation:

- (1) a copy of the report;
- (2) a statement of the right of the person to a hearing relating to the alleged violation;
- (3) a statement of the amount of the penalty; and
- (4) an explanation for any significant deviation from the penalty amount assessed for similar violations.

(c) Until a hearing has been held on the possible violation, the amount to be assessed may be disclosed only to the person charged with the violation, unless that person has waived the right to a hearing or paid the amount to the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.31, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.389(a), eff. Sept. 1, 2001.

Sec. 651.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 30th day after the date the preliminary report is sent, the person charged may:

- (1) make a written request for a hearing; or
- (2) pay the administrative penalty to the commission.

(b) Failure to request a hearing or pay the penalty within the time provided by this section waives the right to a hearing under this chapter. If the right to a hearing is waived, the penalty is due not later than the 30th day after the date the preliminary report is sent.

(c) If the person fails to timely pay the penalty, the person's license is automatically suspended for six months.

(d) If the person requests a hearing, the hearing shall be conducted in the manner provided by Section 651.506.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.555. OPTIONS AFTER DECISION: PAY OR APPEAL. (a) If an administrative penalty is assessed after a hearing conducted under Section 651.506, not later than the 30th day after the date the order is sent or a motion for rehearing is denied, the person charged shall:

(1) pay the penalty; or

(2) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Not later than the 30-day period, a person who acts under Subsection (a)(2) must, if the penalty that the person wishes to contest is greater than \$5,000:

(1) post a supersedeas bond in a form approved by the commission for the amount of the penalty; or

(2) if the person cannot afford to pay the penalty or file the bond, file an affidavit in the manner required by the Texas Rules of Civil Procedure for a person who cannot afford to file security for costs.

(c) The commission may file a contest, as provided by the Texas Rules of Civil Procedure, to an affidavit filed under Subsection (b)(2).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.389(b), eff. Sept. 1, 2001.

Sec. 651.556. COLLECTION OF PENALTY. On the commission's request, the attorney general shall bring a civil action to recover an administrative penalty owed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.557. REMITTANCE OF PENALTY. If, after judicial

review, the court determines that a violation did not occur, the court shall order, when the court's judgment becomes final, the release of the bond if the person gave a supersedeas bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.389(c), eff. Sept. 1, 2001.

Sec. 651.558. LICENSE SUSPENSION FOR FAILURE TO COMPLY. (a) The commission shall suspend for six months the license of a person who fails to pay an administrative penalty or post a supersedeas bond within the time required by Section 651.555, or within a longer period agreed to by the commission.

(b) After notice and a hearing, the commission may extend the license suspension for a longer period or may revoke the license for failure to pay the penalty or post a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.559. ENFORCEMENT OF LAW REGULATING CREMATORIES. For purposes of this subchapter, a person regulated under this chapter that violates Chapter 716, Health and Safety Code, violates this chapter.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 5, eff. Sept. 1, 2003.

#### **SUBCHAPTER M. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 651.601. INJUNCTION. (a) The commission in its own name or an adversely affected party may bring an action for appropriate injunctive relief against a funeral establishment, an embalmer, or a funeral director who violates this chapter or a rule adopted under this chapter.

(a-1) The commission may bring an action for appropriate injunctive relief against a crematory establishment that violates this chapter or a rule adopted under this chapter.

(b) In an action brought by the commission, the commission shall be represented by the attorney general or a county or district attorney.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.391(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 178, Sec. 6, eff. Sept. 1, 2003.

Sec. 651.602. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) acts or holds the person out as a funeral director, embalmer, or provisional license holder without being licensed under this chapter;

(2) makes a first call in a manner that violates Section 651.401;

(3) is a funeral director, embalmer, or provisional license holder and engages in a funeral practice that violates this chapter or a rule adopted under this chapter; or

(4) violates Chapter 154, Finance Code, or a rule adopted under that chapter, regardless of whether the Texas Department of Banking or another governmental agency takes action relating to the violation.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER N. LICENSING REQUIREMENTS: CREMATORIES**

Sec. 651.651. DEFINITIONS. In this subchapter:

(1) "Cremation" means the irreversible process of reducing human remains to bone fragments through direct flame, extreme heat, and evaporation. The term may include pulverization, which is the process of reducing identifiable bone fragments after cremation and processing granulated particles by manual or mechanical means.

(2) "Crematory establishment" means a business licensed under this subchapter to operate a crematory and to perform cremation services.

(3) Repealed by Acts 2009, 81st Leg., R.S., Ch. 263, Sec. 33(2), eff. September 1, 2009.

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.32, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 178, Sec. 8, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 33(2), eff. September 1, 2009.

Sec. 651.652. APPLICABILITY. (a) This subchapter applies only to a crematory that sells goods or services related to the burial or final disposition of a body.

(b) Repealed by Acts 2003, 78th Leg., R.S., Ch. 562, Sec. 44, eff. March 1, 2004.

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.32, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 178, Sec. 9, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 562, Sec. 31, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 562, Sec. 44, eff. March 1, 2004.

Sec. 651.656. CREMATORY ESTABLISHMENT LICENSE REQUIRED. (a) A person may not conduct a crematory business in this state unless the person who is the owner or operator of the crematory holds a crematory establishment license issued by the commission.

(b) A person may not hold a crematory establishment license unless the person:

(1) holds a funeral establishment or commercial embalmers establishment license; or

(2) owns or operates a perpetual care cemetery.

(c) Subsection (b) does not apply to the owner or operator of a crematory registered with the commission on September 1, 2003.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 263, Sec. 33(2), eff. September 1, 2009.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 14, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 596 (H.B. 56), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 33(2), eff. September 1, 2009.

## Sec. 651.657. CREMATORY ESTABLISHMENT LICENSE APPLICATION. (a)

An applicant for a crematory establishment license must:

- (1) submit a written license application to the commission;
- (2) pay the application fee; and
- (3) provide proof satisfactory to the commission that the owner or operator of the crematory is trained and certified by a reputable organization approved by the commission, such as the Cremation Association of North America.

(b) An application for a license or renewal of a license as a crematory establishment must include:

- (1) the full business name of the crematory establishment;
- (2) the address of:
  - (A) the applicant if the business is owned by an individual;
  - (B) each partner if the business is a partnership;
  - (C) each member of the board of directors if the business is an association; or
  - (D) each shareholder who owns more than 25 percent of the corporate stock and each officer and director if the business is a corporation;
- (3) a statement from each individual named under Subdivision (2) that details:
  - (A) the individual's business experience for the previous 10 years;
  - (B) any felony or misdemeanor conviction of the individual;
  - (C) any involvement of the individual as a defendant in a civil action involving allegations of fraud; and
  - (D) a suspension by this state or any other state of any license related to funeral directing or the operation of a cemetery or crematory;
- (4) the location of the crematory; and
- (5) the date the business was established.

(c) An application for a license or renewal of a license must be on a form furnished by the commission.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 14, eff. Sept. 1, 2003.

## Sec. 651.658. CREMATORY ESTABLISHMENT LICENSE RENEWAL AND

ANNUAL REPORT; PENALTY. (a) To renew a crematory establishment license, the crematory establishment must annually:

(1) file a report with the commission that lists the number of cremations performed at the crematory during the previous year;

(2) pay the license renewal fee; and

(3) provide the information required by Section 651.657 or a written statement that the information has not changed since previously provided.

(b) The commission shall mail written notice to a license holder of the impending expiration of the license not later than the 30th day before the expiration date of the license. The notice must state that to renew the license, the license holder must pay the renewal fee not later than the date on which the license expires.

(c) A license holder who fails to pay the renewal fee on or before the expiration date is subject to a late payment penalty equal to the amount of the renewal fee.

(d) If the license is expired for longer than 30 days, the crematory establishment may not operate a crematory until the renewal fee and late payment penalty are paid.

(e) The commission shall grant an extension for filing the annual report required by this section on the written request of a crematory establishment for good cause. An extension may not exceed 60 days. The commission may grant additional extensions for good cause.

(f) The commission shall impose a \$100 late fee for each day a crematory establishment fails to submit the annual report required by this section if an extension has not been granted.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 14, eff. Sept. 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 32, eff. September 1, 2009.

## **SUBTITLE M. REGULATION OF OTHER HEALTH PROFESSIONS**

### **CHAPTER 701. DIETITIANS**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 701.001. SHORT TITLE. This chapter may be cited as the Licensed Dietitian Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



Sec. 701.002. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(3) "Dietetics" means the professional discipline of applying and integrating scientific principles of food, nutrition, biochemistry, physiology, management, and behavioral and social sciences under different health, social, cultural, physical, psychological, and economic conditions for the proper nourishment, care, and education of an individual or group throughout the life cycle to achieve and maintain human health. The term includes the development, management, and provision of nutrition services.

(4) "Dietitians board" means the Texas State Board of Examiners of Dietitians.

(5) "Licensed dietitian" means a person licensed under this chapter.

(6) "Nutrition assessment" means evaluating the nutritional needs of an individual or group based on appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and recommend appropriate nutritional intake, including enteral and parenteral nutrition.

(7) "Nutrition counseling" means advising and assisting an individual or group on appropriate nutritional intake by integrating information from a nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status.

(8) "Nutrition services" means:

(A) assessing the nutritional needs of an individual or group and determining constraints and resources in the practice;

(B) establishing priorities and goals that meet nutritional needs and are consistent with constraints and available resources;

(C) providing nutrition counseling in health and disease;

(D) developing, implementing, and managing nutritional care systems; or

(E) evaluating, changing, and maintaining appropriate

quality standards in food and nutritional care services.

(9) "Provisional licensed dietitian" means a person provisionally licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 1, eff. September 1, 2005.

Sec. 701.003. APPLICATION OF SUNSET ACT. The Texas State Board of Examiners of Dietitians is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 2, eff. September 1, 2005.

#### **SUBCHAPTER B. TEXAS STATE BOARD OF EXAMINERS OF DIETITIANS**

Sec. 701.051. DIETITIANS BOARD MEMBERSHIP. (a) The Texas State Board of Examiners of Dietitians consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) six licensed dietitian members, each of whom has been licensed under this chapter for not less than three years before the member's date of appointment; and

(2) three members who represent the public.

(b) In appointing dietitian members to the dietitians board, the governor shall attempt to maintain balanced representation among the following primary areas of expertise included in the professional discipline of dietetics:

(1) clinical;

(2) educational;

(3) management;

(4) consultation; and

(5) community.

(c) Appointments to the dietitians board shall be made without regard to the race, color, disability, sex, religion, age, or

national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.052. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the dietitians board if the person or the person's spouse:

- (1) is registered, certified, or licensed by an occupational regulatory agency in the field of dietetics;
- (2) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the board;
- (3) owns or controls directly or indirectly more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the board; or
- (4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a dietitians board member and may not be an employee of the department employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

- (1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of dietetics; or
- (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of dietetics.

(c) A person may not be a member of the dietitians board or act

as the general counsel to the board or the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 3, eff. September 1, 2005.

Sec. 701.054. TERMS. Members of the dietitians board serve staggered six-year terms. The terms of two members begin on September 1 of each odd-numbered year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the dietitians board that a member:

- (1) does not have at the time of taking office the qualifications required by Section 701.051(a);
- (2) does not maintain during service on the board the qualifications required by Section 701.051(a);
- (3) is ineligible for membership under Section 701.052 or 701.053;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

(c) If the executive secretary has knowledge that a potential ground for removal exists, the executive secretary shall notify the presiding officer of the dietitians board of the ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive

secretary shall notify the assistant presiding officer, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 4, eff. September 1, 2005.

Sec. 701.056. REIMBURSEMENT. (a) Repealed by Acts 2005, 79th Leg., Ch. 147, Sec. 28, eff. September 1, 2005.

(b) A member is entitled to reimbursement for travel expenses as provided by the General Appropriations Act.

(c) A member may not receive a fixed salary for services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 5, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 6, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 28, eff. September 1, 2005.

Sec. 701.057. OFFICERS. (a) The governor shall designate a member of the dietitians board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(b) Not later than the 30th day after the date the governor appoints new board members, the dietitians board shall meet to elect an assistant presiding officer, who holds office according to board rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 7, eff. September 1, 2005.

Sec. 701.058. MEETINGS. The dietitians board shall hold at

least two regular meetings each year as provided by board rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the dietitians board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) this chapter and the dietitians board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts-of-interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

(d) Repealed by Acts 2005, 79th Leg., Ch. 147, Sec. 28, eff. September 1, 2005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 8, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 28, eff. September 1, 2005.

#### **SUBCHAPTER C. EXECUTIVE SECRETARY AND PERSONNEL**

Sec. 701.101. EXECUTIVE SECRETARY. The commissioner shall designate a department employee to serve as executive secretary of the dietitians board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.102. EXECUTIVE SECRETARY POWERS AND DUTIES. In addition to performing other duties prescribed by this chapter and by the department, the executive secretary of the dietitians board shall:

- (1) administer licensing activities for the board;
- (2) keep full and accurate minutes of the board's transactions and proceedings;
- (3) serve as custodian of the board's files and records;
- (4) prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this chapter, including rules and proposals on administrative procedures;
- (5) exercise general supervision over persons employed by the department in the administration of this chapter;
- (6) investigate complaints and present formal complaints;
- (7) attend all board meetings as a nonvoting participant;
- (8) handle the board's correspondence; and
- (9) obtain, assemble, or prepare reports and other information as directed or authorized by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.103. PERSONNEL AND FACILITIES. (a) Department personnel shall administer this chapter as agents of the dietitians board.

(b) If necessary to administer this chapter, the department by agreement may:

- (1) obtain and provide compensation for services; and
- (2) employ professional consultants, technical assistants, or other persons on a full-time or part-time basis.

(c) Department facilities shall be used as necessary to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.104. DIVISION OF RESPONSIBILITIES. The dietitians board shall develop and implement policies that clearly separate the

policymaking responsibilities of the board and the management responsibilities of the executive secretary and the staff of the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 9, eff. September 1, 2005.

Sec. 701.105. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The dietitians board shall provide, as often as necessary, to its members and employees information regarding their:

- (1) qualifications for office or employment under this chapter; and
- (2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

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

- (1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel, that are in compliance with Chapter 21, Labor Code;
- (2) a comprehensive analysis of the dietitians board workforce that meets federal and state guidelines;
- (3) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and
- (4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

- (1) cover an annual period;



- (2) be updated annually;
- (3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and
- (4) be filed with the governor.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. POWERS AND DUTIES**

##### Sec. 701.151. GENERAL POWERS AND DUTIES OF DIETITIANS BOARD.

The dietitians board shall:

- (1) adopt an official seal;
- (2) adopt and publish a code of ethics;
- (3) establish the qualifications and fitness of applicants for licenses, including renewed and reciprocal licenses;
- (4) revoke, suspend, or deny a license, probate a license suspension, or reprimand a license holder for a violation of this chapter, a board rule, or the code of ethics;
- (5) spend money necessary to properly administer the board's duties; and
- (6) establish reasonable and necessary fees to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.152. GENERAL RULEMAKING AUTHORITY. (a) The dietitians board may adopt rules consistent with this chapter.

(b) In adopting rules, the dietitians board shall consider the rules and procedures of the Texas Board of Health and the department and shall adopt procedural rules not inconsistent with similar rules and procedures of those entities.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

##### Sec. 701.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE

BIDDING. (a) The dietitians board may not adopt a rule restricting advertising or competitive bidding by a person regulated by the board except to prohibit a false, misleading, or deceptive practice.

(b) The dietitians board may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the use of a trade name in advertising by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.1535. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.

(a) The dietitians board shall adopt rules necessary to comply with Chapter 53.

(b) In its rules under this section, the dietitians board shall list the specific offenses for which a conviction would constitute grounds for the board to take action under Section 53.021.

Added by Acts 2005, 79th Leg., Ch. 147 (H.B. [1155](#)), Sec. 10, eff. September 1, 2005.

Sec. 701.154. FEES. (a) After consulting the commissioner or the department, the dietitians board by rule shall set fees in amounts reasonable and necessary to cover the cost of administering this chapter.

(b) The dietitians board may not set a fee that existed on September 1, 1993, in an amount that is less than the amount of that fee on that date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.155. SEAL. (a) The dietitians board by rule may

require a license holder to:

(1) obtain a seal authorized by the board bearing the license holder's name and the legend "Licensed Dietitian"; and

(2) affix the seal to formal documentation of nutrition services provided by the license holder, as determined necessary and appropriate by the board.

(b) If the dietitians board adopts rules under Subsection (a), the rules must authorize a license holder to comply with Subsection (a)(2) by maintaining a facsimile of the license holder's seal on file at the location where services are provided if:

(1) the services are provided:

(A) in a facility licensed under the Health and Safety Code;

(B) on behalf of a local, state, or federal government agency; or

(C) under other circumstances determined reasonable and necessary by the board; and

(2) the facsimile is maintained on file at all times during which the services are provided.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.156. DIETITIANS BOARD DUTIES REGARDING COMPLAINTS.

(a) The dietitians board by rule shall:

(1) adopt a form to standardize information concerning complaints made to the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The dietitians board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.157. POWERS AND DUTIES OF TEXAS BOARD OF HEALTH. To implement this chapter, the Texas Board of Health:

(1) shall request and receive any necessary assistance from state educational institutions or other state agencies;

(2) shall prepare information of consumer interest describing the regulatory functions of the dietitians board, the

procedures by which consumer complaints are filed and resolved, and the profession of dietetics;

(3) shall prepare a registry of licensed dietitians and provisional licensed dietitians and make the registry available to the public, license holders, and appropriate state agencies; and

(4) may request the attorney general or the appropriate county or district attorney to institute a suit to enjoin a violation of this chapter in addition to any other action, proceeding, or remedy authorized by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.159. DELEGATION TO COMMITTEE. The dietitians board may delegate a function or activity required by this chapter to a committee of board members on a permanent or temporary basis if the board agrees to the delegation.

Added by Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 11, eff. September 1, 2005.

Sec. 701.160. USE OF TECHNOLOGY. The dietitians board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 11, eff. September 1, 2005.

Sec. 701.161. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The dietitians board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The dietitians board's procedures relating to alternative

dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The dietitians board shall designate a trained person to:

- (1) coordinate the implementation of the policy adopted under Subsection (a);
- (2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and
- (3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 11, eff. September 1, 2005.

#### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 701.201. PUBLIC INTEREST INFORMATION. (a) The dietitians board shall prepare information of public interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board.

(b) The dietitians board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.202. COMPLAINTS. (a) The dietitians board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

- (1) on each registration form, application, or written contract for services of a person regulated by the board;
- (2) on a sign prominently displayed in the place of business of each person regulated by the board; or
- (3) in a bill for services provided by a person regulated by the board.

(b) The dietitians board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health

professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.203. RECORDS OF COMPLAINTS. (a) The dietitians board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain:

- (1) information about the parties to the complaint and the subject matter of the complaint;
- (2) a summary of the results of the review or investigation of the complaint; and
- (3) information about the disposition of the complaint.

(b) The dietitians board shall make information available describing its procedures for complaint investigation and resolution.

(c) The dietitians board shall periodically notify the parties of the status of the complaint until final disposition of the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. [1155](#)), Sec. 12, eff. September 1, 2005.

Sec. 701.204. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The dietitians board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection shall:

- (1) distinguish among categories of complaints;
- (2) ensure that a complaint is not dismissed without appropriate consideration;
- (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
- (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and
- (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(b) The dietitians board shall:

(1) dispose of each complaint in a timely manner; and

(2) establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) Each party to the complaint shall be notified of the projected time requirements for pursuing the complaint. Each party shall be notified of any change in the schedule established under Subsection (b)(2) not later than the seventh day after the date the change is made.

(d) The executive secretary shall notify the dietitians board of a complaint that is not resolved in the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.2041. SUBPOENAS. (a) In an investigation of a complaint filed with the dieticians board, the board may request that the commissioner or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the dieticians board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The board may delegate the authority granted under Subsection (a) to the executive secretary of the dieticians board.

(f) The dieticians board shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the board may charge for copies of its records.

(g) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section

2001.103, Government Code.

(h) All information and materials subpoenaed or compiled by the dietitians board in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in discipline of the holder of a license, except that this information may be disclosed to:

- (1) persons involved with the board in a disciplinary action against the holder of a license;
- (2) professional dietitian licensing or disciplinary boards in other jurisdictions;
- (3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges by the dietitians board against a holder of a license, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.401(a), eff. Sept. 1, 2001.

Sec. 701.205. PUBLIC PARTICIPATION. (a) The dietitians board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The dietitians board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.206. COMPLAINT COMMITTEE. The dietitians board shall



appoint at least one public member to any board committee established to review a complaint filed with the board or review an enforcement action against a license holder related to a complaint filed with the board.

Added by Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 13, eff. September 1, 2005.

#### **SUBCHAPTER F. LICENSE REQUIREMENTS**

Sec. 701.251. LICENSE REQUIRED; COMMISSION REGISTRATION. (a) In this section, "Commission on Dietetic Registration" means the commission that is a member of the National Commission on Health Certifying Agencies.

(b) Unless the person holds an appropriate license issued under this chapter, a person may not:

(1) use the title or represent or imply that the person has the title "licensed dietitian" or "provisional licensed dietitian" or use the letters "LD" or "PLD"; or

(2) use a facsimile of those titles to indicate or imply that the person is a licensed dietitian or provisional licensed dietitian.

(c) Unless the person is a dietitian registered by the Commission on Dietetic Registration, a person may not:

(1) use the title or represent or imply that the person has the title "registered dietitian" or use the letters "RD"; or

(2) use a facsimile of that title to indicate or imply that the person is a dietitian registered by the Commission on Dietetic Registration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.252. LICENSE APPLICATION. (a) Each applicant for a dietitian license must submit a sworn application accompanied by the application fee.

(b) The dietitians board shall prescribe the application form and may by rule establish dates by which applications and fees must be received.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.253. LICENSE EXAMINATION. (a) In this section, "Commission on Dietetic Registration" has the meaning assigned by Section 701.251(a).

(b) Except as provided by Subsection (f), an applicant must pass a license examination to qualify for a license under this chapter.

(c) The dietitians board shall prepare or approve an examination. An examination prescribed by the board may be or may include an examination given by the Commission on Dietetic Registration or by a national or state testing service instead of an examination prepared by the board.

(d) Any written portion of the examination must be validated by an independent testing professional.

(e) The dietitians board shall administer an examination to qualified applicants at least twice each calendar year.

(f) The dietitians board shall waive the examination requirement for an applicant who, at the time of application, is a dietitian registered by the Commission on Dietetic Registration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 14, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 15, eff. September 1, 2005.

Sec. 701.254. QUALIFICATIONS FOR EXAMINATION. To qualify for the licensing examination under this chapter, an applicant must:

(1) possess a baccalaureate or postbaccalaureate degree, conferred by a college or university regionally accredited at the time of conferral, with:

(A) a major course of study in human nutrition, food and nutrition, nutrition education, dietetics, or food systems management; or

(B) an equivalent major course of study approved by the dietitians board; and

(2) have completed an internship or preplanned, documented,

professional experience program in dietetics practice of not less than 900 hours under the supervision of a licensed dietitian or a registered dietitian approved by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.255. INVESTIGATION. (a) Not later than the 45th day after the date a properly submitted and timely application is received and not later than the 30th day before the next examination date, the department shall notify an applicant in writing of the receipt and investigation of the applicant's application and any other relevant evidence relating to applicant qualifications established by dietitians board rule.

(b) The notice shall state whether the applicant has qualified for examination based on the application and other submitted evidence. If the applicant has not qualified, the notice shall state the reasons for the applicant's failure to qualify.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.256. LICENSING EXAMINATION RESULTS. (a) The department shall notify each examinee of the licensing examination results not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national or state testing service, the department shall notify each examinee of the examination results not later than the 14th day after the date the department receives the results from the testing service.

(b) If the notice of the results of an examination graded or reviewed by a national or state testing service will be delayed for longer than 90 days after the examination date, the department shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the examination, the department shall provide to the person an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. [1155](#)), Sec. 16, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 17, eff. September 1, 2005.

Sec. 701.257. REEXAMINATION FOR LICENSING EXAMINATION. An applicant who fails the licensing examination three times must provide evidence to the dietitians board that the applicant has successfully completed credit hours in the applicant's areas of weakness before the applicant may apply for reexamination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.  
Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 18, eff. September 1, 2005.

Sec. 701.2575. JURISPRUDENCE EXAMINATION. (a) The dietitians board shall develop and administer at least twice each calendar year a jurisprudence examination to determine an applicant's knowledge of this chapter, board rules, and any other applicable laws of this state affecting the applicant's dietetics practice.

(b) In addition to the license examination required by Section 701.253, an applicant must pass a jurisprudence examination to qualify for a license under this chapter.

(c) The dietitians board shall adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results.

Added by Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 19, eff. September 1, 2005.

Sec. 701.258. QUALIFIED PERSON ENTITLED TO LICENSE. The dietitians board shall issue a license certificate as a licensed dietitian to a person qualified for a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.259. PROVISIONAL LICENSE. (a) The dietitians board may issue a license to use the title "provisional licensed dietitian" to an applicant who files an application, pays an application fee, and submits evidence of successful completion of the education requirement under Section 701.254.

(b) A provisional licensed dietitian must practice under the supervision and direction of a licensed dietitian. The supervising licensed dietitian must sign the applicant's initial application for a provisional license.

(c) The dietitians board shall issue a license certificate as a provisional licensed dietitian to a person qualified for a provisional license under this chapter.

(d) A provisional license expires on the first anniversary of the date of issuance and, if the supervising licensed dietitian signs the renewal application, may be renewed annually not more than twice by complying with the renewal procedures under Section 701.301.

(e) A provisional licensed dietitian shall comply with Sections 701.351 and 701.352.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.260. TEMPORARY LICENSE. (a) On receipt of an application and payment of an application fee, the dietitians board may grant a temporary license to an applicant who:

(1) is licensed in good standing as a dietitian in another state that has licensing requirements that are substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination that is recognized by the board and relates to dietetics; and

(3) is sponsored by a person licensed by the board under this chapter with whom the temporary license holder may practice.

(b) The dietitians board may waive the requirement of Subsection (a)(3) if the board determines that compliance with that provision is a hardship to an applicant.

(c) A temporary license is valid until the date the dietitians board approves or denies the temporary license holder's application for a license. The board shall issue a license under this chapter to the holder of a temporary license if:

(1) the temporary license holder passes the competency

examination required by Section 701.253;

(2) the board verifies that the temporary license holder meets the academic and experience requirements for a license under this chapter; and

(3) the temporary license holder satisfies any other license requirements under this chapter.

(d) The dietitians board must complete the processing of a temporary license holder's application for a license not later than the 180th day after the date the board issues the temporary license. The board may extend this deadline to receive pending examination results.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.261. INACTIVE STATUS. The dietitians board by rule may provide for a license holder to place the person's license on inactive status. The board by rule shall provide for a time limit for a license to remain on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. LICENSE RENEWAL**

Sec. 701.301. LICENSE RENEWAL. (a) A license is valid for two years after the date of issuance and may be renewed biennially.

(b) The Texas Board of Health by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, a license fee payable on the original expiration date shall be prorated on a monthly basis so that the license holder pays only that portion of the fee allocable to the number of months the license is valid. The license holder shall pay the total license renewal fee on renewal of the license on the new expiration date.

(c) A person may renew an unexpired license by paying the required renewal fee to the dietitians board before the license expiration date.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the dietitians board a fee that is equal to 1-1/4 times the amount of the renewal fee for the license. If a license has been expired for more than 90 days but less than one

year, the person may renew the license by paying to the board a fee that is equal to 1-1/2 times the amount of the renewal fee for the license.

(e) Except as provided by Section 701.302, a person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(f) Not later than the 30th day before a person's license expiration date, the dietitians board shall send written notice of the impending license expiration to the person at the person's last known address according to board records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 20, eff. September 1, 2005.

Sec. 701.302. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. The dietitians board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date the person applies for renewal. The person must pay to the board a fee that is equal to the amount of the examination fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.303. CONTINUING EDUCATION. (a) The dietitians board by rule shall establish a minimum number of hours of continuing education required for license renewal under this chapter.

(b) The dietitians board may assess the continuing education needs of license holders and may require license holders to attend continuing education courses specified by the board. The board shall develop a process to evaluate and approve continuing education courses.

(c) The dietitians board shall identify key factors for a license holder's competent performance of professional duties. The board shall adopt a procedure to assess the license holder's participation in continuing education programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.304. GROUND FOR REFUSING RENEWAL. The dietitians board may refuse to renew the license of a person who fails to pay an administrative penalty imposed under Subchapter K, unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 21, eff. September 1, 2005.

#### **SUBCHAPTER H. PRACTICE BY LICENSE HOLDER**

Sec. 701.351. DISPLAY OF LICENSE CERTIFICATE. (a) A license holder shall display the person's license certificate in an appropriate and public manner.

(b) A license certificate issued by the dietitians board is the property of the board and shall be surrendered on demand.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.352. LICENSE HOLDER INFORMATION. A license holder shall keep the department informed of the license holder's current address.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.353. PROHIBITED USE OF SEAL. (a) A person may not use a seal authorized by the dietitians board unless the person holds a license issued under this chapter.

(b) A person may not affix a seal to a document if the license of the license holder named on the seal is expired, suspended, or revoked.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER I. DISCIPLINARY PROCEDURES**



Sec. 701.401. GROUND FOR DISCIPLINARY ACTION. The dietitians board shall refuse to renew a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of this chapter or a rule or code of ethics adopted by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 22, eff. September 1, 2005.

Sec. 701.402. HEARING. (a) If the dietitians board proposes to refuse to renew a license, revoke, or suspend a person's license, the person is entitled to a hearing before the board.

(b) A member or employee of the dietitians board or a department employee who carries out the functions of the board and proposes to make a decision, a finding of fact, or a conclusion of law in a proceeding pending before the board may communicate directly or indirectly with a party to the proceeding or with the party's representative only if notice and an opportunity to participate are given to each party.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 23, eff. September 1, 2005.

Sec. 701.403. SANCTIONS. The State Office of Administrative Hearings shall use the schedule of sanctions adopted by dietitians board rule for a sanction imposed as the result of a hearing conducted by the office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.404. PROBATION. The dietitians board may require a license holder whose license suspension is probated to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to areas prescribed by the board; or  
(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.405. MONITORING OF LICENSE HOLDER. (a) The dietitians board by rule shall develop a system for monitoring a license holder's compliance with the requirements of this chapter.

(b) Rules adopted under this section must include procedures to:

(1) monitor for compliance a license holder who is ordered by the dietitians board to perform certain acts; and

(2) identify and monitor license holders who represent a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.406. INFORMAL PROCEDURES. (a) The dietitians board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under Subsection (a) must:

(1) provide the complainant and the license holder an opportunity to be heard; and

(2) require the presence of a representative of the attorney general or the dietitians board's legal counsel to advise the board or the board's employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.407. ADMINISTRATIVE PROCEDURE. A proceeding to suspend or revoke a license under this subchapter is governed by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.408. EMERGENCY SUSPENSION. (a) The dietitians board or a three-member committee of board members designated by the board shall temporarily suspend the license of a license holder if the board or committee determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 23, eff. Sept. 1, 2003.

#### **SUBCHAPTER J. PENALTIES AND OTHER ENFORCEMENT PROVISIONS**

Sec. 701.451. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates Section 701.251.

(b) A person commits an offense if the person violates Section 701.353(a).

(c) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.452. CEASE AND DESIST ORDER. (a) If it appears to the dietitians board that a person who is not licensed under this chapter is violating this chapter or a rule adopted under this chapter, the board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging

in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

Added by Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 25, eff. September 1, 2005.

Sec. 701.453. INJUNCTION. (a) The dietitians board may apply to a district court in any county for an injunction to restrain a violation of Section 701.251 by a person.

(b) At the request of the board, the attorney general shall initiate and conduct an action in a district court in the state's name to obtain an injunction under this section.

Added by Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 25, eff. September 1, 2005.

#### **SUBCHAPTER K. ADMINISTRATIVE PENALTY**

Sec. 701.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The dietitians board may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 24, eff. Sept. 1, 2003.

Sec. 701.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the administrative penalty may not be less than \$50 or more than \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

(c) The dietitians board by rule shall adopt an administrative

penalty schedule based on the criteria listed in Subsection (b) for violations of this chapter or board rules to ensure that the amounts of penalties imposed are appropriate to the violation. The board shall provide the administrative penalty schedule to the public on request.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 24, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 26, eff. September 1, 2005.

Sec. 701.503. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the commissioner or the commissioner's designee determines that a violation occurred, the commissioner or the designee may issue to the dietitians board a report stating:

(1) the facts on which the determination is based; and  
(2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the commissioner or the commissioner's designee shall give written notice of the report to the person. The notice must:

(1) include a brief summary of the alleged violation;  
(2) state the amount of the recommended administrative penalty; and  
(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 24, eff. Sept. 1, 2003.

Sec. 701.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty of the commissioner or the commissioner's designee; or  
(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the commissioner or the commissioner's designee, the

dietitians board by order shall approve the determination and impose the recommended penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 24, eff. Sept. 1, 2003.

Sec. 701.505. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the commissioner or the commissioner's designee shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the dietitians board a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 24, eff. Sept. 1, 2003.

Sec. 701.506. DECISION BY DIETITIANS BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the dietitians board by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the dietitians board's order given to the person must include a statement of the right of the person to judicial review of the order.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 24, eff. Sept. 1, 2003.

Sec. 701.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Within 30 days after the date the dietitians board's order becomes final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the dietitians board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner or the commissioner's designee by certified mail.

(c) If the commissioner or the commissioner's designee receives a copy of an affidavit under Subsection (b)(2), the commissioner or the designee may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 24, eff. Sept. 1, 2003.

Sec. 701.508. COLLECTION OF PENALTY. (a) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 24, eff. Sept. 1, 2003.

Sec. 701.509. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation

occurred, the court shall order that a penalty is not owed.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 24, eff. Sept. 1, 2003.

Sec. 701.510. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 24, eff. Sept. 1, 2003.

Sec. 701.511. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is a contested case under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 24, eff. Sept. 1, 2003.

Sec. 701.512. REFUND. (a) Subject to Subsection (b), the dietitians board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of



other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 27, eff. September 1, 2005.

**CHAPTER 702. HEALTH SPAS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 702.001. SHORT TITLE. This chapter may be cited as the Health Spa Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.002. PURPOSE AND CONSTRUCTION. (a) The purpose of this chapter is to protect the public against fraud, deceit, imposition, and financial hardship and to foster and encourage competition, fair dealing, and prosperity in the field of health spa operations and services by prohibiting or restricting injurious practices involving:

- (1) health spa contracts; and
- (2) the marketing of health spa services.

(b) This chapter shall be liberally construed and applied to promote its purpose and to provide efficient and economical procedures to protect the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.003. DEFINITIONS. In this chapter:

- (1) "Closed" means a condition in which:
  - (A) the facilities of a health spa are no longer available to the health spa's members and equivalent facilities located not more than 10 miles from the health spa have not been made available to the members;
  - (B) a certificate holder sells a registered location and the security filed or posted by the certificate holder under Subchapter D is:
    - (i) canceled;
    - (ii) withdrawn; or
    - (iii) otherwise unavailable to the members of the

health spa; or

(C) a certificate holder sells a registered location and the buyer does not adopt or honor the contracts of existing members of the health spa.

(2) "Contract" means an agreement between a seller and purchaser by which the purchaser becomes a member of a health spa.

(3) "Facilities" means the equipment, physical structures, improvements, including improvements to leasehold premises, and other tangible property, including saunas, whirlpool baths, gymnasiums, running tracks, swimming pools, shower areas, racquetball courts, martial arts equipment, and exercise equipment, that are located at a health spa and used to conduct the business of the health spa.

(4) "Health spa" means a business that offers for sale, or sells, memberships that provide the members instruction in or the use of facilities for a physical exercise program. The term does not include:

(A) an organization that is tax exempt under Section 501 et seq., Internal Revenue Code (26 U.S.C. Section 501 et seq.);

(B) a private club owned and operated by its members;

(C) an entity operated exclusively to:

(i) teach dance or aerobic exercise; or

(ii) provide physical rehabilitation activity

related to an individual's injury or disease;

(D) a person engaged in an activity authorized under a license issued by the state;

(E) an activity conducted or sanctioned by a school under the Education Code; or

(F) a hospital or clinic owned or operated by an agency of the state or federal government or by a political subdivision of this state.

(5) "Location" means the physical site of the facilities of a health spa.

(6) "Member" means a person who is entitled to the benefits of membership in a health spa.

(7) "Membership" means the status of a person under a contract that entitles the person to use a health spa's services or facilities.

(8) "Obligor" means a person, other than a surety, who is obligated to perform if a certificate holder defaults.

(9) "Open" means the date each service of a health spa that

was advertised before the opening, or promised to be made available, are available for use by its members.

(10) "Prepayment" means consideration paid by a purchaser for membership in a health spa before the date the health spa opens.

(11) "Purchaser" means a person who purchases, or applies to purchase, the right to use a health spa's services or facilities.

(12) "Registered location" means a health spa location for which a health spa operator's certificate of registration is issued under this chapter.

(13) "Seller" means a person who:

(A) owns or operates a health spa; or

(B) offers for sale, or sells, the right to use a health spa's services or facilities.

(14) "Services" means the programs, plans, guidance, or instruction that a health spa provides for its members. The term includes diet planning, exercise instruction and programs, and instructional classes.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 887 (S.B. 335), Sec. 1, eff. September 1, 2011.

#### **SUBCHAPTER B. POWERS AND DUTIES OF SECRETARY OF STATE**

Sec. 702.051. ADMINISTRATIVE AND RULEMAKING AUTHORITY. (a) The secretary of state shall administer this chapter.

(b) In administering this chapter, the secretary of state shall:

(1) adopt rules;

(2) issue administrative orders; and

(3) take action necessary to ensure compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.052. RULES RELATING TO SECURITY CLAIMS AND PROCEEDS. The secretary of state shall adopt rules necessary to:

(1) determine the disposition of a security claim filed under Section 702.251; and

(2) ensure the prompt and fair distribution of security proceeds.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.053. REGISTRATION AND RENEWAL FEES. The secretary of state may charge each applicant for a certificate of registration, or renewal of a certificate, a reasonable fee not to exceed \$100 to cover the cost of issuance or renewal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. CERTIFICATE OF REGISTRATION**

Sec. 702.101. CERTIFICATE OF REGISTRATION REQUIRED. A person may not operate a health spa or offer for sale, or sell, a membership in a health spa unless the person holds a health spa operator's certificate of registration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.102. APPLICATION REQUIREMENTS. (a) An applicant for a health spa operator's certificate of registration must file with the secretary of state an application stating:

- (1) the applicant's name, address, and telephone number;
- (2) the applicant's business trade name;
- (3) for an applicant whose business is incorporated:
  - (A) the applicant's business name registered with the secretary of state;
  - (B) the location of the applicant's registered business office; and
  - (C) the name and address of each person who directly or indirectly owns or controls 10 percent or more of the outstanding shares of stock in the applicant's business;
- (4) the date the applicant became the owner and operator of the applicant's business;
- (5) the address of the health spa; and
- (6) the type of available or proposed facilities and services offered at the health spa location.

(b) An application for a certificate of registration must be accompanied by:

(1) a sample of each contract used to sell a membership in the applicant's health spa;

(2) proof of security filed or posted by the applicant under Subchapter D; and

(3) the required registration fee.

(c) An applicant must comply with the application requirements of this section for each location where the applicant operates a health spa.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.103. CERTIFICATE OF REGISTRATION NONTRANSFERABLE; APPLICATION BY NEW OWNER. (a) A health spa operator's certificate of registration is not transferable.

(b) A person who obtains ownership of a health spa by purchase or other transfer shall file an application for a certificate of registration under Section 702.102 not later than the fifth day after the date the person obtains ownership.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.104. TERM; RENEWAL. (a) A health spa operator's certificate of registration expires on the first anniversary of the date of issuance.

(b) A certificate of registration may be renewed as provided by the secretary of state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.105. CERTIFICATE POSTING. A certificate holder shall post a health spa operator's certificate of registration in a conspicuous place at each registered location.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.106. CHANGE OF INFORMATION. If the information provided in an application for a certificate of registration changes, the certificate holder shall amend the application not later than the 90th day after the date the change occurs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.107. SALES TAX PERMIT; PROOF OF REGISTRATION REQUIRED.

(a) A health spa operator shall submit to the comptroller a copy of the operator's certificate of registration at the time the operator applies for a sales tax permit.

(b) The comptroller may not issue a sales tax permit to a health spa operator who fails to comply with this section. The secretary of state shall assist the comptroller in determining whether a business is a health spa under this chapter.

Added by Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 1, eff. September 1, 2005.

#### **SUBCHAPTER D. SECURITY REQUIREMENTS**

Sec. 702.151. SECURITY REQUIRED. (a) Except as provided by Subchapter E, the secretary of state may not issue a health spa operator's certificate of registration to an applicant unless the applicant files a surety bond, or posts other security as prescribed by the secretary, in the amount prescribed by the secretary under Subsection (b).

(b) The secretary of state shall prescribe the amount of security required for an applicant in the amount determined sufficient by the secretary to protect the health spa's total membership. The amount may not be less than \$20,000 or more than \$50,000.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 2, eff. September 1, 2005.

Sec. 702.152. SURETY BOND REQUIREMENTS. If a surety bond is

filed under Section 702.151, the bond must:

- (1) remain in effect until canceled by the surety company;
- (2) be issued by a company authorized to do business in this state; and
- (3) conform to the requirements of the Insurance Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.153. REQUIREMENTS FOR SECURITY OTHER THAN SURETY BOND. An applicant who posts under Section 702.151 security other than a surety bond is:

- (1) not required to post other security annually if the applicant maintains security in the amount of \$20,000; and
- (2) entitled to receive the interest that accumulates on the other security posted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.154. BENEFICIARY OF SECURITY. The security filed or posted by a certificate holder under this subchapter must be payable to the state and held for the benefit of:

- (1) the state; and
- (2) each member of the certificate holder's health spa who has been administratively adjudicated to have suffered actual financial loss as a result of the closing of the certificate holder's health spa.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.155. DURATION OF SECURITY. A certificate holder shall maintain the security filed or posted under Section 702.151 in effect until the earlier of:

- (1) the second anniversary of the date the certificate holder's health spa closes; or
- (2) the date the secretary of state determines that each claim filed against the security has been satisfied or foreclosed by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. 1231), Sec. 1, eff. September 1, 2011.

Sec. 702.156. NOTICE OF CANCELLATION OF SECURITY. A surety or obligor of security filed or posted under this subchapter shall provide to the secretary of state, not later than the 60th day before the date the security is canceled, written notice of the cancellation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. 1231), Sec. 2, eff. September 1, 2011.

Sec. 702.157. LIMIT ON LIABILITY OF SURETY OR OBLIGOR. (a) The limit of a surety's or obligor's liability stated in the security filed or posted under this subchapter may not be cumulative from year to year or period to period, regardless of the number of:

- (1) years that the security continues in force; or
- (2) premiums paid or payable.

(b) The liability of a surety or obligor is exclusively conditioned on a final administrative order issued by the secretary of state.

(c) Security filed or posted under this subchapter is subject to a claim only as provided by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.158. REVIEW OF SECURITY AMOUNT. (a) At least once every three years, the secretary of state shall review the amount of security a health spa operator is required to post under Section 702.151 to determine whether the amount is sufficient to protect the health spa's total membership. The secretary may increase the amount required if the secretary determines that the increase is necessary to protect that membership but may not increase the amount above the maximum amount allowed under Section 702.151(b).



(b) The secretary of state may adopt procedures necessary to implement this section, including:

- (1) establishing a schedule to review the amount of security posted by each health spa operator; and
- (2) requiring each health spa operator to submit periodically a written statement of the health spa's total membership.

Added by Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 3, eff. September 1, 2005.

#### **SUBCHAPTER E. EXEMPTION FROM SECURITY REQUIREMENTS**

Sec. 702.201. APPLICATION FOR EXEMPTION. A certificate holder may apply for an exemption from the security requirements of Subchapter D by filing with the secretary of state a sworn application for the exemption on a form prescribed by the secretary of state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.202. QUALIFICATIONS FOR EXEMPTION. A certificate holder may apply for an exemption under Section 702.201 if:

- (1) the certificate holder does not require, or solicit or offer a plan or program that requires, a health spa consumer to:
  - (A) execute a membership contract for a term that exceeds 31 days;
  - (B) execute a note or retail installment contract;
  - (C) authorize a draw or other recurring debit on a financial institution in favor of the certificate holder or the certificate holder's assignee;
  - (D) pay an initiation fee or other fee, not including monthly dues; or
  - (E) prepay for a term that exceeds 31 days; or
- (2) the certificate holder submits a sworn statement every three years with the secretary of state stating that the certificate holder:
  - (A) has assets based on net book value that exceed \$50,000 per registered location;
  - (B) has operated under substantially the same ownership

or management for at least five years; and

(C) has not been the subject of a complaint relating to the closing of a health spa owned by the certificate holder or the failure of a health spa owned by the certificate holder to open that has been initiated or filed by a member of the health spa with a governmental authority in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 4, eff. September 1, 2005.

Sec. 702.205. ISSUANCE OF EXEMPTION. (a) On approval of an application for an exemption under Section 702.201, the secretary of state shall issue a certificate of exemption.

(b) A certificate holder to whom a certificate of exemption is issued is not required to file a surety bond or post other security under Subchapter D.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.206. NONTRANSFERABILITY OF EXEMPTION. (a) A certificate of exemption is not transferable.

(b) A person who by purchase or other transfer obtains ownership of a health spa for which a certificate of exemption has been issued shall, not later than the fifth day after the date the person obtains ownership:

(1) file a surety bond, or post other security, as required by Section 702.151; or

(2) file a new application for an exemption under Section 702.201.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.207. DENIAL AND REVOCATION OF EXEMPTION. After notice and opportunity for hearing, the secretary of state may deny an application for an exemption or permanently revoke a certificate holder's certificate of exemption if the secretary finds that the

applicant or certificate holder:

- (1) provided false information on the application for an exemption; or
- (2) is no longer eligible for an exemption.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. [1231](#)), Sec. 3, eff. September 1, 2011.

#### **SUBCHAPTER F. CLAIM ON SECURITY**

Sec. 702.251. FILING OF SECURITY CLAIM. A member may file a claim against the security filed or posted under this subchapter by providing to the secretary of state a copy of the contract between the member and certificate holder who filed or posted the security, accompanied by proof of payment made under the contract, if the certificate holder's health spa:

- (1) closes and fails to provide alternative facilities not more than 10 miles from the location of the health spa; or
- (2) relocates more than 10 miles from its location preceding the relocation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. [1231](#)), Sec. 4, eff. September 1, 2011.

Sec. 702.252. COMPUTATION OF CLAIM. (a) Recovery on a claim filed under Section 702.251 is limited to the amount of actual financial loss suffered by the member as a result of the closing or relocating of the certificate holder's health spa.

(b) For purposes of this section, actual financial loss is computed by:

- (1) rounding the date of the health spa's closing or relocation and the contract's expiration date to the nearest full month;
- (2) subtracting the date of closing or relocation determined under Subdivision (1) from the expiration date determined under that subdivision, with the result expressed in whole months and

representing the number of months remaining on a contract;

(3) computing the gross monthly payment by adding all payments made under the contract, including any down payment and initiation fee, and dividing the resulting amount by the total number of months in the term of the contract; and

(4) multiplying the number of months remaining on the contract computed under Subdivision (2) by the gross monthly payment computed under Subdivision (3).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.253. ADJUDICATION ON PRO RATA BASIS. If the total amount of actual financial losses computed under Section 702.252 for all claims filed under Section 702.251 exceeds the amount of available security, the secretary of state shall reduce the amount of each recovery under Section 702.252 on a pro rata basis and shall compute the amount of each recovery by:

(1) dividing the amount of available security by the total amount of actual financial losses computed under Section 702.252 for all claims; and

(2) multiplying the results computed under Subdivision (1) by the amount of the recovery.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 756, Sec. 1, eff. Sept. 1, 2001.

Sec. 702.254. CLAIM BARRED. The secretary of state may not consider a claim filed under Section 702.251 if the claim is received later than the 90th day after the date notice of the closure or relocation is first posted on the secretary of state's Internet website under Section 702.452(c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 756, Sec. 2, eff. Sept. 1, 2001.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. [1231](#)), Sec. 5, eff. September 1, 2011.

**SUBCHAPTER G. CONTRACT REQUIREMENTS**

Sec. 702.301. GENERAL REQUIREMENTS. (a) A contract:

- (1) must be:
  - (A) in writing; and
  - (B) signed by the purchaser;

(2) must state the proposed opening date of the health spa that is the subject of the contract, if the health spa is not open on the contract date; and

(3) must include the health spa operator's certificate of registration number or an identification number as provided by Subsection (b).

(b) The secretary of state shall adopt procedures for the issuance of an identification number that may be used in a contract for purposes of Subsection (a) by health spas with more than one location in this state.

(c) A contract under Subsection (a) constitutes the entire agreement between the seller and purchaser.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 5, eff. September 1, 2005.

Sec. 702.302. DISCLOSURE REQUIREMENTS. (a) A health spa shall prepare a comprehensive list that includes each membership plan the health spa offers for sale. The health spa shall disclose the list to a prospective purchaser on request.

(b) A certificate holder who is not exempt under Section 702.202 from the security requirements of Subchapter D must deliver to a purchaser a complete copy of the contract, accompanied by a written receipt for any payment made by the purchaser under the contract before entering into the contract with the purchaser.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.303. CONTRACT TERM. (a) Except as provided by Subsection (b), the term of a contract may not exceed three years.

(b) A contract that is financed through a retail installment contract or note may not require the purchaser to make payments or

finance the contract for more than five years after the contract date.

(c) If, after a health spa opens, the health spa is rendered unusable for 30 consecutive days or longer because of an event beyond the control of the owner or operator of the health spa, including a natural disaster, the health spa shall extend the term of each affected member's contract for a period equal to the time that the health spa is rendered unusable.

(d) If the term of a contract overlaps the term of another contract between the same seller and purchaser, the contracts are considered to be one contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.304. CANCELLATION AND REFUND NOTICE. (a) Except as provided by Subsection (b), a contract must state in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously distinguished from surrounding written material:

(1) "NOTICE TO PURCHASER: DO NOT SIGN THIS CONTRACT UNTIL YOU READ IT OR IF IT CONTAINS BLANK SPACES."

(2) "IF YOU DECIDE YOU DO NOT WISH TO REMAIN A MEMBER OF THIS HEALTH SPA, YOU MAY CANCEL THIS CONTRACT BY MAILING TO THE HEALTH SPA BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DAY YOU SIGN THIS CONTRACT A NOTICE STATING YOUR DESIRE TO CANCEL THIS CONTRACT. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

(Address of the health spa home office)."

(3) "IF THE HEALTH SPA GOES OUT OF BUSINESS AND DOES NOT PROVIDE FACILITIES WITHIN 10 MILES OF THE FACILITY IN WHICH YOU ARE ENROLLED OR IF THE HEALTH SPA MOVES MORE THAN 10 MILES FROM THE FACILITY IN WHICH YOU ARE ENROLLED, YOU MAY:

(A) CANCEL THIS CONTRACT BY MAILING BY CERTIFIED MAIL A WRITTEN NOTICE STATING YOUR DESIRE TO CANCEL THIS CONTRACT, ACCOMPANIED BY PROOF OF PAYMENT ON THE CONTRACT TO THE HEALTH SPA AT THE FOLLOWING ADDRESS:

(Address of the health spa home office); AND

(B) FILE A CLAIM FOR A REFUND OF YOUR UNUSED MEMBERSHIP FEES AGAINST THE BOND OR OTHER SECURITY POSTED BY THE HEALTH SPA WITH THE TEXAS SECRETARY OF STATE. TO MAKE A CLAIM AGAINST THE SECURITY

PROVIDE A COPY OF YOUR CONTRACT TOGETHER WITH PROOF OF PAYMENTS MADE ON THE CONTRACT TO THE TEXAS SECRETARY OF STATE. THE REQUIRED CLAIM INFORMATION MUST BE RECEIVED BY THE SECRETARY OF STATE NOT LATER THAN THE 90TH DAY AFTER THE DATE NOTICE OF THE CLOSURE OR RELOCATION IS FIRST POSTED ON THE SECRETARY OF STATE'S INTERNET WEBSITE."

(4) "IF YOU DIE OR BECOME TOTALLY AND PERMANENTLY DISABLED AFTER THE DATE THIS CONTRACT TAKES EFFECT, YOU OR YOUR ESTATE MAY CANCEL THIS CONTRACT AND RECEIVE A PARTIAL REFUND OF YOUR UNUSED MEMBERSHIP FEE BY MAILING A NOTICE TO THE HEALTH SPA STATING YOUR DESIRE TO CANCEL THIS CONTRACT. THE HEALTH SPA MAY REQUIRE PROOF OF DISABILITY OR DEATH. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

(Address of the health spa home office)."

(b) A health spa operator is required to include the statement under Subsection (a)(3)(B) in a contract only if the operator is required to post security with the secretary of state under Subchapter D.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 6, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. 1231), Sec. 6, eff. September 1, 2011.

Sec. 702.305. PREPAYMENT REFUND NOTICE. If a certificate holder offers for sale, or sells, memberships in a health spa before the date the health spa opens, the contract for the health spa must state in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously distinguished from surrounding written material:

"IF THE HEALTH SPA DOES NOT OPEN BEFORE (insert: the date that is the 181st day after the date the membership is prepaid) OR IF THE NEW SPA DOES NOT REMAIN OPEN FOR THIRTY DAYS, YOU ARE ENTITLED TO A FULL REFUND OF THE MONEY YOU PREPAID. HOWEVER, IF ANOTHER HEALTH SPA, OPERATED BY (insert: the name of the health spa registration holder), IS LOCATED WITHIN 10 MILES OF (insert: the address of the proposed location of the new spa) AND IF YOU ARE AUTHORIZED TO USE THE OTHER FACILITIES, YOU ARE ENTITLED TO RECEIVE A FULL REFUND OF

YOUR MEMBERSHIP FEES ONLY IF THIS LOCATION DOES NOT FULLY OPEN FOR BUSINESS BEFORE (insert: the date that is the 361st day after the date the new spa first sells memberships) OR IF THE NEW SPA DOES NOT REMAIN OPEN FOR 30 DAYS."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.306. FINANCE CHARGE NOTICE. A contract that contains a finance charge as defined by the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) or Regulation Z (12 C.F.R. Part 226) must state in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously distinguished from surrounding written material:

"ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.307. CANCELLATION OF CONTRACT FOR FULL REFUND. (a) A member may cancel a contract and receive a full refund of the payments made under the contract by sending, not later than midnight of the third business day after the contract date, written notice of cancellation, accompanied by proof of payment made under the contract, by certified mail to the certificate holder's home office.

(b) A certificate holder who receives notice under Subsection (a) shall refund the payments made under the contract not later than the 30th day after the date notice is received.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.308. CANCELLATION OF CONTRACT FOR PARTIAL REFUND. (a) A member may cancel a contract and receive a refund of unearned payments made under the contract by sending written notice of cancellation, accompanied by proof of payment made under the contract, by certified mail to the certificate holder's home office



if the certificate holder:

(1) closes the health spa and fails to provide alternative facilities not more than 10 miles from the location of the health spa;

(2) relocates the health spa more than 10 miles from its location preceding the relocation; or

(3) fails to provide advertised services.

(b) A member who dies or becomes totally and permanently disabled after the date a contract is entered into, or the member's estate, may cancel the contract and receive a refund of the unearned payments made under the contract by sending written notice of cancellation by certified mail to the certificate holder's home office. The certificate holder may require the member, or the member's estate, to provide reasonable proof of the member's death or disability.

(c) A certificate holder who receives notice under Subsection (a) or (b) shall refund the unearned payments made under the contract to the member, or the member's estate, as appropriate, not later than the 30th day after the date notice is received.

(d) In this section, the unearned payments are computed in the same manner as a member's actual financial loss is computed under Section 702.252, except that the date a contract is canceled is substituted for the date a health spa closes or relocates.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.309. PROOF OF PAYMENT. A receipt given to a purchaser by a health spa when the purchaser makes a payment under a contract constitutes proof of the payment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.310. EFFECT OF CONTRACT ON THIRD-PARTY RIGHTS. A contract may not require the purchaser to execute a note or series of notes if separate negotiation of the notes cuts off as to third parties a right of action or defense that the purchaser may assert against the seller.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.311. VOID CONTRACT. A contract is void if:

- (1) the contract or an assignment of the contract does not comply with this chapter;
- (2) the seller does not hold a certificate of registration issued under this chapter at the time of contract; or
- (3) the purchaser enters into the contract in reliance on false, fraudulent, or misleading information wilfully provided by, or a false, fraudulent, or misleading representation, notice, or advertisement wilfully made by, the seller or the health spa owner or operator.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER H. PREPAYMENTS AND ESCROW**

Sec. 702.351. MEMBERSHIP PREPAYMENT. A certificate holder may offer for sale, or sell, a membership in a health spa before the date the health spa opens.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.352. ESCROW DEPOSIT REQUIRED. (a) A certificate holder or an assignee or agent of a certificate holder who accepts a prepayment for a membership in the certificate holder's health spa shall deposit the prepayment in an escrow account established with a financial institution insured by the Federal Deposit Insurance Corporation.

(b) A person required to make a deposit under Subsection (a) shall:

(1) not later than the 14th day after the date the person first accepts a prepayment:

- (A) deposit the prepayments received; and
- (B) submit to the secretary of state:

(i) a notarized statement that identifies the financial institution and the name in which the escrow account is held; and

(ii) a signed statement on a form approved by the secretary of state that authorizes the secretary to direct inquiries

to the financial institution regarding the escrow account; and

(2) after the first deposit is made under this section, deposit subsequent prepayments not less frequently than biweekly.

(c) A certificate holder shall maintain an escrow account under this section until the 30th day after the date the certificate holder's health spa opens.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.353. EXEMPTION FROM ESCROW REQUIREMENT. (a) A certificate holder is not required to deposit prepayments in an escrow account under Section 702.352 if:

(1) the certificate holder has operated at least one health spa in the state for not less than two years before the date the certificate holder first sells a membership in the health spa that is the subject of the exemption; and

(2) except as provided by Subsection (b):

(A) litigation has not been initiated against the certificate holder by a member of a health spa owned or operated by the certificate holder relating to the closing of the health spa or the failure of the health spa to open; and

(B) a member of a health spa has not filed a complaint with a governmental authority in this state against the certificate holder, or an owner, officer, or director of a health spa owned or operated by the certificate holder, relating to the closing of the health spa or the failure of the health spa to open.

(b) The initiation of litigation or filing of a complaint against a certificate holder, or an owner, officer, or director of a health spa owned or operated by the certificate holder, does not preclude the certificate holder from claiming an exemption under Subsection (a) if the basis of the litigation or complaint is that the certificate holder's health spa closed:

(1) as a result of a natural disaster and the closing did not exceed one month; or

(2) to relocate the health spa to a location not more than 10 miles from its location preceding the relocation and the closing did not exceed one month.

(c) The number of exemptions that a certificate holder may claim under Subsection (a) during a two-year period may not exceed

twice the number of health spas operated by the certificate holder on the first day of that two-year period.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.354. DUTY OF FINANCIAL INSTITUTION. A financial institution in which an escrow account is established under Section 702.352 shall hold each prepayment in the account as escrow agent for the benefit of the member who made the prepayments.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.355. REFUND OF ESCROWED PREPAYMENT. (a) Except as provided by Subsection (b), a member is entitled to receive a full refund of the prepayment made under a contract if the health spa that is the subject of the contract does not open before the 181st day after the date the health spa first sells a membership in the health spa or does not remain open for at least 30 days unless:

(1) an alternative health spa operated by the seller is located not more than 10 miles from the location of the health spa that is the subject of the contract; and

(2) the member is authorized to use the facilities of the alternative health spa.

(b) A member who is authorized to use the facilities of an alternative health spa under Subsection (a) is entitled to receive a full refund of the prepayment made under the contract if the health spa that is the subject of the contract does not open before the 361st day after the date the health spa first sells a membership in the health spa or does not remain open for at least 30 days.

(c) For purposes of this section, the date a health spa opens does not depend on whether the services of the health spa that were advertised before the opening, or promised to be made available, are included in the contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.356. WITHDRAWAL OF ESCROW FUNDS. A certificate holder may withdraw prepayments deposited in an escrow account under Section

702.352 if:

- (1) the health spa for which the prepayments are made remains open for not less than 30 days;
- (2) the certificate holder files with the secretary of state an affidavit certifying that all obligations of the health spa for which a lien may be claimed under Chapter 53, Property Code, have been paid; and
- (3) no person is eligible to claim a lien under Chapter 53, Property Code, during the period the certificate holder or an assignee or agent of the certificate holder accepts prepayments for memberships in the certificate holder's health spa.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER I. PROHIBITED PRACTICES**

Sec. 702.401. **WAIVER PROHIBITED.** A person, including a person who buys a health spa membership from a former member, may not waive a provision of this chapter by contract or other means. A purported waiver of this chapter is void.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.402. **PROHIBITED ACTS.** (a) A seller or certificate holder may not:

- (1) offer a special offer or discount to fewer than all prospective members of the health spa, except that a seller or certificate holder may offer a special group price or discount; or
- (2) make a material misrepresentation to a member, prospective member, or purchaser regarding:
  - (A) the qualifications of the health spa staff;
  - (B) the availability, quality, or extent of the facilities or services of the health spa;
  - (C) the results obtained through exercise, diet, weight control, or physical fitness conditioning programs;
  - (D) membership rights; or
  - (E) the period during which a special offer or discount will be available.

(b) A certificate holder may not:

- (1) fail or refuse to:

- (A) file or amend an application for registration as required by Subchapter C;
- (B) file or post, or maintain, the security required by Subchapter D; or
- (C) deposit prepayments in an escrow account as required by Subchapter H;
- (2) advertise that the certificate holder is bonded by the state; or
- (3) sell a membership plan that is not included in the list required by Section 702.302(a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.403. APPLICATION OF DECEPTIVE TRADE PRACTICES ACT.

(a) A person who violates this chapter commits a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code.

(b) A public or private right or remedy under Chapter 17, Business & Commerce Code, may be used to enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.404. INFORMATION REQUIRED IN ADVERTISEMENT. A health spa operator may not advertise in any print or electronic medium unless the advertisement includes the health spa operator's certificate of registration number or an identification number issued as provided by Section 702.301(b).

Added by Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 7, eff. September 1, 2005.

**SUBCHAPTER J. ADMINISTRATIVE ENFORCEMENT AND DISCIPLINARY ACTIONS**

Sec. 702.451. DISCIPLINARY ACTIONS. (a) After notice and opportunity for hearing, the secretary of state may deny an application for a certificate of registration, or may permanently revoke a health spa operator's certificate of registration, on a finding by the secretary that the applicant or certificate holder:

- (1) provided false information on an application or other

document filed with the secretary;

(2) failed to file or post, or maintain, the security for each health spa location as required by Subchapter D; or

(3) failed to provide the contract disclosure language required by Subchapter G.

(b) The secretary of state may permanently revoke a certificate of registration under Subsection (a) based on the certificate holder's failure to maintain the required security only after a finding by the secretary that, within the 30-day period following the cancellation or lapse of the security, the certificate holder failed to file or post replacement security in the required amount.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. [1231](#)), Sec. 7, eff. September 1, 2011.

Sec. 702.452. NOTICE REQUIREMENT BEFORE HEALTH SPA CLOSING.

(a) At least 30 days before the date a health spa is scheduled to close or relocate, the certificate holder shall contemporaneously:

(1) post, inside and outside each entrance to the health spa, a notice stating:

(A) the date the health spa is scheduled to close or relocate;

(B) that a member of the health spa may, not later than the 90th day after the date notice of the closure or relocation is first posted on the secretary of state's Internet website, file with the secretary of state a claim to recover actual financial loss suffered by the member as a result of the health spa closing; and

(C) the procedures for perfecting a security claim; and

(2) notify the secretary of state in writing of the health spa closing or relocation and the date that the notice was first posted.

(b) The notice posted under Subsection (a)(1) must be:

(1) at least 8-1/2 by 11 inches in size; and

(2) posted continuously for at least 30 days.

(c) After receiving a notice under Subsection (a)(2) or otherwise discovering that a health spa is closed, the secretary of state shall post on the secretary of state's Internet website a

notice containing the information specified in Subsection (a)(1). The notice must be posted continuously for at least 30 days.

(d) The secretary of state shall, not later than the 10th day after the date the secretary receives notice or otherwise discovers that a health spa is closed, notify the appropriate surety company or obligor of the administrative proceedings pending under Subsection (a)(1).

(e) The notice required under Subsection (a) is not required in the case of a fire, flood, or act of God that is not within the reasonable control of a health spa.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 756, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 9, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. 1231), Sec. 7, eff. September 1, 2011.

#### **SUBCHAPTER K. CIVIL REMEDY**

Sec. 702.501. FILING OF SUIT; VENUE. (a) A member may file suit against a seller if:

- (1) the seller violates this chapter; and
- (2) the seller's violation causes injury to the member.

(b) Venue for a suit filed under Subsection (a) is in a court located in:

- (1) Travis County; or
- (2) the county in which:
  - (A) the seller resides;
  - (B) the seller's principal place of business is

located;

- (C) the seller is doing business;
- (D) the member resides; or
- (E) the transaction that is the subject of the suit

occurred.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.502. STATUTE OF LIMITATIONS. A member must file a



suit under Section 702.501 not later than the later of:

(1) the first anniversary of the date the attorney general or district or county attorney concludes a suit filed under Section 702.552; or

(2) the second anniversary of the date the seller's violation of this chapter is discovered.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.503. RECOVERY. In a suit filed under Section 702.501, a court may award:

(1) actual damages;

(2) equitable relief;

(3) punitive damages; or

(4) reasonable attorney's fees and court costs to the prevailing party.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.504. TEMPORARY CLOSING. For purposes of this subchapter, the closing of a health spa is not a violation of this chapter if the closing does not exceed one month and:

(1) is a result of a natural disaster; or

(2) is to relocate the health spa not more than 10 miles from its location preceding the relocation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER L. ENFORCEMENT AND PENALTIES**

Sec. 702.551. INVESTIGATIVE AND ENFORCEMENT AUTHORITY. (a) The attorney general or a district or county attorney may:

(1) investigate an alleged violation of this chapter; and

(2) enforce any penalty or remedy authorized by this chapter.

(b) The attorney general, a district or county attorney, or the secretary of state may recover reasonable expenses, including court costs, attorney's fees, investigative costs, witness fees, and deposition expenses, incurred in obtaining an injunction or

recovering a civil penalty under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.552. SUIT FOR ENFORCEMENT. (a) The attorney general or a district or county attorney may file suit against a person who violates, or threatens to violate, this chapter to:

(1) obtain an injunction to enjoin the person from violating this chapter; or

(2) recover a civil penalty under Section 702.553.

(b) Venue for a suit filed under this section is in a district court located in:

(1) Travis County; or

(2) the county in which the defendant resides.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.553. AMOUNT OF CIVIL PENALTY. (a) Except as provided by Subsection (b) and Section 702.554, a person who violates this chapter is subject to a civil penalty in an amount not to exceed \$1,000 for a single violation.

(b) If more than one civil penalty is assessed against the same person, the total amount of civil penalties assessed may not exceed \$25,000.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.554. VIOLATION OF INJUNCTION. (a) The attorney general or a district or county attorney may file suit to recover a civil penalty against a person who violates an injunction issued under this subchapter in an amount not to exceed \$25,000 for a single violation. If more than one civil penalty is assessed against the same person, the total amount of civil penalties assessed under this section may not exceed \$50,000.

(b) Venue for a suit filed under this section is in the district court that issued the injunction that is the subject of the civil penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.555. DEPOSIT IN COUNTY FUND. A civil penalty collected under this subchapter by a district or county attorney shall be deposited to the credit of the general fund of the county.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.556. CRIMINAL OFFENSE: VIOLATION OF CHAPTER. (a) A person commits an offense if the person knowingly operates, or attempts to operate, a health spa in violation of Subchapter C, D, or H.

(b) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.557. CRIMINAL OFFENSE: INTERFERENCE WITH INVESTIGATION. (a) A person commits an offense if with actual notice that the attorney general, or a district or county attorney, has initiated, or plans to initiate, an investigation under this chapter the person intentionally conceals, alters, destroys, or falsifies a document or record that is relevant or material to the investigation.

(b) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.558. CRIMINAL OFFENSE: NONCOMPLIANCE WITH SUBPOENA OR INVESTIGATIVE DEMAND. (a) A person commits an offense if, after receiving a subpoena or civil investigative demand issued under Section 17.61, Business & Commerce Code, the person intentionally falsifies or withholds relevant material, including a document or record, that is not privileged.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed \$2,000.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**TITLE 4. PROFESSIONS RELATED TO ANIMALS****CHAPTER 801. VETERINARIANS****SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 801.001. SHORT TITLE. This chapter may be cited as the Veterinary Licensing Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.002. DEFINITIONS. In this chapter:

(1) "Board" means the State Board of Veterinary Medical Examiners.

(1-a) "Certified veterinary assistant" means a person who has been certified as a certified veterinary assistant by the Texas Veterinary Medical Association and is employed by a licensed veterinarian.

(2) "Compensation" includes a fee, monetary reward, discount, or emolument, whether received directly or indirectly.

(3) "Direct supervision" means supervision of a person by a responsible veterinarian who is physically present on the premises.

(3-a) "Equine dentistry" means any diagnosis, treatment, or surgical procedure performed on the head or oral cavity of an equine animal. The term includes:

(A) any procedure that invades the tissues of the oral cavity, including a procedure to:

- (i) remove sharp enamel projections;
- (ii) treat malocclusions of the teeth;
- (iii) reshape teeth; and
- (iv) extract one or more teeth;

(B) the treatment or extraction of damaged or diseased teeth;

(C) the treatment of diseased teeth through restoration and endodontic procedures;

(D) periodontal treatments, including:

- (i) the removal of calculus, soft deposits, plaque, and stains above the gum line; and
- (ii) the smoothing, filing, and polishing of tooth surfaces; and

(E) dental radiography.

(4) "General supervision" means supervision of a person by a responsible veterinarian who is readily available to communicate with the person.

(4-a) "Immediate supervision" means supervision by a person who is within audible and visual range of both the animal patient and the person under supervision.

(4-b) "Licensed equine dental provider" means a person who holds a license to practice equine dentistry issued under this chapter.

(4-c) "Licensed veterinary technician" means a person licensed as a veterinary technician by the board.

(5) "Practice of veterinary medicine" means:

(A) the diagnosis, treatment, correction, change, manipulation, relief, or prevention of animal disease, deformity, defect, injury, or other physical condition, including the prescription or administration of a drug, biologic, anesthetic, apparatus, or other therapeutic or diagnostic substance or technique;

(B) the representation of an ability and willingness to perform an act listed in Paragraph (A);

(C) the use of a title, a word, or letters to induce the belief that a person is legally authorized and qualified to perform an act listed in Paragraph (A); or

(D) the receipt of compensation for performing an act listed in Paragraph (A).

(6) "Veterinarian" means a person licensed by the board under this chapter to practice veterinary medicine.

(6-a) "Veterinary assistant" means a person who:

(A) is employed by a licensed veterinarian;

(B) performs tasks related to animal care; and

(C) is not a certified veterinary assistant or a licensed veterinary technician.

(7) "Veterinary medicine" includes veterinary surgery, reproduction and obstetrics, dentistry, ophthalmology, dermatology, cardiology, and any other discipline or specialty of veterinary medicine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 1, eff.

September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 1, eff. September 1, 2013.

Sec. 801.003. APPLICATION OF SUNSET ACT. The State Board of Veterinary Medical Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 1, eff. September 1, 2005.

Sec. 801.004. APPLICATION OF CHAPTER. This chapter does not apply to:

(1) the treatment or care of an animal in any manner by the owner of the animal, an employee of the owner, or a designated caretaker of the animal, unless the ownership, employment, or designation is established with the intent to violate this chapter;

(2) a person who performs an act prescribed by the board as an accepted livestock management practice, including:

(A) castrating a male animal raised for human consumption;

(B) docking or earmarking an animal raised for human consumption;

(C) dehorning cattle;

(D) aiding in the nonsurgical birth process of a large animal, as defined by board rule;

(E) treating an animal for disease prevention with a nonprescription medicine or vaccine;

(F) branding or identifying an animal in any manner;

(G) artificially inseminating an animal, including training, inseminating, and compensating for services related to artificial insemination; and

(H) shoeing a horse;

(3) the performance of a cosmetic or production technique

to reduce injury in poultry intended for human consumption;

(4) the performance of a duty by a veterinarian's employee if:

(A) the duty involves food production animals;

(B) the duty does not involve diagnosis, prescription, or surgery;

(C) the employee is under the direction and general supervision of the veterinarian; and

(D) the veterinarian is responsible for the employee's performance;

(5) the performance of an act by a person who is a full-time student of an accredited college of veterinary medicine if the act is performed under the direct supervision of a veterinarian;

(6) an animal shelter employee who performs euthanasia in the course and scope of the person's employment if the person has successfully completed training in accordance with Chapter 829, Health and Safety Code;

(7) a person who is engaged in a recognized state-federal cooperative disease eradication or control program or an external parasite control program while the person is performing official duties required by the program;

(8) a person who, without expectation of compensation, provides emergency care in an emergency or disaster; or

(9) a consultation given to a veterinarian in this state by a person who:

(A) resides in another state; and

(B) is lawfully qualified to practice veterinary medicine under the laws of that state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 411 (S.B. 811), Sec. 1, eff. September 1, 2011.

#### **SUBCHAPTER B. STATE BOARD OF VETERINARY MEDICAL EXAMINERS**

Sec. 801.051. BOARD; MEMBERSHIP. (a) The State Board of Veterinary Medical Examiners consists of nine members appointed by

the governor with the advice and consent of the senate as follows:

- (1) six veterinarian members; and
- (2) three members who represent the public.

(b) The board may include not more than one veterinarian member who is a faculty member of a college of veterinary medicine.

(c) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.052. MEMBERSHIP ELIGIBILITY. (a) A person is eligible for appointment as a veterinarian member of the board if the person:

- (1) has resided and practiced veterinary medicine in this state for the six years preceding the date of appointment;
- (2) is of good repute; and
- (3) is not the holder of a special license issued under Section 801.256.

(b) A person is not eligible for appointment as a public member of the board if the person:

- (1) is licensed by an occupational regulatory agency in the field of health care;
  - (2) is employed by or participates in the management of a business entity or other organization that:
    - (A) provides health care services;
    - (B) sells, manufactures, or distributes health care supplies or equipment; or
    - (C) is regulated by or receives funds from the board;
  - (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that:
    - (A) provides health care services;
    - (B) sells, manufactures, or distributes health care supplies or equipment; or
    - (C) is regulated by or receives funds from the board;
- or

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



expenses.

(c) A person is not eligible for appointment as a public member of the board if the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of veterinary medicine;

(2) is employed by or participates in the management of a business entity or other organization that:

(A) provides veterinary health care services;

(B) sells, manufactures, or distributes veterinary health care supplies or equipment; or

(C) is regulated by or receives funds from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that:

(A) provides veterinary health care services;

(B) sells, manufactures, or distributes veterinary health care supplies or equipment; or

(C) is regulated by or receives funds from the board;

or

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 2, eff. September 1, 2005.

Sec. 801.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be an employee of the board employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201

et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of veterinary medicine.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 3, eff. September 1, 2005.

Sec. 801.054. TERMS; VACANCY. (a) Members of the board are appointed for staggered six-year terms.

(b) If a vacancy occurs because of the death or resignation of a board member, the governor shall appoint a replacement to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.055. OFFICERS. (a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(b) At the first meeting of the board each year, the board shall elect from its members any other officer the board considers necessary or convenient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 4, eff. September 1, 2005.

Sec. 801.056. GROUNDS FOR REMOVAL. (a) It is a ground for

removal from the board that a member:

- (1) does not have at the time of taking office the qualifications required by Section 801.052;
- (2) does not maintain during service on the board the qualifications required by Section 801.052;
- (3) is ineligible for membership under Section 801.052 or 801.053;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 5, eff. September 1, 2005.

Sec. 801.057. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

- (1) the legislation that created the board and the board's

programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 6, eff. September 1, 2005.

Sec. 801.058. PER DIEM; REIMBURSEMENT. A board member is entitled to receive:

(1) a per diem, as set by legislative appropriation, for each day that the member engages in board business; and

(2) reimbursement for travel expenses, as prescribed by the General Appropriations Act, including expenses for meals and lodging.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.059. OATH OF OFFICE. Before assuming the duties of office, each board member shall file with the secretary of state a signed copy of the constitutional oath of office taken by the member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL**

Sec. 801.101. EXECUTIVE DIRECTOR. The board may employ an executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.102. CERTAIN DUTIES OF EXECUTIVE DIRECTOR. (a) The executive director is responsible for:

- (1) safekeeping the money collected under this chapter; and
- (2) properly disbursing the veterinary fund account established by this chapter.

(b) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(39).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 285, Sec. 25, 31(39), eff. Sept. 1, 2003.

Sec. 801.103. PERSONNEL. The board may employ personnel to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.104. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.  
Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 7, eff. September 1, 2005.

Sec. 801.105. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide as often as necessary to its members and employees information regarding their:

- (1) qualifications for office or employment under this chapter; and
- (2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.106. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.107. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

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

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel, that are in compliance with Chapter 21, Labor Code;

(2) a comprehensive analysis of the board workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of the significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must be:

(1) prepared to cover an annual period;

(2) updated annually;

(3) reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) filed with the governor.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. BOARD POWERS AND DUTIES**

Sec. 801.151. RULES. (a) The board may adopt rules as necessary to administer this chapter.

(b) The board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

(c) The board shall adopt rules to:

(1) protect the public;

(2) ensure that alternate therapies, including ultrasound diagnosis and therapy, magnetic field therapy, holistic medicine, homeopathy, chiropractic treatment, acupuncture, and laser therapy, are performed only by a veterinarian or under the supervision of a veterinarian;

(3) ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian who is active and in good standing and who has established a veterinarian-client-patient relationship with the owner or other caretaker of an animal in accordance with Section 801.351; and

(4) provide for the licensing and regulation of licensed veterinary technicians.

(d) The board may adopt rules regarding the work of a person who works under the supervision of a veterinarian.

(e) The board shall adopt rules to implement a jurisprudence examination for licensed equine dental providers and licensed veterinary technicians, including rules relating to the development and administration of the examination, examination fees, guidelines for reexamination, examination grading, and provision of notice of examination results.

(f) The board may not adopt rules that unreasonably restrict

the selection by the owner or other caretaker of an animal of a licensed equine dental provider who is in good standing to provide equine dental services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 2, eff. September 1, 2013.

Sec. 801.152. EXCEPTIONS TO RULE. (a) The board may consider an exception to a rule adopted by the board on the request of a person subject to board regulation.

(b) After notice and hearing, the board may approve an exception to a board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt a rule restricting advertising or competitive bidding by a person regulated by the board except to prohibit a false, misleading, or deceptive practice by that person.

(b) In its rules to prohibit a false, misleading, or deceptive practice, the board may not include a rule that:

- (1) restricts the person's use of any advertising medium;
- (2) restricts the person's personal appearance or the use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.154. FEES. (a) The board by rule shall set fees in amounts that are reasonable and necessary so that the fees, in the aggregate, cover the costs of administering this chapter. The board



may not set a fee that existed on September 1, 1993, in an amount that is less than the fee on that date.

(b) The veterinarian license renewal fee set by the board under this chapter is the amount set by the board under Subsection (a) and an additional fee of \$200.

(c) Of each additional fee collected under Subsection (b), \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

(d) The additional fee under Subsection (b) does not apply to a veterinarian who is:

(1) exempt from paying the renewal fee under Section 801.304; or

(2) placed on inactive status as provided by Section 801.306.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 3, eff. September 1, 2011.

Sec. 801.155. PAYMENT OF ADMINISTRATIVE COSTS. Costs incurred by the board in administering this chapter, including the compensation and expenses of board members and employees, may be paid only from fees collected under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.156. REGISTRY. (a) The board shall maintain a record of each license holder's:

- (1) name;
- (2) residence address; and
- (3) business address.

(b) A license holder shall notify the board of a change of business address or employer not later than the 60th day after the date the change takes effect.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 4, eff.

September 1, 2011.

Sec. 801.157. PEER ASSISTANCE PROGRAM. (a) The board shall establish or approve a peer assistance program for veterinarians. The peer assistance program must comply with Chapter 467, Health and Safety Code.

(b) The board may order a veterinarian who is subject to disciplinary action under this chapter based on a finding that the veterinarian is impaired by chemical dependency or mental illness to submit to care, counseling, or treatment through the peer assistance program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 411 (S.B. 811), Sec. 2, eff. September 1, 2011.

Sec. 801.158. SUBPOENA. (a) The board may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production for inspection or copying of books, accounts, records, papers, correspondence, documents, and other evidence relevant to an investigation of an alleged violation of this chapter.

(b) The board, acting through the attorney general, may bring an action to enforce a subpoena issued under Subsection (a) against a person, including a corporation, organization, business trust, estate, trust, partnership, association, or other legal entity, who fails to comply with the subpoena.

(c) Venue for an action brought under Subsection (b) is in a district court in:

(1) Travis County; or

(2) any county in which the board may hold a hearing.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.421(a), eff. Sept. 1,

2001.

Sec. 801.159. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

(1) adopt a form to standardize information relating to complaints filed with the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.160. ANNUAL REPORT. (a) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year.

(b) The report must be in the form and reported in the time provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.161. USE OF TECHNOLOGY. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 8, eff. September 1, 2005.

Sec. 801.162. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION PROCEDURES. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 8, eff. September 1, 2005.

Sec. 801.163. ADVISORY COMMITTEES. (a) The board may appoint advisory committees to perform advisory functions as assigned by the board.

(b) An advisory committee shall provide independent expertise on board functions and policies, but may not be involved in setting board policy.

(c) The board shall adopt rules regarding the purpose, structure, and use of an advisory committee, including rules on:

(1) the purpose, role, responsibility, and goal of an advisory committee;

(2) the size and quorum requirements for an advisory committee;

(3) the composition and representation of an advisory committee;

(4) the qualifications of advisory committee members, including any experience requirements or requirements that members represent specific geographic regions of the state;

(5) the appointment procedures for an advisory committee;

(6) the terms of service for advisory committee members;

(7) the training requirements for advisory committee

members, if necessary;

(8) the method the board will use to receive public input on issues addressed by an advisory committee; and

(9) the development of board policies and procedures to ensure that an advisory committee meets the requirements for open meetings under Chapter 551, Government Code, including notice requirements.

(d) To the extent of any conflict with Chapter 2110, Government Code, this section and board rules adopted under this section control.

Added by Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 3, eff. September 1, 2013.

#### **SUBCHAPTER E. PUBLIC ACCESS AND INFORMATION; COMPLAINT PROCEDURES**

Sec. 801.201. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.202. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.203. COMPLAINTS. (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law for presenting a complaint about a license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 5, eff. September 1, 2011.

Sec. 801.204. RECORDS OF COMPLAINTS. (a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The board shall make information available describing its procedures for complaint investigation and resolution.

(c) The board shall periodically notify the complaint parties of the status of the complaint until final disposition.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 9, eff. September 1, 2005.

Sec. 801.205. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. The board shall adopt rules relating to the investigation of complaints filed with the board. The rules must:

- (1) distinguish between categories of complaints;
- (2) ensure that complaints are not dismissed without appropriate consideration;
- (3) require that the board be advised of a complaint that is dismissed and that a written explanation be given to the person who filed the complaint explaining the action taken on the dismissed complaint;
- (4) ensure that the person who filed the complaint has the opportunity to explain the allegations made in the complaint; and
- (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the

procedures for the board to obtain the services of a private investigator.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.2051. PRIORITY OF COMPLAINTS. The board shall prioritize complaints to resolve the more serious complaints first.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 10, eff. September 1, 2005.

Sec. 801.2055. COMPLAINTS REQUIRING MEDICAL EXPERTISE. (a) A complaint that requires medical expertise to review must be reviewed by two or more veterinarian board members. The board members shall determine whether to dismiss the complaint or refer it to an informal proceeding under Section 801.408.

(b) If the veterinarian members do not agree to dismiss or refer the complaint to an informal proceeding, the complaint is referred to an informal proceeding under Section 801.408.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 10, eff. September 1, 2005.

Sec. 801.2056. COMPLAINTS NOT REQUIRING MEDICAL EXPERTISE. (a) The board may delegate to a committee of board staff the authority to dismiss or enter into an agreed settlement of a complaint that does not require medical expertise. The disposition determined by the committee must be approved by the board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceedings under Section 801.408 if:

(1) the committee determines that the complaint should not be dismissed or settled;

(2) the committee is unable to reach an agreed settlement;  
or

(3) the license holder who is the subject of the complaint requests that the complaint be referred for informal proceedings.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 10, eff.

September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 6, eff. September 1, 2011.

Sec. 801.206. DISPOSITION OF COMPLAINT. (a) The board shall:

(1) dispose of each complaint in a timely manner; and

(2) establish a schedule for conducting each phase of the complaint process that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(b) Each party to the complaint shall be notified of the projected time requirements for the complaint. Each party shall be notified of a change in the schedule not later than the seventh day after the date the change is made.

(c) The executive director shall notify the board of a complaint that is not resolved within the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.207. PUBLIC RECORD; EXCEPTION. (a) Except as provided by Subsection (b), a board record is a public record and is available for public inspection during normal business hours.

(b) An investigation record of the board, including a record relating to a complaint that is found to be groundless, is confidential.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. LICENSE REQUIREMENTS**

Sec. 801.251. LICENSE REQUIRED FOR PRACTICE OF VETERINARY MEDICINE. Except as provided by Section 801.004, a person may not practice, or offer or attempt to practice, veterinary medicine unless the person holds a license to practice veterinary medicine issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 7, eff. September 1, 2011.

Sec. 801.252. ELIGIBILITY REQUIREMENTS FOR LICENSE TO PRACTICE VETERINARY MEDICINE. The board shall issue a license to practice veterinary medicine to a person who is qualified to be licensed to practice veterinary medicine under this chapter. A person is qualified to be licensed to practice veterinary medicine if:

- (1) the person has attained the age of majority;
- (2) the person is a graduate of a board-approved school or college of veterinary medicine;
- (3) the person successfully completes the licensing examination for veterinarians conducted by the board; and
- (4) the board does not refuse to issue a license to the person under Section 801.401.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 7, eff. September 1, 2011.

Sec. 801.253. LICENSING EXAMINATIONS FOR VETERINARIANS.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 411 (S.B. 811), Sec. 3

(a) The board shall conduct licensing examinations at least twice each year as provided by board rule. The examination shall be conducted at a time and place the board determines is convenient for applicants.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 9

(a) The board shall conduct licensing examinations for veterinarians as provided by board rule. The board shall conduct the examination at a time and place the board determines is convenient for applicants.

(b) The board shall provide notice of a licensing examination by publication in a newspaper or periodical.

(c) The board shall examine each qualified applicant who attends the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 411 (S.B. 811), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 8, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 9, eff. September 1, 2011.

Sec. 801.254. CONTENT AND CONDUCT OF EXAMINATION. (a) The board shall conduct, or may contract with a board-approved entity to conduct, the licensing examination on subjects relating to veterinary medicine, including anatomy, pathology, chemistry, obstetrics, public health, veterinary practice, veterinary jurisprudence, physiology and bacteriology, and other subjects regularly taught in reputable schools of veterinary medicine. In this chapter, a reference to an examination conducted by the board includes an examination conducted by a board-approved entity as permitted by this subsection.

(b) The board may conduct a licensing examination in writing, by a practical demonstration of the applicant's skill, or by a combination of those methods. The board shall arrange for the written portion of the examination, if any, to be validated by an independent testing professional.

(c) To pass the licensing examination, an applicant must demonstrate the standard of proficiency the board determines is essential for a qualified veterinarian.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 11, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 411 (S.B. 811), Sec. 4, eff. September 1, 2011.

Sec. 801.255. EXAMINATION RESULTS. (a) The board shall notify each examinee of the results of the examination not later than the

30th day after the date the licensing examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify the examinee of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of the examination results graded or reviewed by a national testing service will be delayed longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.2555. EXAMINATION FEE REFUND. (a) The board shall refund the examination fee paid by an applicant who:

(1) provides advance notice of the applicant's inability to take the examination; or

(2) is unable to take the examination because of an emergency.

(b) The board shall adopt rules that establish the required notification period and the emergency situations that warrant a refund.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 12, eff. September 1, 2005.

Sec. 801.256. SPECIAL LICENSE TO PRACTICE VETERINARY MEDICINE.

(a) The board may issue a special license to practice veterinary medicine to an applicant who is:

(1) a member of the faculty or staff of a board-approved veterinary program at an institution of higher education;

(2) a veterinarian employee of the Texas Animal Health Commission;

(3) a veterinarian employee of the Texas Veterinary Medical Diagnostic Laboratory; or

(4) a person licensed to practice veterinary medicine in another jurisdiction, if the board determines that the person's

specialty practice is unrepresented or underrepresented in this state.

(b) An applicant is eligible for a special license if:

(1) the applicant:

(A) is at least 21 years of age and a graduate of a board-approved veterinary medicine program at an institution of higher education; or

(B) provides to the board a written affirmation by a person described under Subsection (f) that the applicant meets a critical need for staffing at the person's institution and is certified by a nationally recognized veterinary speciality board or is eligible for that certification; and

(2) the applicant passes the jurisprudence section of the licensing examination.

(c) The board shall adopt rules relating to the issuance of a special license.

(d) A special license is valid only for the performance of duties within the scope of the special license holder's employment or practice.

(e) The board may suspend or revoke a special license if:

(1) the special license holder's employment is terminated; or

(2) the special license holder practices outside of the scope of the license.

(f) The following people may provide a statement under Subsection (b)(1)(B):

(1) the dean of a board-approved veterinary medicine program at an institution of higher education in this state;

(2) the executive director of the Texas Animal Health Commission; or

(3) the executive director of the Texas Veterinary Medical Diagnostic Laboratory.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1114, Sec. 1, eff. June 15, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 11, eff. September 1, 2011.

Sec. 801.257. PROVISIONAL LICENSE TO PRACTICE VETERINARY MEDICINE. (a) The board may grant a provisional license to practice veterinary medicine to an applicant who presents proof that the applicant:

(1) is licensed in good standing as a veterinarian in another state that:

(A) has licensing requirements substantially equivalent to the requirements of this chapter; and

(B) maintains professional standards the board considers equivalent to the professional standards of this chapter; and

(2) has passed a national or other examination recognized by the board relating to veterinary medicine.

(b) Repealed by Acts 2005, 79th Leg., Ch. 27, Sec. 27(1), eff. September 1, 2005.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this chapter to a provisional license holder if:

(1) the provisional license holder passes the licensing examination under Section 801.253;

(2) the board verifies that the provisional license holder has the academic and experience requirements to qualify for a license; and

(3) the provisional license holder satisfies any other license requirement under this chapter.

(d) The board shall complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 13, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 27(1), eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 12, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 13, eff. September 1, 2011.

Sec. 801.258. TEMPORARY LICENSE TO PRACTICE VETERINARY MEDICINE. The board by rule may provide for the issuance of a temporary license to practice veterinary medicine to an applicant who:

(1) is licensed in good standing as a veterinarian in another state or foreign country;

(2) meets the eligibility requirements under Sections 801.252(1) and (2); and

(3) is not subject to denial of a license or to disciplinary action for a ground listed in Section 801.402.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 411 (S.B. 811), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 14, eff. September 1, 2011.

Sec. 801.259. LICENSED EQUINE DENTAL PROVIDER DESIGNATIONS.

(a) A person may not represent to the public that the person is authorized to perform equine dentistry or use the titles "dentist," "certified equine dental provider," "equine dental provider," "CEDP," or "EDP" unless specifically authorized by Subsection (b).

(b) Only a licensed equine dental provider who is certified in accordance with Section 801.261(a)(3) may use the title "certified equine dental provider" or the designation "CEDP." Only a licensed equine dental provider who is licensed before September 1, 2013, and who is not certified in accordance with Section 801.261(a)(3) may use the title "equine dental provider" or the designation "EDP."

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 15, eff. September 1, 2011.

Sec. 801.260. LICENSE REQUIRED FOR EQUINE DENTISTRY. A person may not perform equine dentistry or offer or attempt to act as an

equine dental provider unless the person is:

- (1) a veterinarian who is active and in good standing; or
- (2) a licensed equine dental provider who is active and in good standing performing under the supervision of a veterinarian who is active and in good standing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 15, eff. September 1, 2011.

Sec. 801.261. LICENSED EQUINE DENTAL PROVIDER: APPLICATION, QUALIFICATIONS, AND ISSUANCE. (a) The board shall issue an equine dental provider license to a person who is qualified under this section. A person is qualified to be licensed as an equine dental provider if the person:

- (1) passes a jurisprudence examination conducted by the board in accordance with Section 801.264;
  - (2) is not disqualified under this chapter or board rule;
- and
- (3) is certified by the International Association of Equine Dentistry or another board-approved certification entity or organization.

(b) An applicant for an equine dental provider license must submit to the board:

- (1) an application on the form prescribed by the board;
- (2) information to enable the board to conduct a criminal background check as required by the board; and
- (3) any other information required by the board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 15, eff. September 1, 2011.

Sec. 801.262. SCOPE OF PRACTICE OF LICENSED EQUINE DENTAL PROVIDER. (a) A licensed equine dental provider may not perform equine dentistry unless the provider is active and in good standing and performs equine dentistry under the general supervision of a veterinarian who is active and in good standing.

(b) A licensed equine dental provider may perform only the following equine dental procedures:

- (1) removing sharp enamel points;

- (2) removing small dental overgrowths;
- (3) rostral profiling of the first cheek teeth;
- (4) reducing incisors;
- (5) extracting loose, deciduous teeth;
- (6) removing supragingival calculus;
- (7) extracting loose, mobile, or diseased teeth or dental fragments with minimal periodontal attachments by hand and without the use of an elevator; and
- (8) removing erupted, non-displaced wolf teeth.

(c) Subsection (b) may not be construed to prohibit an employee of a veterinarian who is not a licensed equine dental provider from performing the equine dental procedures described in Subsection (b) if the employee is under the direct supervision of a veterinarian.

(d) A copy of the dental chart of an equine animal is to be left with the person who authorizes an equine dental procedure and is to be made available to the supervising veterinarian upon request.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 15, eff. September 1, 2011.

Sec. 801.263. LICENSED EQUINE DENTAL PROVIDER RESPONSIBILITY. A licensed equine dental provider shall be held to the same standard of care as a veterinarian when the provider performs the equine dental procedures described in Section 801.262(b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 15, eff. September 1, 2011.

Sec. 801.264. JURISPRUDENCE EXAMINATION. (a) The board shall develop and administer a jurisprudence examination for licensed equine dental providers to determine an applicant's knowledge of this chapter, board rules, and any other applicable laws of this state affecting the applicant's practice.

(b) The board shall develop and administer a jurisprudence examination for licensed veterinary technicians to determine an applicant's knowledge of this chapter, board rules, and any other applicable laws of this state affecting the applicant's employment as a licensed veterinary technician.



Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 15, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 4, eff. September 1, 2013.

Sec. 801.265. LICENSED VETERINARY TECHNICIAN: APPLICATION, QUALIFICATIONS, AND ISSUANCE. (a) The board shall issue a veterinary technician license to a person who is qualified under this section. A person is qualified to be licensed as a licensed veterinary technician if the person:

- (1) passes a jurisprudence examination conducted by the board in accordance with Section 801.264;
- (2) is at least 18 years old;
- (3) has graduated from a program accredited by the American Veterinary Medical Association;
- (4) has passed the Veterinary Technician National Examination; and
- (5) is not disqualified under this chapter or board rule.

(b) An applicant for a veterinary technician license must submit to the board:

- (1) an application on the form prescribed by the board;
- (2) information to enable the board to conduct a criminal background check if required by the board; and
- (3) any other information required by the board.

Added by Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 5, eff. September 1, 2013.

Sec. 801.266. LICENSED VETERINARY TECHNICIAN LICENSE REQUIRED; DISPLAY OF LICENSE. (a) A person may not use the title "Licensed Veterinary Technician" or "LVT" or advertise or offer services in a manner to lead other people to believe that the person is licensed as a licensed veterinary technician unless the person holds a license under Section 801.265.

(b) If employed by a veterinary hospital, a licensed veterinary technician shall display at that facility the person's license issued by the board or a legible photocopy of the license.

Added by Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 5, eff. September 1, 2013.

#### **SUBCHAPTER G. LICENSE EXPIRATION AND RENEWAL**

Sec. 801.301. ANNUAL RENEWAL REQUIRED. (a) The board shall provide for the annual renewal of a license.

(b) The board by rule may adopt a system under which licenses expire on various dates during the year.

(c) For a year in which the license expiration date is changed, license fees payable on March 1 shall be prorated on a monthly basis so that each license holder pays only that portion of the fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.302. NOTICE OF LICENSE EXPIRATION. Not later than the 30th day before the expiration date of a person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address according to the board's records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.303. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to the sum of 1-1/2 times the renewal fee set by the board under Section 801.154(a) and the additional fee required by Section 801.154(b), if applicable.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the

board a renewal fee that is equal to the sum of two times the renewal fee set by the board under Section 801.154(a) and the additional fee required by Section 801.154(b), if applicable.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 14, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 16, eff. September 1, 2011.

Sec. 801.304. FEE EXEMPTION. A veterinarian is exempt from the fee requirements imposed under Section 801.303 if the veterinarian:

- (1) is on active duty with the Armed Forces of the United States and does not engage in private or civilian practice; or
- (2) is permanently and totally retired.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 17, eff. September 1, 2011.

Sec. 801.305. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) A person who was licensed to practice veterinary medicine in this state, moved to another state, and is currently licensed in good standing and has been in practice in the other state for the two years preceding the date of application may obtain a new license to practice veterinary medicine without reexamination.

(b) The person must pay to the board a fee that is equal to the amount of the renewal fee set by the board under Section 801.154(a) and the additional fee required by Section 801.154(b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 15, eff. September

1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 18, eff. September 1, 2011.

Sec. 801.306. INACTIVE STATUS. The board by rule may provide for the placement of a license holder on inactive status. The rules adopted under this section must include a limit on the time a license holder may remain on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 19, eff. September 1, 2011.

Sec. 801.307. CONTINUING EDUCATION. (a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license to practice veterinary medicine or work as a licensed veterinary technician. The board shall require six hours of continuing education annually to renew an equine dental provider license.

(b) The board may:

(1) establish general categories of continuing education that meet the needs of license holders; and

(2) require a license holder to successfully complete continuing education courses.

(c) The board may require a license holder who does not complete the required number of hours of continuing education in a year to make up the missed hours in later years. Hours required to be made up in a later year are in addition to the hours normally required to be completed in that year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 16, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 20, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 6, eff. September 1, 2013.

Sec. 801.308. CONTINUING EDUCATION AUDITS. (a) The board shall monitor compliance with continuing education requirements by conducting random audits of license holders seeking renewal. The board staff may conduct an audit at any time. The board may perform additional compliance monitoring by other means.

(b) A license holder who is audited shall provide proof of course completion to the board, including certificates of completion.

(c) A list of completed continuing education courses from the license holder on one presigned form does not establish compliance.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 17, eff. September 1, 2005.

#### **SUBCHAPTER H. PRACTICE BY VETERINARIAN**

Sec. 801.351. EXISTENCE OF VETERINARIAN-CLIENT-PATIENT RELATIONSHIP. (a) A person may not practice veterinary medicine unless a veterinarian-client-patient relationship exists. A veterinarian-client-patient relationship exists if the veterinarian:

(1) assumes responsibility for medical judgments regarding the health of an animal and a client, who is the owner or other caretaker of the animal, agrees to follow the veterinarian's instructions;

(2) possesses sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the animal's medical condition; and

(3) is readily available to provide, or has provided, follow-up medical care in the event of an adverse reaction to, or a failure of, the regimen of therapy provided by the veterinarian.

(b) A veterinarian possesses sufficient knowledge of the animal for purposes of Subsection (a)(2) if the veterinarian has recently seen, or is personally acquainted with, the keeping and care of the animal by:

(1) examining the animal; or

(2) making medically appropriate and timely visits to the premises on which the animal is kept.

(c) A veterinarian-client-patient relationship may not be established solely by telephone or electronic means.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 971 (H.B. 1767), Sec. 1, eff. September 1, 2005.

Sec. 801.352. PROHIBITION AGAINST INTERFERENCE OR INTERVENTION.

(a) The professional services of a veterinarian may not be controlled or exploited by a person who:

- (1) is not a veterinarian; and
- (2) intervenes between the veterinarian and the

veterinarian's client.

(b) A veterinarian may not:

(1) allow a person who does not hold a license to practice veterinary medicine issued under this chapter to interfere with or intervene in the veterinarian's practice of veterinary medicine; or

(2) submit to interference or intervention by a person who does not hold a license to practice veterinary medicine issued under this chapter.

(c) A veterinarian shall avoid a relationship that may result in interference with or intervention in the veterinarian's practice of veterinary medicine by a person who does not hold a license to practice veterinary medicine issued under this chapter.

(d) A veterinarian is responsible for the veterinarian's actions. The veterinarian is directly responsible to the client and for the care and treatment of the patient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 21, eff. September 1, 2011.

Sec. 801.353. CONFIDENTIALITY; WAIVER. (a) A veterinarian may not violate the confidential relationship between the veterinarian and the veterinarian's client.

(b) A veterinarian may not be required to release information concerning the veterinarian's care of an animal, except on the veterinarian's receipt of:

- (1) a written authorization or other form of waiver

executed by the client; or

(2) an appropriate court order or subpoena.

(c) A veterinarian who releases information as required under Subsection (b) is not liable to any person, including the client, for an action resulting from the disclosure.

(d) The privilege provided by this section is waived by the client or the owner of an animal treated by the veterinarian to the extent the client or owner places at issue in a civil or criminal proceeding:

(1) the nature and extent of the animal's injuries; or

(2) the care and treatment of the animal provided by the veterinarian.

(d-1) The privilege provided by this section is waived by the client or the owner of the animal treated by the veterinarian in a proceeding to substantiate and collect on a claim for the provision of or a debt incurred for veterinary services.

(e) This section does not apply to an inspection or investigation conducted by the board or an agent of the board.

(f) A veterinarian does not violate this section by providing the name or address of a client, or the rabies vaccination status of a specific client's specific animal, to a public health authority, veterinarian, physician, or other licensed health care professional who requests the identity of the client to obtain information for:

(1) the verification of a rabies vaccination;

(2) other treatment involving a life-threatening situation;

or

(3) a public health purpose.

(g) A public health authority that receives information under Subsection (f) shall maintain the confidentiality of the information, may not disclose the information under Chapter 552, Government Code, and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 971 (H.B. 1767), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 231 (H.B. 413), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 411 (S.B. 811), Sec. 6, eff.

September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 14.003, eff. September 1, 2013.

Sec. 801.354. AUTHORIZED BUSINESS PRACTICES. It is not a violation of this chapter for a veterinarian, or a business entity authorized under this chapter to render veterinary services, to:

- (1) lease space for the purpose of providing veterinary services;
- (2) pay for franchise fees or other services on a percentage-of-receipts basis; or
- (3) sell, transfer, or assign accounts receivable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.3541. LOCATION OF VETERINARY PRACTICE. The premises on which a veterinary practice is located may be owned by a person or other legal entity that does not hold a license to practice veterinary medicine issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.421(d), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 22, eff. September 1, 2011.

Sec. 801.355. LEASING SPACE FROM MERCANTILE ESTABLISHMENT. (a) The practice of a veterinarian who leases space from a mercantile establishment and practices veterinary medicine on the premises of the mercantile establishment must be owned by a veterinarian. The practice and the leased space must be under the exclusive control of a veterinarian.

(b) The leased space must be definite and apart from the space occupied by other occupants of the premises. The leased space must be separated from the space used by other occupants by solid and opaque partitions or walls that extend from the floor to the ceiling. The requirement of this subsection is not satisfied by the use of railings, curtains, or other similar arrangements.



(c) The leased space must have a patient's entrance that:

(1) opens to a public street, hall, lobby, corridor, or other public thoroughfare other than the aisle of a mercantile establishment; and

(2) is actually used as an entrance by the veterinarian's patients.

(d) The leased space may have an additional patient's entrance, that may be nonopaque, that opens from the inside of the mercantile establishment directly into the leased space.

(e) The practice of the veterinarian may not be conducted in any part as a department or concession of the mercantile establishment. A legend or sign that states "Veterinary Department," or that contains other words implying that the practice is not an independent veterinary practice, may not be displayed on the premises or in an advertisement for the premises. The use of the veterinarian's name must clearly indicate that the practice is independent and not under the ownership or control of the mercantile establishment.

(f) The patient and business records of the practice of the veterinarian are the sole property of the veterinarian. The mercantile establishment or a person who is not a veterinarian may not control the records, except that:

(1) business records that are essential to the initiation or continuation of a percentage of gross receipts lease of space may be inspected by the lessor; and

(2) a veterinarian may enter into a management agreement that permits an employee or agent of the management company to access or copy patient records as necessary to perform management functions.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.356. EXEMPTIONS FROM REQUIREMENTS RELATED TO MERCANTILE ESTABLISHMENT. (a) Section 801.355(c) does not apply to the practice of a veterinarian, or the legal successor of the practice, if the practice is operating in space that was opened, designed, or engineered in accordance with plans for a specific facility submitted to the board before December 31, 2009.

(b) Section 801.355 does not prohibit the delivery of temporary limited-service veterinary activities, including preventive

veterinary services such as vaccinations and testing, at a mercantile establishment that is not owned or under the exclusive control of a veterinarian if the services are periodic and delivered by a veterinarian. The board by rule may establish the conditions under which a veterinarian may provide the services described by this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 41 (H.B. 1615), Sec. 1, eff. May 19, 2009.

Sec. 801.357. RESPONSIBILITY OF VETERINARIAN TOWARD ABANDONED ANIMALS. (a) A veterinarian may dispose of an animal that is abandoned in the veterinarian's care if the veterinarian:

(1) gives the client, by certified mail to the client's last known address, notice of the veterinarian's intention to dispose of the animal; and

(2) allows the client to retrieve the animal during the 10 days after the date the veterinarian mails the notice.

(b) A veterinarian may not dispose of an animal under Subsection (a) if:

(1) a contract between the veterinarian and client provides otherwise; or

(2) after notice is given under Subsection (a), the veterinarian and client agree to extend the veterinarian's care of the animal.

(c) The client's contact of the veterinarian by mail, telephone, or personal communication does not extend the veterinarian's obligation to treat, board, or care for an animal unless the veterinarian and client agree to extend the veterinarian's care of the animal.

(d) An animal is considered abandoned on the 11th day after the date the veterinarian mails the notice under Subsection (a) unless an agreement is made to extend the care for the animal.

(e) Notice given by a veterinarian under Subsection (a) does not relieve a client of liability to pay for treatment, boarding, or care provided by the veterinarian.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 971 (H.B. 1767), Sec. 3, eff. September 1, 2005.

Sec. 801.358. LIABILITY OF VETERINARIAN FOR EMERGENCY TREATMENT; EUTHANASIA PRESUMPTION. (a) A veterinarian who provides emergency treatment to an ill or injured animal on the veterinarian's own initiative, or at the request of a person other than the animal's owner, is not liable to the owner for damages to the animal unless the veterinarian commits gross negligence.

(b) If the veterinarian performs euthanasia on the animal, the veterinarian is presumed to have performed a humane act necessary to relieve the animal's pain and suffering.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.3585. LIABILITY FOR REPORTING ANIMAL CRUELTY; IMMUNITY. A veterinarian who in good faith and in the normal course of business reports to the appropriate governmental entity a suspected incident of animal cruelty under Section 42.09 or 42.092, Penal Code, is immune from liability in a civil or criminal action brought against the veterinarian for reporting the incident.

Added by Acts 2005, 79th Leg., Ch. 971 (H.B. 1767), Sec. 4, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 886 (H.B. 2328), Sec. 5, eff. September 1, 2007.

Sec. 801.359. CONTROLLED SUBSTANCES RECORDS. (a) The board shall require each veterinarian to maintain a recordkeeping system for controlled substances as required by Chapter 481, Health and Safety Code.

(b) The records are subject to review by a law enforcement agency or board representative.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.360. DEATH OF VETERINARIAN. On the death of a veterinarian, the veterinarian's practice ownership and patient records become the property of the veterinarian's heirs to dispose of as necessary not later than the second anniversary of the date of the veterinarian's death.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.361. DISPOSAL OF ANIMAL REMAINS. (a) In this section, "medical waste" includes animal waste, blood, gloves, sleeves, newspapers, and plastic bags, but does not include sharps.

(b) A veterinarian may dispose of the remains of an animal and medical waste associated with the animal by burial or burning if:

(1) the burial or burning occurs on property owned by the veterinarian that is located:

(A) outside the corporate boundaries of a municipality;

or

(B) within the corporate boundaries of a municipality as a result of an annexation that occurs on or after September 1, 2003; and

(2) at least one of the following requirements is met:

(A) a veterinarian-client-patient relationship existed between the veterinarian, the owner or other caretaker of the animal, and the animal before the animal's death;

(B) the veterinarian diagnosed, treated, boarded, or otherwise cared for the animal before its death; or

(C) the veterinarian performed euthanasia or an autopsy on the animal.

(c) Notwithstanding any other law, the Texas Commission on Environmental Quality may not adopt a rule that prohibits conduct authorized by this section.

(d) The Texas Commission on Environmental Quality may not adopt a rule that relates to the disposal of animal remains under this section unless the rule is developed in cooperation with and is approved by the Texas Animal Health Commission.

(e) This section prevails over any other law that authorizes a governmental entity to:

(1) prohibit or restrict outdoor burning; or

(2) abate a public nuisance.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 17.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 806, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1333, Sec. 3, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(74), eff. September 1, 2005.

Sec. 801.362. AUTHORITY TO DISPENSE DRUGS PRESCRIBED BY ANOTHER VETERINARIAN IN EMERGENCY. (a) A veterinarian may dispense a drug, other than a controlled substance, prescribed by another veterinarian, including a veterinarian licensed in another state, if:

- (1) failure to dispense the drug could interrupt a therapeutic regimen or cause a patient to suffer;
- (2) the prescribing veterinarian informs the dispensing veterinarian that the drug is appropriate and necessary for the animal;
- (3) the quantity of the dispensed drug does not exceed a five-day supply for each animal annually;
- (4) the annual total of dosage units of drugs dispensed under this subsection is not more than five percent of the total dosage units of drugs the veterinarian dispenses in a year; and
- (5) the veterinarian maintains records of dispensing activities under this section consistent with board rules.

(b) A veterinarian does not violate Section 801.402 by ordering a prescription drug in compliance with this section for the treatment of an animal without first establishing a veterinarian-client-patient relationship.

(c) The board may adopt rules to implement this section.

Added by Acts 2005, 79th Leg., Ch. 971 (H.B. 1767), Sec. 5, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 699 (H.B. 2765), Sec. 1, eff. June 19, 2009.

Sec. 801.363. DELEGATION AND SUPERVISION OF ANIMAL CARE TASKS.

(a) Decisions relating to the diagnosis, treatment, management, and future disposition of an animal patient must be made by a supervising

veterinarian.

(b) A supervising veterinarian shall determine the appropriate level of supervision and protocol for a task that is delegated to a licensed veterinary technician, certified veterinary assistant, or veterinary assistant. In determining the appropriate level of supervision, the veterinarian must consider the level of training and experience of the person to whom the task is delegated.

(c) According to the judgment of the supervising veterinarian, a veterinarian may delegate greater responsibility to a licensed veterinary technician than to a certified veterinary assistant or a veterinary assistant. A veterinarian may provide greater supervision for a task performed by a certified veterinary assistant or a veterinary assistant than for the same task performed by a licensed veterinary technician.

(d) A satellite office or mobile facility may not be operated without a supervising veterinarian.

Added by Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. [1312](#)), Sec. 7, eff. September 1, 2013.

Sec. 801.364. SCOPE OF PRACTICE OF LICENSED VETERINARY TECHNICIANS, CERTIFIED VETERINARY ASSISTANTS, AND VETERINARY ASSISTANTS. (a) A licensed veterinary technician may:

(1) under the direct or immediate supervision of a veterinarian:

(A) suture to close existing surgical skin incisions and skin lacerations;

(B) induce anesthesia; and

(C) extract loose teeth or dental fragments of companion animals with minimal periodontal attachments by hand and without the use of an elevator;

(2) under the direct, immediate, or general supervision of a veterinarian:

(A) draw blood; and

(B) take samples for the purpose of testing and diagnosis;

(3) perform a task assigned by the supervising veterinarian under a level of supervision determined by the supervising veterinarian; and

(4) immediately supervise a certified veterinary assistant or veterinary assistant who is performing a task described by Subdivision (1)(A) or (B) or (2) or other tasks related to animal care as assigned by the supervising veterinarian according to the protocol established by the supervising veterinarian.

(b) A licensed veterinary technician who is immediately supervising a task performed by a certified veterinary assistant or a veterinary assistant is responsible for conduct that violates laws, including board rules, related to the practice of veterinary medicine.

(c) In addition to tasks described by Subsection (a)(4), a certified veterinary assistant or veterinary assistant may:

(1) under the immediate supervision of a veterinarian:

(A) suture to close existing surgical skin incisions and skin lacerations; and

(B) induce anesthesia; and

(2) perform other tasks assigned by the supervising veterinarian under a level of supervision determined by the supervising veterinarian.

(d) A licensed veterinary technician, certified veterinary assistant, or veterinary assistant may not:

(1) perform surgery;

(2) perform an invasive dental procedure, except as provided by Subsection (a)(1)(C);

(3) diagnose or determine a prognosis for an animal disease or condition;

(4) prescribe a drug or appliance; or

(5) initiate treatment without prior instruction by a veterinarian, except in the case of an emergency.

Added by Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. [1312](#)), Sec. 7, eff. September 1, 2013.

#### **SUBCHAPTER I. LICENSE DENIAL AND DISCIPLINARY PROCEDURES**

Sec. 801.401. DISCIPLINARY POWERS OF BOARD. (a) If an applicant or license holder is subject to denial of a license or to disciplinary action under Section 801.402, the board may:

(1) refuse to examine an applicant or to issue or renew a license;

- (2) revoke or suspend a license;
- (3) place on probation a license holder or person whose license has been suspended;
- (4) reprimand a license holder; or
- (5) impose an administrative penalty.

(b) The board may take action under Subsection (a) after notice and hearing under Section 801.407 or as provided by board rule.

(c) The board may require a license holder whose license suspension is probated to:

- (1) report regularly to the board on matters that are the basis of the probation;

- (2) limit practice to the areas prescribed by the board;

or

- (3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(d) In addition to other disciplinary actions authorized by this subchapter, the board may require a license holder who violates this chapter to participate in a continuing education program. The board shall specify the continuing education programs that the license holder may attend and the number of hours that the license holder must complete. A continuing education program specified by the board must be relevant to the violation committed by the license holder.

(e) The board may issue a disciplinary order directing a veterinarian to participate in the peer assistance program under Section 801.157 if the board determines that the veterinarian is an impaired professional as defined by Section 467.001, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 18, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 697 (H.B. 412), Sec. 1, eff. September 1, 2011.

Sec. 801.402. GENERAL GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY ACTION. A person is subject to denial of a license or



to disciplinary action under Section 801.401 if the person:

- (1) presents to the board dishonest or fraudulent evidence of the person's qualifications;
- (2) commits fraud or deception in the examination process or to obtain a license;
- (3) is chronically or habitually intoxicated, chemically dependent, or addicted to drugs;
- (4) engages in dishonest or illegal practices in, or connected with, the practice of veterinary medicine or the practice of equine dentistry;
- (5) is convicted of a felony under the laws of this state, another state, or the United States;
- (6) engages in practices or conduct that violates the board's rules of professional conduct;
- (7) permits another to use the person's license to practice veterinary medicine or to practice equine dentistry in this state;
- (8) fraudulently issues a health certificate, vaccination certificate, test chart, or other form used in the practice of veterinary medicine or the practice of equine dentistry that relates to the presence or absence of animal disease;
- (9) issues a false certificate relating to the sale for human consumption of inedible animal products;
- (10) commits fraud in connection with the application or reporting of a test of animal disease;
- (11) pays or receives a kickback, rebate, bonus, or other remuneration for treating an animal or for referring a client to another provider of veterinary or equine dental services or goods;
- (12) performs or prescribes unnecessary or unauthorized treatment;
- (13) orders a prescription drug or controlled substance for the treatment of an animal without first establishing a veterinarian-client-patient relationship;
- (14) refuses to admit a board representative to inspect the person's client and patient records and business premises during regular business hours;
- (15) fails to keep the person's equipment and business premises in a sanitary condition;
- (16) commits gross malpractice or a pattern of acts that indicate consistent malpractice, negligence, or incompetence in the practice of veterinary medicine or the practice of equine dentistry;

(17) is subject to disciplinary action in another jurisdiction, including the suspension, probation, or revocation of a license to practice veterinary medicine or to practice equine dentistry issued by another jurisdiction;

(18) is convicted for an offense under Section 42.09, 42.091, or 42.092, Penal Code;

(19) represents the person as a veterinarian without a license issued under this chapter;

(20) practices veterinary medicine or assists in the practice of veterinary medicine without a license issued under this chapter; or

(21) violates Section 801.353 or a rule adopted by the board related to confidentiality.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 23, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 8, eff. September 1, 2013.

Sec. 801.403. FAILURE TO REPORT DISEASE. The board may suspend or revoke a license to practice veterinary medicine, place a veterinarian on probation, or reprimand a veterinarian if the veterinarian knowingly fails to report a disease to the Texas Animal Health Commission as required by Section 161.101, Agriculture Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 23, eff. September 1, 2011.

Sec. 801.404. FAILURE TO MAINTAIN RECORDS. The board may suspend or revoke a license to practice veterinary medicine issued under this chapter or place on probation a veterinarian if the veterinarian fails to maintain records as required by Section 801.359.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 23, eff. September 1, 2011.

Sec. 801.405. MENTAL INCOMPETENCE. (a) The board may suspend or revoke a license if a court finds that the license holder is mentally incompetent.

(b) If a court determines that a person whose license is suspended or revoked under this section is mentally competent, the board may reinstate the person's license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.406. REQUIRED DISCIPLINARY ACTION FOR CERTAIN FELONY CONVICTIONS. (a) On conviction of a license holder of a felony under Section 485.033, Health and Safety Code, or Chapter 481 or 483 of that code, the board shall, after conducting an administrative hearing in which the fact of conviction is determined, impose a penalty as provided by Section 801.401. The board shall set the amount of the penalty to match the seriousness of the conviction.

(b) Repealed by Acts 2005, 79th Leg., Ch. 27, Sec. 27(2), eff. September 1, 2005.

(c) The board may reinstate or reissue a license suspended or revoked under this section only on an express determination based on substantial evidence contained in an investigative report indicating that reinstatement or reissuance of the license is in the best interests of:

(1) the public; and

(2) the person whose license has been suspended or revoked.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 19, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 27(2), eff. September 1, 2005.

Sec. 801.407. RIGHT TO HEARING; SCHEDULE OF SANCTIONS. (a) A

person is entitled to a hearing before the State Office of Administrative Hearings if the board:

- (1) refuses to examine the person;
- (2) denies the person's application for a license;
- (3) revokes or suspends the person's license;
- (4) places the person on probation;
- (5) reprimands the person; or
- (6) assesses an administrative penalty against the person.

(b) A hearing conducted under this section is governed by Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall use the schedule of sanctions adopted by board rule for any sanction imposed as the result of a hearing conducted by that office.

(d) The board may conduct deliberations relating to a disciplinary action during executive session. At the conclusion of those deliberations, the board shall vote and announce its decision to the license holder in open session.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 20, eff. September 1, 2005.

Sec. 801.408. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

- (1) informal disposition of a contested case under Section 2001.056, Government Code; and
- (2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under Subsection (a) must:

- (1) provide the complainant and the license holder an opportunity to be heard; and
- (2) require the presence of the board's general counsel or a representative of the attorney general during an informal proceeding to advise the board or the board's employees.

(c) A committee of two or more veterinarian board members and one or more public board members must be present at an informal proceeding for a complaint that requires medical expertise. The committee shall recommend enforcement action at the informal

proceeding.

(d) A committee of board staff may recommend enforcement action at an informal proceeding for a complaint that does not require medical expertise or may refer the complaint to the committee of board members under Subsection (c).

(e) At an informal proceeding under this section, and on agreement with the license holder, the board may order the license holder to refund an amount not to exceed the amount a client paid to the license holder instead of or in addition to imposing an administrative penalty under this chapter. The board may not require payment of other damages or estimate harm under this subsection.

(f) Before an informal disposition is effective, the board must review and approve at a public meeting an informal disposition of the complaint recommended by board members or board staff.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 21, eff. September 1, 2005.

Sec. 801.409. TEMPORARY LICENSE SUSPENSION. (a) An executive committee of the board consisting of the president and two other board members appointed by the president may temporarily suspend the license of a license holder if the executive committee determines from the evidence or information presented to the committee that continued practice by the license holder constitutes a continuing or imminent threat to the public welfare. A temporary suspension may also be ordered on a majority vote of the board.

(b) The board by rule shall adopt procedures for the temporary suspension of a license under this section.

(c) A license temporarily suspended under this section may be suspended without notice or hearing if, at the time the suspension is ordered, a hearing on whether disciplinary proceedings under this chapter should be initiated against the license holder is scheduled to be held not later than the 14th day after the date of the suspension.

(d) A second hearing on the suspended license shall be held not later than the 60th day after the date the suspension is ordered. If the second hearing is not held in the time required by this

subsection, the suspended license is automatically reinstated.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.410. VENUE FOR APPEAL. An appeal of an action of the board must be filed in a district court in Travis County.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER J. ADMINISTRATIVE PENALTY**

Sec. 801.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on a person, including a corporation, organization, business trust, estate, trust, partnership, association, or other legal entity, who violates this chapter or a rule adopted or order issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.423(a), eff. Sept. 1, 2001.

Sec. 801.452. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000 for each violation per day.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) A committee described by Section 801.408(c) or (d) shall recommend the amount of the administrative penalty based on a standardized penalty schedule. The board by rule shall develop the

standardized penalty schedule based on the criteria listed in Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 22, eff. September 1, 2005.

Sec. 801.453. COMMITTEE RECOMMENDATIONS. (a) On a determination by a committee described by Section 801.408(c) or (d) that a violation of this chapter or a rule adopted or order issued under this chapter occurred, the committee may issue a report to the board stating:

- (1) the facts on which the determination is based; and
- (2) the committee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the committee's report to the person on whom the penalty may be imposed. The notice may be given by certified mail.

(c) The notice given under this section must:

- (1) include a notice of each alleged violation;
- (2) state the amount of any recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 23, eff. September 1, 2005.

Sec. 801.454. PENALTY TO BE PAID OR HEARING REQUESTED ON COMMITTEE'S RECOMMENDATIONS. (a) Not later than the 20th day after the date a person receives the notice, the person may in writing:

- (1) accept the committee's determination and recommended administrative penalty; or
- (2) request a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the committee's determination and recommended penalty, the board by order may:

- (1) approve the determination and impose the recommended penalty;
- (2) modify the determination or recommended penalty; or
- (3) reject the determination or recommended penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 24, eff. September 1, 2005.

Sec. 801.455. HEARING ON COMMITTEE'S RECOMMENDATIONS. (a) If the person requests a hearing or fails to respond timely to the notice, the executive director shall set a hearing and give notice of the hearing to the person.

(b) A hearing set by the executive director under Subsection (a) shall be held by an administrative law judge of the State Office of Administrative Hearings.

(c) The administrative law judge shall:

- (1) make findings of fact and conclusions of law; and
- (2) promptly issue to the board a proposal for a decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 25, eff. September 1, 2005.

Sec. 801.456. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for a decision under Section 801.455(c), the board by order may determine that:

- (1) a violation has occurred and impose an administrative penalty; or
- (2) a violation did not occur.

(b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the person's right to judicial review of the order.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.457. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond that is approved by the court and that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and stay enforcement of the penalty on finding that the alleged facts are true. The person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give the supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.458. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.459. DETERMINATION BY COURT. (a) If a court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that an administrative penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.460. REMITTANCE OF PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not upheld by the court, the court shall, after the judgment becomes final:

(1) order the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.461. ADMINISTRATIVE PROCEDURE. (a) A proceeding under this subchapter is subject to Chapter 2001, Government Code.

(b) This subchapter does not prohibit the board from assessing an administrative penalty by using an informal proceeding under Section 801.408.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER K. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 801.501. MONITORING LICENSE HOLDER. The board by rule shall develop a system for monitoring a license holder's compliance with the requirements of this chapter. The rules must include procedures to:

- (1) monitor for compliance a license holder who is ordered by the board to perform certain acts; and
- (2) identify and monitor a license holder who represents a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.502. INJUNCTIVE RELIEF. (a) The board, through the attorney general or a district or county attorney, may bring an action for an injunction, or a proceeding incident to an injunction, to:

- (1) enforce this chapter; or
- (2) enjoin a person, including a corporation, organization, business trust, estate, trust, partnership, association, or other legal entity, from practicing veterinary medicine or equine dentistry in violation of this chapter.

(b) Venue for an action under this section is in:

- (1) the county in which the person against whom the action is brought resides, if the person is an individual who resides in this state;
- (2) the county of the defendant's principal office in this state if the defendant is not an individual; or
- (3) Travis County, if the person:
  - (A) is an individual who does not reside in this state;
 or
  - (B) is an entity that does not have its principal office in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.424(a), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 24, eff. September 1, 2011.

Sec. 801.503. ASSESSMENT OF CIVIL PENALTY AGAINST PERSON NOT LICENSED. (a) A person not licensed under this chapter, including a corporation, organization, business trust, estate, trust, partnership, association, or other legal entity, who violates this chapter or a rule adopted by the board under this chapter is subject to a civil penalty of \$1,000 for each day of violation.

(b) At the request of the board, the attorney general shall bring an action to recover a civil penalty authorized by this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.422(a), eff. Sept. 1, 2001.

Sec. 801.504. GENERAL CRIMINAL PENALTY. (a) A person, including an entity, commits an offense if the person violates this chapter.

(b) An offense under this section is a Class A misdemeanor.

(c) Venue for the prosecution of an offense under this section that consists of the violation of Section 801.251 is in a district court in Travis County or the county in which the offense occurred.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.421(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 971 (H.B. 1767), Sec. 6, eff. September 1, 2005.

Sec. 801.505. BOARD MEMBER OR EMPLOYEE; FINE. A board member or employee shall pay a fine of not less than \$1,000 or more than

\$5,000 if the member or employee:

- (1) issues a license other than as provided by this chapter; or
- (2) provides to an applicant for examination a list of questions to be propounded at the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.506. PROHIBITED PRACTICES RELATING TO CERTAIN ENTITIES. (a) A sole proprietorship, partnership, or corporation may not engage in veterinary medicine unless the owner, each partner, or each shareholder, as appropriate, holds a license to practice veterinary medicine issued under this chapter.

(b) A corporation, organization, business trust, estate, trust, partnership, association, or other legal entity not owned exclusively by one or more persons licensed to practice veterinary medicine under this chapter may not engage in veterinary medicine.

(c) A veterinarian may not form or continue a partnership with a member of another profession or a person who is not a member of a profession if a part of the partnership employment consists of the practice of veterinary medicine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.421(c), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 25, eff. September 1, 2011.

Sec. 801.507. NONAPPLICABILITY OF DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT. Subchapter E, Chapter 17, Business & Commerce Code, does not apply to a claim against a veterinarian for damages alleged to have resulted from veterinary malpractice or negligence.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.508. CEASE AND DESIST ORDER. (a) If it appears to

the board that a person is engaging in an act or practice that constitutes the practice of veterinary medicine without a license or the practice of equine dentistry without a license under this chapter, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter J.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 26, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 26, eff. September 1, 2011.

Sec. 801.509. ENFORCEMENT POLICY. The board shall adopt a formal policy to focus enforcement efforts toward investigating complaints.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 26, eff. September 1, 2005.

#### **SUBCHAPTER L. EQUINE DENTAL PROVIDER ADVISORY COMMITTEE**

Sec. 801.551. EQUINE DENTAL PROVIDER ADVISORY COMMITTEE. (a) The equine dental provider advisory committee is an informal advisory committee to the board and is not subject to Chapter 2110, Government Code.

(b) The advisory committee does not have any independent rulemaking authority but shall advise and assist the board in adopting rules relating to licensed equine dental providers.

(c) The board shall consult the advisory committee regarding matters relating to a disciplinary action that involves a licensed equine dental provider.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 27, eff. September 1, 2011.

Sec. 801.552. APPOINTMENT OF ADVISORY COMMITTEE. (a) The

equine dental provider advisory committee is composed of three members appointed by the presiding officer of the board as follows:

(1) two members who are licensed equine dental providers, have resided in and engaged in the practice of smoothing or filing teeth by floating in this state for the five years immediately preceding the date of appointment, and are of good repute; and

(2) one veterinarian member who is active and in good standing and who supervises a licensed equine dental provider.

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 27, eff. September 1, 2011.

Sec. 801.553. TERMS; VACANCY. (a) Members of the equine dental provider advisory committee are appointed for staggered six-year terms. The terms of the members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the board shall appoint a new member to fill the unexpired term.

(c) An advisory committee member may not serve more than two consecutive full terms.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 27, eff. September 1, 2011.

Sec. 801.554. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the equine dental provider advisory committee that a member:

(1) does not have at the time of appointment the qualifications required by Section 801.552;

(2) does not maintain during service on the advisory committee the qualifications required by Section 801.552; and

(3) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term.

(b) The validity of an action of the advisory committee is not affected by the fact that it is taken when a ground for removal of an

advisory committee member exists.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 27, eff. September 1, 2011.

Sec. 801.555. OFFICERS. The presiding officer of the board shall designate biennially an equine dental provider advisory committee member as the presiding officer of the advisory committee to serve in that capacity at the will of the presiding officer of the board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 27, eff. September 1, 2011.

Sec. 801.556. REIMBURSEMENT; COMPENSATION. An equine dental provider advisory committee member is not entitled to reimbursement for travel expenses or compensation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 27, eff. September 1, 2011.

Sec. 801.557. MEETINGS. (a) The equine dental provider advisory committee shall meet at the call of the presiding officer of the board.

(b) A meeting may be held by telephone conference call.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 27, eff. September 1, 2011.

## **CHAPTER 802. DOG OR CAT BREEDERS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 802.001. SHORT TITLE. This chapter may be cited as the Dog or Cat Breeders Act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.



## Sec. 802.002. DEFINITIONS. In this chapter:

- (1) "Adult animal" means an animal six months of age or older.
- (2) "Animal" means a dog or a cat.
- (3) "Cat" means a mammal that is wholly or partly of the species *Felis domesticus*.
- (4) "Commission" means the Texas Commission of Licensing and Regulation under Chapter 51.
- (5) "Controlling person" means an individual who:
  - (A) is a partner, manager, director, officer, or member of a dog or cat breeder;
  - (B) possesses the authority to set policy or direct management of a dog or cat breeder; or
  - (C) possesses a direct or indirect control of 25 percent or more of a dog or cat breeder.
- (6) "Department" means the Texas Department of Licensing and Regulation under Chapter 51.
- (7) "Dog" means a mammal that is wholly or partly of the species *Canis familiaris*.
- (8) "Dog or cat breeder" means a person who possesses 11 or more adult intact female animals and is engaged in the business of breeding those animals for direct or indirect sale or for exchange in return for consideration and who sells or exchanges, or offers to sell or exchange, not fewer than 20 animals in a calendar year.
- (9) "Facility" means the premises used by a dog or cat breeder for keeping or breeding animals. The term includes all buildings, property, and confinement areas used to conduct the breeding business.
- (10) "Federal regulations" means the specifications for the humane handling, care, treatment, and transportation of dogs and cats set forth in 9 C.F.R. Part 3, Subpart A.
- (11) "Intact female animal" means a female animal that has not been spayed and is capable of reproduction.
- (12) "Kitten" means a cat less than six months old.
- (13) "Licensed breeder" means a dog or cat breeder who holds a license issued under this chapter.
- (14) "Possess" means to have custody of or control over.
- (15) "Primary enclosure" means any structure used to restrict an animal to a limited amount of space. The term includes a room, pen, run, cage, or compartment.

(16) "Puppy" means a dog less than six months old.

(17) "Third-party inspector" means any of the following entities with which the department contracts under Section 802.061, including an employee of the entity:

(A) a state agency; or

(B) a local law enforcement agency or fire department.

(18) "Veterinarian" means a veterinarian in good standing and licensed to practice veterinary medicine in this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.003. APPLICABILITY OF CHAPTER. (a) This chapter does not affect the applicability of any other law, rule, order, ordinance, or other legal requirement of the federal government, this state, or a political subdivision of this state.

(b) This chapter does not prevent a municipality or county from prohibiting or further regulating by order or ordinance the possession, breeding, or selling of dogs or cats.

(c) This chapter does not apply to an animal regulated under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.004. PRESUMPTION OF USE FOR BREEDING. For purposes of this chapter, each adult intact female animal possessed by a person engaged in the business of breeding animals for direct or indirect sale or for exchange in return for consideration is presumed to be used for breeding purposes unless the person establishes to the satisfaction of the department, based on the person's breeding records or other evidence reasonably acceptable to the department, that the animal is not used for breeding.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.005. EXEMPTION FOR CERTAIN PERSONS WHO BREED SPECIAL

PURPOSE DOGS. (a) This section applies only to a dog bred with the intent that it be used primarily for:

(1) herding livestock, as defined by Section 1.003, Agriculture Code, or other agricultural uses;

(2) hunting, including tracking, chasing, pointing, flushing, or retrieving game; or

(3) competing in field trials, hunting tests, or similar organized performance events.

(b) This chapter does not apply to a person to the extent the person breeds dogs described by Subsection (a) for personal use. A person described by this subsection may conduct direct or indirect sales or exchanges in return for consideration of dogs described by Subsection (a).

(c) Notwithstanding Subsection (b), a person described by Subsection (b) may be subject to the requirements of this chapter based on the person's activities with respect to animals other than dogs that are bred and used as described by this section.

(d) Dogs described by Subsection (a) may not be counted for purposes of determining the number of adult intact female animals possessed by a person as described by Section 802.002(8).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

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

Sec. 802.051. GENERAL POWERS AND DUTIES; RULES. (a) The department shall administer and enforce this chapter.

(b) The commission shall adopt rules necessary to administer and enforce this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.052. FEES. The commission by rule shall establish reasonable and necessary fees in amounts sufficient to cover the costs of administering and enforcing this chapter. In setting the fee for inspecting or licensing a facility, the commission may consider the number of adult intact female animals used for breeding at the facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.053. PERSONNEL. The department may employ personnel necessary to carry out the functions and duties of the department under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.054. EXPENSES. The department may authorize disbursements necessary to implement this chapter, including disbursements for office expenses, equipment costs, and other necessary facilities.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.055. CRIMINAL BACKGROUND CHECKS. The department shall conduct a criminal background check on each applicant who submits an application for a license under this chapter and on any controlling person of the applicant. The department may, as permitted by law:

- (1) examine any criminal conviction, guilty plea, or deferred adjudication of the applicant or controlling person; and
- (2) obtain any criminal history or record of the applicant or controlling person.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.056. DIRECTORY. (a) The department shall maintain a directory of licensed breeders and of third-party inspectors registered under this chapter.

(b) The department shall make the directory available to the public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2,

eff. June 17, 2011.

Sec. 802.057. DISCIPLINARY DATABASE. (a) The department shall maintain a database of dog or cat breeders who have been subject to disciplinary action as provided by Subchapter F.

(b) The department shall make the information maintained in the database available to the public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.058. CONSUMER INTEREST INFORMATION. (a) The department shall prepare information of consumer interest describing:

(1) the functions performed by the department under this chapter; and

(2) the rights of a consumer affected by this chapter.

(b) The information must describe the procedure by which a consumer complaint is filed with and resolved by the department.

(c) The department shall make the information available to the public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.059. DOG OR CAT BREEDER TRAINING AND ENFORCEMENT ACCOUNT. (a) The dog or cat breeder training and enforcement account is an account in the general revenue fund. Administrative penalties collected under Subchapter F shall be deposited to the credit of the account.

(b) Funds in the account may be appropriated only to the department for:

(1) promoting consumer awareness of this chapter and rules adopted under this chapter;

(2) supporting educational seminars, training activities, or other actions designed to benefit the department's ability to administer and enforce this chapter; and

(3) paying for information resulting in disciplinary action under Subchapter F against a person for acting as a dog or cat

breeder without holding a license issued under this chapter.

(c) The commission by rule may provide for a system to pay for information described by Subsection (b)(3). Rules adopted under this subsection must ensure that a public purpose is accomplished through the use of the payment system.

(d) The department may solicit and accept gifts, grants, and other donations from any source for deposit into the account.

(e) The account is exempt from the application of Section 403.095, Government Code.

(f) The executive director of the department must approve any expenditure from the account.

(g) The department shall report its use of the account in its quarterly financial report to the commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.060. REGULATION OF THIRD-PARTY INSPECTORS. The commission by rule shall establish:

- (1) training requirements for a third-party inspector;
- (2) registration procedures for a third-party inspector;

and

(3) policies governing the acts of a third-party inspector in conducting an inspection or investigation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.061. CONTRACTS FOR ENFORCEMENT. The department may contract with a third-party inspector to enforce or assist in the enforcement of this chapter and rules adopted under this chapter, including the performance of inspections and investigations required under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.062. INSPECTIONS. (a) The department shall inspect

each facility of a licensed breeder at least once in every 18-month period and at other times as necessary to ensure compliance with this chapter and rules adopted under this chapter.

(b) The inspection must be conducted during the facility's normal business hours, and the licensed breeder or a representative of the licensed breeder must be given a reasonable opportunity to be present during the inspection.

(c) If necessary to adequately perform the inspection, the department or third-party inspector may determine it is appropriate to not provide advance notice to the licensed breeder or a representative of the licensed breeder before arriving at the facility. The licensed breeder or its representative shall, on request of an inspector, assist the inspector in performing the inspection.

(d) In conducting an inspection under this section, an inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals. The inspector may request that relevant documents or records be provided for inspection.

(e) The inspector shall submit an inspection report to the department not later than the 10th day after the date of the inspection on a form prescribed by the department and provide a copy of the report to the licensed breeder or its representative.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. [1451](#)), Sec. 2, eff. June 17, 2011.

Sec. 802.063. INVESTIGATIONS. On receipt of a complaint alleging a violation of this chapter or a rule adopted under this chapter, the department or a third-party inspector designated by the department shall investigate the alleged violation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. [1451](#)), Sec. 2, eff. June 17, 2011.

Sec. 802.064. REPORTING ANIMAL CRUELTY. A person conducting an inspection under Section 802.062 or 802.103 or an investigation under Section 802.063 shall notify the appropriate local law enforcement

agency not later than 24 hours after discovering evidence of animal cruelty or neglect during the inspection or investigation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.065. ADVISORY COMMITTEE. (a) The commission shall establish an advisory committee to advise the commission and make recommendations on matters related to the administration and enforcement of this chapter, including licensing fees and standards adopted under Subchapter E.

(b) The advisory committee consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

- (1) two members who are licensed breeders;
- (2) two members who are veterinarians;
- (3) two members who represent animal welfare organizations each of which has an office based in this state;
- (4) two members who represent the public; and
- (5) one member who is an animal control officer as defined in Section 829.001, Health and Safety Code.

(c) Members of the advisory committee serve staggered four-year terms. The terms of four or five members expire on February 1 of each odd-numbered year. If a vacancy occurs during a member's term, the presiding officer of the commission, with the approval of the commission, shall appoint a replacement member to serve for the remainder of the unexpired term.

(d) The presiding officer of the commission shall designate one member of the advisory committee to serve as presiding officer of the advisory committee for a two-year term. A member may serve more than one term as presiding officer.

(e) The advisory committee shall meet annually and at the call of the presiding officer of the advisory committee, the presiding officer of the commission, or the executive director of the department.

(f) Except for the members described by Subsection (b)(1), a person may not be a member of the advisory committee if the person or a member of the person's household:

- (1) is required to be licensed under this chapter;



(2) is an officer, employee, or paid consultant of an entity required to be licensed under this chapter;

(3) owns or controls, either directly or indirectly, more than a 10 percent interest in an entity required to be licensed under this chapter; or

(4) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of an entity required to be licensed under this chapter.

(g) The presiding officer of the commission may remove from the advisory committee a member who is ineligible for membership under Subsection (f).

(h) A member may not receive compensation for service on the advisory committee. Subject to the department's budget and any limitation provided by the General Appropriations Act, a committee member may receive reimbursement for the actual and necessary expenses incurred while performing advisory committee duties.

(i) A decision of the advisory committee is effective only on a majority vote of the members present.

(j) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee or to the appointment of the committee's presiding officer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

#### **SUBCHAPTER C. LICENSING OF DOG OR CAT BREEDERS**

Sec. 802.101. LICENSE REQUIRED. (a) A person may not act as, offer to act as, or represent that the person is a dog or cat breeder in this state unless the person holds a license under this chapter for each facility that the person owns or operates in this state. A license for a single facility may cover more than one building on the same premises.

(b) The commission by rule may establish requirements for issuance or renewal of a license issued to a dog or cat breeder under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.102. APPLICATION. An applicant for a license under this chapter must:

- (1) submit to the department a completed application on a form prescribed by the department;
- (2) submit to the department the information regarding the applicant's facilities and operations requested by the department;
- (3) demonstrate that the applicant has satisfied the requirements of this chapter and rules adopted under this chapter; and
- (4) pay to the department the required fee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. [1451](#)), Sec. 2, eff. June 17, 2011.

Sec. 802.103. PRELICENSE INSPECTION. (a) Except as provided by Subsection (e), the department must inspect a facility before a license is issued for the facility.

(b) The department may not issue a license to a dog or cat breeder until the department receives a prelicense inspection report from the inspector in a format approved by the department certifying that the facility meets the requirements of this chapter and rules adopted under this chapter.

(c) Before the prelicense inspection may be conducted, each applicant must pay to the department the required inspection fee to be used to pay third-party inspectors and the reasonable expenses of the department related to its licensing and inspection duties under this chapter.

(d) An applicant whose facility does not meet the requirements of this chapter and rules adopted under this chapter as revealed by a prelicense inspection may, after correcting deficiencies noted in the inspection report, request another prelicense inspection by paying the required fee to the department.

(e) The department may not require a prelicense inspection of a facility for an applicant who:

- (1) holds a current Class A animal dealers license issued under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.); and
- (2) submits to the department:
  - (A) a copy of the license; and
  - (B) on a form prescribed by the department, a statement

certifying that the facility meets the requirements of this chapter and rules adopted under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.104. INITIAL LICENSE. The department shall issue a license to each dog or cat breeder who:

- (1) meets the requirements of this chapter and rules adopted under this chapter;
- (2) applies to the department on the form prescribed by the department; and
- (3) pays the required fee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.105. TERM; NONTRANSFERABILITY. A license issued under this chapter is valid until the first anniversary of the date of issuance and is nontransferable. The department shall include the expiration date on each license issued under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.106. LICENSE RENEWAL. (a) A licensed breeder may renew the person's license by:

- (1) submitting a renewal application to the department on the form prescribed by the department;
- (2) complying with any other renewal requirements adopted by the department; and
- (3) paying the required fee.

(b) A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(c) The department may not renew the license of a person if the person is in violation of this chapter or any rule adopted under this chapter at the time of renewal.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.107. LICENSE DENIAL, REVOCATION, AND SUSPENSION. (a) The department shall deny issuance of a license to, or refuse to renew the license of, a person if the person or a controlling person of the dog or cat breeder has pled guilty to, been convicted of, or received deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction in the five years preceding the person's initial or renewal application for a license.

(b) The department shall revoke a license if, after the license is issued, the person or a controlling person of the dog or cat breeder pleads guilty to, is convicted of, or receives deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction.

(c) The department may deny issuance of a license to, refuse to renew the license of, or revoke or suspend a license held by a person who:

(1) fails to meet the requirements of this chapter and rules adopted under this chapter;

(2) has had a similar license issued by a federal, state, or local authority denied, revoked, or suspended;

(3) has falsified any material information requested by the department;

(4) has failed to meet a standard adopted by rule under this chapter; or

(5) has failed to comply with any corrective action required under an inspection report in the time provided by the report.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

#### **SUBCHAPTER D. PRACTICE BY LICENSED BREEDER**

Sec. 802.151. DISPLAY OF LICENSE; APPLICABLE LAWS AND RULES; INCLUSION OF LICENSE NUMBER AND DEPARTMENT INFORMATION. A licensed breeder shall:

(1) prominently display a copy of the license at the

breeder's facility;

(2) maintain at the breeder's facility a printed copy of this chapter and rules adopted under this chapter as made available by the department;

(3) include the license number in each advertisement of the licensed breeder; and

(4) include in each contract for the sale or transfer of an animal by the licensed breeder:

(A) the license number; and

(B) the following statement: "Dog and cat breeders are regulated by the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599, [www.license.state.tx.us](http://www.license.state.tx.us)" or a similar statement adopted by commission rule that includes the department's name, mailing address, telephone numbers, and Internet website address.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. [1451](#)), Sec. 2, eff. June 17, 2011.

Sec. 802.152. CHANGE IN LICENSE INFORMATION. A licensed breeder shall notify the department in a manner prescribed by the department not later than the 10th day after the date any change occurs in the address, name, management, or controlling person of the business or operation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. [1451](#)), Sec. 2, eff. June 17, 2011.

Sec. 802.153. ANNUAL INVENTORY. (a) Not later than February 1 of each year, a licensed breeder shall submit to the department, on a form prescribed by the department, an accounting of all animals held at the facility at any time during the preceding calendar year.

(b) The licensed breeder shall keep copies of the items described by Subsection (a) at the licensed breeder's facility and shall make them available on request to the department or a third-party inspector designated by the department.

(c) A licensed breeder that has more than one facility shall:

(1) keep separate records for each facility; and

(2) submit a separate accounting of animals for each

facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.154. ANIMAL RECORDS. (a) The commission shall adopt rules establishing the minimum information that a licensed breeder must maintain for each animal in the breeder's facility. A licensed breeder shall maintain a separate record for each animal in the breeder's facility documenting the animal's care.

(b) The licensed breeder shall make the animal records available on request to the department or a third-party inspector designated by the department.

(c) The commission by rule shall establish the retention period for records required under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

#### **SUBCHAPTER E. STANDARDS OF CARE AND CONFINEMENT**

Sec. 802.201. ADOPTION OF STANDARDS. (a) The commission shall adopt rules establishing minimum standards for the humane handling, care, housing, and transportation of dogs and cats by a dog or cat breeder to ensure the overall health, safety, and well-being of each animal in the breeder's possession.

(b) The standards adopted under this section must:

(1) at a minimum, meet federal regulations;

(2) require that, unless otherwise certified by a veterinarian in the manner prescribed by the department, a licensed breeder, if applicable, provide each dog 12 weeks of age and older with at least one hour of daily exercise in an area that:

(A) has a surface that has adequate drainage and that will not adversely affect the dog's health or well-being, and that may be composed of natural turf or soil;

(B) provides adequate protection against harsh weather, including exposure to the sun; and

(C) has at least three times more square feet than the dog's primary enclosure;

(3) require that an adequate period consistent with breed

standards elapse between the breeding cycles of each adult intact female animal;

(4) require that a dog or cat breeder provide basic grooming to each animal, including bathing and nail trimming, to the extent required to maintain the animal in a state of good health;

(5) require that all primary enclosures:

(A) be composed of materials that are safe for the animal based on the animal's breed, size, and age;

(B) have adequate space to allow the animal to comfortably stand, sit, turn around, and lie down in a natural position;

(C) have adequate drainage; and

(D) if any portion of the floor surface is composed of wire or a slatted material, be free from any protruding, sharp surfaces and be designed so the animal's paws are unable to extend through, or become caught in, the floor;

(6) prohibit the placement of a primary enclosure of an animal on top of the primary enclosure of another animal, unless an impervious barrier designed to prevent the transfer of any liquid or animal waste from one enclosure to the other is placed between the enclosures;

(7) prohibit the stacking of the primary enclosures of dogs above three vertical levels;

(8) require at least one regular veterinary examination a year for a breeding animal;

(9) require that a dog or cat breeder maintain at each of the breeder's facilities a written health care management protocol that addresses routine and preventive care;

(10) ensure that necessary routine and preventive care is provided to each animal and that each animal receives appropriate care and treatment for any disease or illness, to the extent required to maintain the animal in a state of good health;

(11) prohibit a person from euthanizing an adult animal or performing a surgical birth of an animal unless the person is a veterinarian;

(12) require appropriate training for any person whose duties and responsibilities include the handling of or caring for an animal in a dog or cat breeder's facility; and

(13) prohibit a dog or cat breeder from selling, trading, or giving away an animal before the animal is eight weeks of age.

(c) The commission by rule may modify existing standards as necessary to protect or improve the health and well-being of animals or to protect the health and safety of the public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

#### **SUBCHAPTER F. ENFORCEMENT**

Sec. 802.251. DISCIPLINARY ACTION; ADMINISTRATIVE PENALTY. If a person violates this chapter or a rule adopted under this chapter, the person is subject to any action or penalty under Subchapter F or G, Chapter 51.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

### **TITLE 5. REGULATION OF FINANCIAL AND LEGAL SERVICES**

#### **SUBTITLE A. FINANCIAL SERVICES**

#### **CHAPTER 901. ACCOUNTANTS**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 901.001. SHORT TITLE. (a) This chapter may be cited as the Public Accountancy Act.

(b) A reference in law to the Public Accountancy Act of 1979 or the Public Accountancy Act of 1991 means this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.002. GENERAL DEFINITIONS. (a) In this chapter:

(1) "Attest service" means:

(A) an audit or other engagement required by the board to be performed in accordance with the auditing standards adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board;

(B) an engagement required by the board to be performed in accordance with standards for accounting and review services adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board;

(C) an engagement required by the board to be performed



in accordance with standards for attestation engagements adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board; or

(D) any other assurance service required by the board to be performed in accordance with professional standards adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board.

(2) "Board" means the Texas State Board of Public Accountancy.

(3) "Certificate" means a certificate issued to a certified public accountant.

(4) "Certified public accountant" means a person who holds a certificate issued under this chapter or who practices in this state under Section 901.462.

(5) "Certified public accountancy firm" means a person who holds a firm license or a firm that practices in this state under Section 901.461.

(6) "Client" means a person who enters into an agreement with a license holder or a license holder's employer to receive a professional accounting service.

(7) "Corporation" means a corporation authorized by a statute applicable to this state or by an equivalent law of another state or a foreign country, including a professional public accounting corporation organized under The Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes).

(8) "Firm" means a sole proprietorship, partnership, corporation, limited liability company, or other business entity engaged in the practice of public accountancy.

(9) "Firm license" means a license issued under Subchapter H.

(10) "License" means a license issued under Subchapter I.

(11) "Peer review" means the study, appraisal, or review of the professional accounting work of a public accountancy firm that performs attest services by a certificate holder who is not affiliated with the firm.

(12) "Professional accounting services" or "professional accounting work" means services or work that requires the specialized knowledge or skills associated with certified public accountants, including:

(A) issuing reports on financial statements;

(B) providing management or financial advisory or consulting services;

(C) preparing tax returns; and

(D) providing advice in tax matters.

(13) "Public accountant" means a person authorized to practice public accountancy under the Public Accountancy Act of 1945 (Article 41a, Vernon's Texas Civil Statutes).

(b) The board by rule may define "financial statement" to comply with the standards adopted by generally recognized bodies responsible for setting accounting standards.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. [2144](#)), Sec. 1, eff. September 1, 2007.

Sec. 901.0021. MEANING AND IMPLICATION OF REPORT. (a) In this chapter, a reference to a report used with respect to a financial statement means an opinion, report, or other document, including an assurance prepared in accordance with standards for accounting and review services adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board, that:

(1) states or implies assurance as to the reliability of the financial statement; and

(2) includes or is accompanied by a statement or implication that the person issuing the opinion, report, or other document has special knowledge or competence in accounting or auditing.

(b) A statement or implication of assurance as to the reliability of a financial statement or as to the special knowledge or competence of the person issuing the opinion, report, or other document includes any form of language that is conventionally understood to constitute such a statement or implication.

(c) A statement or implication of special knowledge or competence in accounting or auditing may arise from:

(1) the use by the issuer of the opinion, report, or other document of a name or title indicating that the person is an

accountant or auditor; or

(2) the language of the opinion, report, or other document itself.

Added by Acts 2001, 77th Leg., ch. 1497, Sec. 2, eff. Sept. 1, 2001.

Sec. 901.003. PRACTICE OF PUBLIC ACCOUNTANCY. (a) In this chapter, "practice of public accountancy" means:

(1) the performance for a client by a person who is certified, licensed, or registered under this chapter of a service that involves the use of accounting, attesting, or auditing skills;

(2) the performance or offer of performance for a client or potential client by a person who represents to the public that the person is certified, licensed, or registered under this chapter of a service that involves the use of accounting, attesting, or auditing skills;

(3) the performance of activities of a person or practice unit licensed under this chapter in:

(A) preparing or reporting on a financial statement or report that is to be used by an investor, the management of an organization, a third party, or a financial institution, unless the report is prepared for internal use only; or

(B) preparing a tax return that is filed with a taxing authority; or

(4) the supervision of an activity described by Subdivision (3).

(b) For purposes of this section, a service that involves the use of accounting, attesting, or auditing skills includes:

(1) issuing a report on or preparing a financial statement;

(2) providing management or financial advisory or consulting services; and

(3) preparing a tax return or advising or consulting on a tax matter.

(c) For purposes of this section, a person represents to the public that the person is certified, licensed, or registered under this chapter if the person makes an oral or written representation that the person is certified, licensed, or registered. A written representation includes a representation communicated by office sign, business card, letterhead, or advertisement. A representation does

not include:

(1) the display of an original certificate or registration unless a license is also displayed;

(2) a representation made by a faculty member of an educational institution solely in connection with the duties of the person as a faculty member; or

(3) a representation in a book, article, or other publication, or a representation made in connection with the promotion of the publication, unless the representation includes an offer to perform a service or to sell a product other than the publication.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 3, eff. Sept. 1, 2001.

Sec. 901.004. CONSTRUCTION; LIMITATIONS. (a) This chapter does not:

(1) restrict an official act of a person acting in the person's capacity as:

(A) an officer of the state or of a county, municipality, or other political subdivision, including a county auditor;

(B) an officer of a federal department or agency; or

(C) an assistant, deputy, or employee of a person described by Paragraph (A) or (B);

(2) prohibit a person who is not a certified public accountant or public accountant from serving as an employee of:

(A) a certified public accountant or public accountant licensed by the board; or

(B) a firm composed of certified public accountants or public accountants licensed by the board;

(3) prohibit a person licensed by the federal government as an enrolled agent from performing an act or using a designation authorized by federal law;

(4) prohibit an attorney or firm of attorneys from preparing or presenting records or documents customarily prepared by an attorney or firm of attorneys in connection with the attorney's or firm's professional work in the practice of law; or

(5) prohibit an employee, officer, or director of a

financial institution, as defined by Section 201.101, Finance Code, from preparing or presenting records or documents when lawfully acting within the scope of the activities of the institution.

(b) A person who serves as an employee as described by Subsection (a)(2) may not issue an accounting or financial statement over the employee's name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 4, eff. Sept. 1, 2001.

Sec. 901.005. FINDINGS; PUBLIC POLICY; PURPOSE. (a) The practice of public accountancy is a learned profession that requires specialized education and experience. That practice has historically been defined to include a broad range of financial, advisory, and attest services, including:

- (1) issuing a report on a financial statement;
- (2) preparing a tax return;
- (3) providing advice in a tax matter;
- (4) providing management or financial advisory or consulting services;
- (5) recommending the sale of a product if the recommendation requires or implies accounting or auditing skill; and
- (6) providing litigation support services.

(b) The attest service is part of the practice of public accountancy. That service provides assurance to the public, especially the public markets, that the management of commercial entities has reasonably described the financial status of those entities. That assurance contributes to the strength of the economy and public markets of this state and to the soundness and reliability of the financial system. The strength of the financial system in this state is supported by the competence, integrity, and expertise of the persons who attest to financial statements in this state.

(c) Notwithstanding Subsection (b), the public relies on the competence and integrity of certified public accountants in all of its dealings with certified public accountants and not merely in connection with their performance of the attest service.

(d) The terms "accountant" and "auditor," and derivations, combinations, and abbreviations of those terms, have an implication of competence in the profession of public accountancy on which the

public relies in personal, business, and public activities and enterprises.

(e) The policy of this state and the purpose of this chapter are to provide that:

(1) the admission of persons to the practice of public accountancy require education and experience commensurate with the requirements of the profession;

(2) a person who represents that the person practices public accountancy be qualified to do so;

(3) a person licensed as a certified public accountant:

(A) maintain high standards of professional competence, integrity, and learning; and

(B) demonstrate competence and integrity in all dealings with the public that rely on or imply the special skills of a certified public accountant and not merely in connection with the performance of the attest service;

(4) areas of specialized practice require special training; and

(5) the activities and competitive practices of persons practicing public accountancy be regulated to be free of commercial exploitation to provide the public with a high level of professional competence at reasonable fees by independent, qualified persons.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 5, eff. Sept. 1, 2001.

Sec. 901.006. APPLICATION OF SUNSET ACT. The Texas State Board of Public Accountancy is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1279 (H.B. 1675), Sec. 3.08, eff. June 14, 2013.

## **SUBCHAPTER B. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY**

Sec. 901.051. BOARD MEMBERSHIP. (a) The Texas State Board of Public Accountancy consists of 15 members appointed by the governor with the advice and consent of the senate as follows:

(1) 10 certified public accountant members, at least eight of whom are, on the date of appointment:

(A) a sole practitioner; or

(B) an owner or employee of a certified public accountancy firm; and

(2) five public members who are not:

(A) licensed under this chapter; or

(B) financially involved in an organization subject to board regulation.

(b) Each member of the board must be a United States citizen.

(c) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 6, eff. Sept. 1, 2001.

Sec. 901.052. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of public accountancy;

(2) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In

this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is acting in the capacity of an officer, executive board or executive committee member, employee, or paid consultant of a Texas trade association in the field of public accountancy; or

(2) the person's spouse is acting in the capacity of an officer, executive board or executive committee member, manager, or paid consultant of a Texas trade association in the field of public accountancy.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 2, eff. Sept. 1, 2003.

Sec. 901.054. TERMS. (a) Board members serve staggered six-year terms.

(b) A board member who has served all or part of six consecutive years is not eligible for reappointment until the second anniversary of the expiration date of the member's most recent term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.055. OFFICERS; EXECUTIVE COMMITTEE. (a) The governor shall designate a member of the board as presiding officer. The presiding officer serves in that capacity at the will of the



governor.

(b) The board shall annually elect from its members an assistant presiding officer, secretary, treasurer, and other officers the board considers necessary to serve with the presiding officer on the executive committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.056. GROUND FOR REMOVAL. (a) It is a ground for removal from the board that a member:

- (1) does not have at the time of taking office the qualifications required by Section 901.051;
- (2) does not maintain during service on the board the qualifications required by Section 901.051;
- (3) is ineligible for membership under Section 901.052 or 901.053;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 3, eff. Sept. 1, 2003.

Sec. 901.057. PER DIEM; REIMBURSEMENT. (a) A board member is

entitled to receive:

(1) \$100 for each day that the member conducts board business; and

(2) reimbursement for actual and necessary expenses incurred in performing board functions.

(b) The board by rule may determine the activities that constitute board business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.058. MEMBER EQUALITY. A board member who is not a certified public accountant has the same authority, responsibility, and duties as any other board member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) this chapter;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including

conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

Added by Acts 2003, 78th Leg., ch. 525, Sec. 4, eff. Sept. 1, 2003.

**SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL**

Sec. 901.101. EXECUTIVE DIRECTOR AND PERSONNEL. The board shall employ an executive director, independent contractors, and personnel selected by the executive director as necessary to assist the board in performing its duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.102. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 5, eff. Sept. 1, 2003.

Sec. 901.103. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide, as often as necessary, to its members and employees information regarding their:

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## Sec. 901.104. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## Sec. 901.105. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

(a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with federal and state law and a description of reasonable methods to achieve compliance with federal and state law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 6, eff. Sept. 1, 2003.

**SUBCHAPTER D. BOARD POWERS AND DUTIES**

Sec. 901.151. GENERAL POWERS AND DUTIES OF BOARD. (a) The board shall:

- (1) administer this chapter;
  - (2) adopt rules the board determines are necessary or advisable to administer this chapter;
  - (3) keep a record of each proceeding conducted before or action taken by the board; and
  - (4) keep an official seal.
- (b) On its own motion or on the complaint of any person, the board may initiate:
- (1) proceedings to determine the eligibility of a person for examination, certification, registration, or licensing under this chapter; or
  - (2) disciplinary proceedings under Subchapter K.
- (c) The board may solicit, contract for, and accept money and other assistance from any source to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.152. ADVISORY COMMITTEES. (a) The board may appoint advisory committees to perform the advisory functions assigned to the committees by the board.

(b) A member of an advisory committee who is not a member of the board may not receive compensation for service on the committee. The member may receive reimbursement for actual and necessary expenses incurred in performing committee functions as provided by Section 2110.004, Government Code.

(c) A member of an advisory committee serves at the will of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.1525. APPOINTMENT OF BOARD COMMITTEES. (a) The board may appoint policy-making and working committees to assist the board in performing its responsibilities under this chapter. The board's policy-making committees shall assist the board in establishing policies, drafting rules, setting budgets, representing the board, and performing other oversight duties necessary to administer this chapter. The board's working committees shall assist the board in carrying out the board's functions, including reviewing enforcement cases and other licensing matters. In establishing committees, the

board shall maintain the distinction between the types of committees authorized by this section.

(b) A person may not serve on a policy-making committee unless the person is a board member. A working committee may consist of members who are members of the board and members who are not board members. A member of a working committee who is not a board member may participate as a full voting member of the committee.

(c) A person may not be a non-board member of a committee if:

(1) the person is acting in the capacity of an officer, executive board or executive committee member, employee, or paid consultant of a Texas trade association in the field of public accountancy;

(2) the person's spouse is acting in the capacity of an officer, executive board or executive committee member, manager, or paid consultant of a Texas trade association in the field of public accountancy; or

(3) the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

(d) For purposes of Subsection (c), "Texas trade association" has the meaning assigned by Section 901.053.

(e) A committee member who is not a member of the board is subject to the same financial disclosure requirements that apply to a member of the board, except that the financial disclosures shall be maintained by the executive director.

(f) A committee member who is not a member of the board may not serve on the committee if the member:

(1) violates Subsection (c);

(2) cannot, because of illness or disability, discharge the member's duties for a substantial time;

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

(4) does not comply with Subsection (e).

(g) The board shall adopt rules that provide that a committee member shall refrain from participating in the discussion of and may not vote on an issue before a committee in which the member has a personal or financial interest. A committee member who is not

permitted to vote on a matter described by this subsection shall state at the time of the vote the reason why the member is not voting on the matter.

Added by Acts 2003, 78th Leg., ch. 525, Sec. 8, eff. Sept. 1, 2003.

Sec. 901.153. ENFORCEMENT COMMITTEES. (a) The board may appoint enforcement committees. An enforcement committee operates as a board working committee. The membership of each enforcement committee must include at least one public member of the board.

(b) An enforcement committee shall consider and make recommendations to the board on matters relating to the enforcement of this chapter and board rules.

(c) The board may adopt rules necessary for the performance of each enforcement committee's duties.

(d) In appointing the members of an enforcement committee, the board must determine whether a prospective committee member who is a license holder under this chapter has been the subject of any disciplinary action under this chapter. A license holder who has been found in violation of this chapter may not serve on an enforcement committee.

(e) A board member who serves on an enforcement committee that participates in the investigation of a specific complaint may not participate in any subsequent disciplinary proceeding of the board that pertains to the complaint and may not vote on the final disposition of the case. The board shall adopt rules necessary to implement the requirements of this subsection.

(f) An enforcement committee may hold a closed meeting as provided by Section 551.090, Government Code, to investigate and deliberate a disciplinary action under Subchapter K relating to the enforcement of this chapter or board rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 9, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 36 (S.B. 228), Sec. 1, eff. September 1, 2013.

Sec. 901.154. FEES. (a) The board shall set the fee for the

issuance of a certificate under this chapter and the fee for the issuance or renewal of a license under this chapter in an amount not to exceed \$250.

(b) The board may increase the fee for the issuance or renewal of a license as necessary to cover the costs of enforcing this chapter.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 36, Sec. 4(1), eff. September 1, 2013.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 36 (S.B. 228), Sec. 4(1), eff. September 1, 2013.

Sec. 901.155. SCHOLARSHIP TRUST FUND FOR FIFTH-YEAR ACCOUNTING STUDENTS. (a) The fee for the issuance or renewal of a license under this chapter consists of:

(1) the amount of the fee set by the board under Section 901.154;

(2) the fee increase imposed under Section 901.406; and

(3) an additional \$10 annual fee to be deposited to the credit of the scholarship trust fund for fifth-year accounting students.

(b) The scholarship trust fund for fifth-year accounting students is held by the board outside the state treasury and may be used only to:

(1) provide scholarships under Subchapter N to accounting students in the fifth year of a program designed to qualify each student to apply for certification as a certified public accountant; and

(2) pay administrative costs under Subsection (c).

(c) The administrative costs incurred to collect the fee imposed under Subsection (a)(3) and to disburse the money may not exceed 10 percent of the total money collected.

(d) Notwithstanding Section 404.071, Government Code, interest earned on amounts in the scholarship trust fund for fifth-year accounting students shall be credited to that fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:



Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. 2440), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 33 (S.B. 777), Sec. 1, eff. May 9, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 33 (S.B. 777), Sec. 2, eff. May 9, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 33 (S.B. 777), Sec. 3, eff. May 9, 2011.

Sec. 901.156. RULES OF PROFESSIONAL CONDUCT. The board shall adopt rules of professional conduct to:

(1) establish and maintain high standards of competence and integrity in the practice of public accountancy; and

(2) ensure that the conduct and competitive practices of license holders serve the purposes of this chapter and the best interest of the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.1565. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.

(a) The board shall adopt rules necessary to comply with Chapter 53.

(b) In its rules under this section, the board shall list the specific misdemeanor offenses for which a conviction would constitute grounds for the board to take action under Section 53.021. With regard to a misdemeanor conviction in another state, the board shall develop a process for determining whether the conviction is for an offense listed in the rules required by this subsection.

Added by Acts 2003, 78th Leg., ch. 525, Sec. 10, eff. Sept. 1, 2003.

Sec. 901.157. RULES FOR SPECIALIZATION. The board by rule may recognize an area of specialization in the practice of public accountancy if the area of specialization is generally recognized by other bodies that regulate or issue authoritative pronouncements in the field of public accountancy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.158. RULES RESTRICTING COMPETITIVE PRACTICES. The board in its rules of professional conduct may regulate the competitive practices of a license holder as necessary to ensure that the license holder does not engage in a competitive practice that:

(1) impairs the independence or quality of a service provided by a license holder;

(2) impairs or restricts the public's opportunity to obtain professional accounting services of high quality at a reasonable price; or

(3) unreasonably restricts competition among license holders.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 7, eff. Sept. 1, 2001.

Sec. 901.159. PEER REVIEW. (a) The board by rule shall provide for a peer review program to review the work product of a license holder or of the certified public accountancy firm in which the license holder is a member, in lieu of the license holder, to the extent necessary to comply with any applicable standards adopted by generally recognized bodies responsible for setting accounting standards. Peer review must include a verification that each individual in a certified public accountancy firm who is responsible for supervising attest services and who signs or authorizes another person to sign an accountant's reports on financial statements on behalf of the firm meets the competency requirements of the professional standards that apply to those services.

(b) The board by rule shall establish a fee in an amount not to exceed \$200 to be paid by a certified public accountancy firm, or by a license holder who is not a member of a certified public accountancy firm, for each peer review required by the board under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 7, eff. Sept. 1, 2001.

Sec. 901.160. AVAILABILITY AND CONFIDENTIALITY OF CERTAIN BOARD FILES. (a) The board shall make available at the board's offices in Austin any file maintained or information gathered or received by the

board from a third party regarding a license applicant or current or former license holder for inspection by the applicant or license holder during normal business hours.

(b) A license applicant or current or former license holder may authorize the board in writing to make available for inspection by a designated person or by the public any information gathered or received by the board from a third party regarding the applicant or license holder.

(c) Except on written authorization as provided by Subsection (b), the following information gathered or received by the board is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) information regarding the qualifications of an applicant or license holder to be certified as a certified public accountant;

(2) information regarding the qualifications of an applicant or firm license holder to be issued a firm license as a certified public accountancy firm; and

(3) information regarding a disciplinary action under Subchapter K against a license holder or an applicant to take the uniform CPA examination, before a public hearing on the matter.

(d) A final order of the board relating to a disciplinary action against a license holder, including a reprimand, that results from an informal proceeding or a formal public hearing is subject to disclosure to the public and is available on request.

(e) The board may disclose information that is confidential under this section to another governmental, regulatory, or law enforcement agency engaged in an enforcement action. The board by rule shall adopt guidelines to assist the board in exercising its authority to share information under this subsection. Subsections (a) and (c) do not apply to information disclosed under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 8, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 525, Sec. 11, eff. Sept. 1, 2003.

Sec. 901.161. PRIVILEGE FOR CERTAIN INFORMATION. (a) Any statement or record prepared or an opinion formed in connection with

a positive enforcement or peer review is privileged and is not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to a person other than the board; or

(2) admissible as evidence in a judicial or administrative proceeding other than a board hearing.

(b) The privilege provided by Subsection (a) does not apply to information involved in a dispute between a reviewer and the person, including an entity, who is the subject of the review.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 9, eff. Sept. 1, 2001.

Sec. 901.162. IMMUNITY FROM LIABILITY. (a) Each board member and each officer, director, or employee of a state agency, board, or commission is immune from liability arising out of a disclosure made to the board in connection with a complaint filed with the board.

(b) The board and each board member is immune from liability to a person for damages incident to:

(1) the board's investigation of the person; or

(2) any complaint, charge, or proceeding that results from the investigation.

(c) The state shall hold each board member, employee or agent of the board, and volunteer member of a constructive enforcement committee of the board harmless from any cost, damage, or attorney's fees arising from a claim or suit against that person for an action taken by the person in good faith in the discharge of the board's responsibilities.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 10, eff. Sept. 1, 2001.

Sec. 901.163. STATISTICAL ANALYSIS OF COMPLAINTS. (a) The board shall develop and maintain a system for tracking a complaint filed with the board against a person who holds a license or firm license.

(b) At the time the board files an annual report under Section 901.164, the board shall also report a statistical analysis of the disciplinary actions taken by the board during the preceding year. The report must contain a statistical analysis of:

- (1) the number of complaints received;
  - (2) the number of complaints resolved and the manner in which they were resolved;
  - (3) a categorization of complaints received and the number of complaints in each category;
  - (4) the average length of time required to resolve a complaint for each category of complaints; and
  - (5) other information the board determines necessary.
- (c) If the board does not receive any complaint in a category during a reporting period, the board shall report that a complaint was not received in that category.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 11, eff. Sept. 1, 2001.

Sec. 901.165. RULES FOR ATTEST SERVICES. (a) The board by rule shall specify those services that constitute attest services.

(b) Attest services are required to be performed in accordance with professional standards. The board may adopt by reference the standards developed for general application by the American Institute of Certified Public Accountants or another nationally recognized accountancy organization.

Added by Acts 2001, 77th Leg., ch. 1497, Sec. 12, eff. Sept. 1, 2001.

Sec. 901.166. AUTHORITY TO ISSUE SUBPOENA, ADMINISTER OATH, AND RECEIVE EVIDENCE. (a) The board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection and copying, of relevant documents, records, and other evidence, maintained by electronic or other means, that is in this state.

(b) The board may administer oaths and take testimony and other evidence regarding any matter under the board's jurisdiction.

(c) If a person fails to comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in a county in which a hearing conducted by the board may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The board shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the board may charge for copies of its own records.

(f) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

Added by Acts 2003, 78th Leg., ch. 525, Sec. 12, eff. Sept. 1, 2003.

Sec. 901.167. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training necessary for implementation of the negotiated rulemaking or alternative dispute resolution procedures; and

(3) collect data on the effectiveness of the procedures implemented by the board.

Added by Acts 2003, 78th Leg., ch. 525, Sec. 13, eff. Sept. 1, 2003.

Sec. 901.168. TECHNOLOGY POLICY. The board shall develop and implement a policy requiring the executive director and board employees to research and propose appropriate technological solutions to improve the board's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to easily find information about the board on the Internet;

(2) ensure that persons who want to use the board's services are able to:

(A) interact with the board through the Internet; and  
 (B) access any service that can be provided effectively through the Internet; and

(3) be cost-effective and developed through the board's planning processes.

Added by Acts 2003, 78th Leg., ch. 525, Sec. 14, eff. Sept. 1, 2003.

#### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 901.201. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.202. COMPLAINTS. The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing a complaint to the board. The board may require that notice:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter; or

(2) in a bill for service provided by a person regulated under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.203. COMPLAINT INFORMATION. (a) The board shall maintain a file on each written complaint filed with the board. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the board;
- (3) the subject matter of the complaint;

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

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

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

(b) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(c) The board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 15, eff. Sept. 1, 2003.

Sec. 901.204. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. CERTIFICATE REQUIREMENTS**

Sec. 901.251. CERTIFICATE REQUIRED. (a) A person who is an individual may not engage in the practice of public accountancy unless the person holds a certificate issued under this chapter or practices in this state under a privilege under Section 901.462.

(b) The board shall issue a certificate to a person who meets the applicable requirements of this chapter.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 2, eff. September 1, 2007.

Sec. 901.252. ELIGIBILITY REQUIREMENTS. To be eligible to receive a certificate, a person must:

- (1) be of good moral character as determined under Section 901.253;
- (2) meet the education requirements established under Section 901.254 or 901.255;
- (3) pass the uniform CPA examination;
- (4) meet the work experience requirements established under Section 901.256; and
- (5) pass an examination on the rules of professional conduct as determined by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.253. CHARACTER INVESTIGATION. (a) The board shall ensure that an applicant to take the uniform CPA examination or to receive a certificate is of good moral character as demonstrated by a lack of history of dishonest or felonious acts.

(b) The board by rule may adopt a system to investigate an applicant's background.

(c) The board may obtain criminal history record information maintained by a law enforcement agency, including the Department of Public Safety and the Federal Bureau of Investigation identification division, to investigate the qualifications of an individual who applies to take the uniform CPA examination or to be certified or issued a firm license under this chapter.

(d) The board may require the applicant to submit a complete set of fingerprints. If an applicant does not provide a complete set of fingerprints on request of the board, the board may:

- (1) deny the applicant's application to take the uniform CPA examination; or
- (2) refuse to issue a certificate to the applicant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1497, Sec. 13, eff. Sept. 1, 2001.

Sec. 901.254. EDUCATION REQUIREMENTS. To be eligible to take the uniform CPA examination, an applicant must:

- (1) hold a baccalaureate or graduate degree, or its equivalent as determined by board rule, conferred by a board-recognized institution of higher education; and
- (2) complete at least 150 semester hours or quarter-hour equivalents in board-recognized courses, including an accounting concentration or equivalent courses as determined by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 14, eff. Sept. 1, 2001.

Sec. 901.255. SPECIAL EDUCATION REQUIREMENTS FOR PART-TIME STUDENT. (a) This section applies only to an applicant to take the uniform CPA examination who:

- (1) was enrolled in an accounting program on September 1, 1994;
- (2) notified the board not later than September 1, 1997, of the applicant's intent to take the examination;
- (3) is enrolled in fewer than 12 semester hours in each semester that the applicant attends a college or university; and
- (4) completes the accounting program not later than September 1, 2002.

(b) To be eligible to take the uniform CPA examination, an applicant subject to this section must:

- (1) hold a baccalaureate or graduate degree, or its equivalent as determined by board rule, conferred by a board-recognized institution of higher education; and
- (2) complete at least:
  - (A) 30 semester hours or quarter-hour equivalents in board-recognized accounting courses, as defined by board rule; and
  - (B) 20 semester hours or quarter-hour equivalents in board-recognized accounting-related courses in other areas of business administration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.256. WORK EXPERIENCE REQUIREMENTS. (a) To be eligible to receive a certificate, a person must complete:

(1) at least two years of work experience under the supervision of a certified public accountant; or

(2) at least one year of work experience acceptable to the board, including experience providing a service or advice involving accounting, attest services, management or financial advisory or consulting services, tax services, or other services the board considers appropriate for an accountant, if the person:

(A) has completed at least 150 semester hours of college credits; or

(B) holds a graduate degree.

(b) The board by rule shall define the work experience that is acceptable for purposes of this section.

(c) The board is the final authority regarding work experience. The board may not consider a petition from another entity in resolving a dispute under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 15, eff. Sept. 1, 2001.

Sec. 901.257. OATH AND CERTIFICATE FEE. Before the board issues a certificate to a person, the person must:

(1) take an oath, administered by a board member or by another person authorized to administer oaths, to support:

(A) the constitution and laws of this state and the United States; and

(B) the board's rules; and

(2) pay a fee for the certificate in an amount set by board rule not to exceed \$50.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.258. TRANSFER OF COMPLETE EXAMINATION CREDIT BETWEEN STATES. (a) The board may accept the completion of the uniform CPA examination given by the licensing authority of another state if:

(1) the examination was prepared and graded by the American Institute of Certified Public Accountants or, if doing so would result in a greater degree of reciprocity with the examination

results of other states, the National Association of State Boards of Accountancy; and

(2) the applicant met the requirements in effect in this state at the time the credit was earned.

(b) The board may transfer to the licensing authority of another state active credits earned as a result of completing the uniform CPA examination in this state.

(c) The board by rule shall establish:

(1) a fee in an amount not to exceed \$100 to receive credits from another licensing authority; and

(2) a fee in an amount not to exceed \$50 to transfer credits to another licensing authority.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.259. CERTIFICATION BASED ON RECIPROCITY. (a) The board shall issue a certificate to a person who holds a certificate or license issued by another state if the person:

(1) satisfies at least one of the following:

(A) holds a certificate or license as a certified public accountant from a state that the National Association of State Boards of Accountancy's National Qualification Appraisal Service has verified as having education, examination, and experience requirements for certification or licensure that are comparable to or exceed the requirements for licensure as a certified public accountant of The American Institute of Certified Public Accountants/National Association of State Boards of Accountancy Uniform Accountancy Act and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter;

(B) obtains from the National Association of State Boards of Accountancy's National Qualification Appraisal Service verification that the individual's education, examination, and experience qualifications are comparable to or exceed the requirements for licensure as a certified public accountant of The American Institute of Certified Public Accountants/National Association of State Boards of Accountancy Uniform Accountancy Act and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this

chapter;

(C) meets the requirements for issuance of a certificate in this state other than the requirement providing the grades necessary to pass the uniform CPA examination;

(D) met the requirements in effect for issuance of a certificate in this state on the date the person was issued a certificate by the other state; or

(E) has completed at least four years of experience practicing public accountancy, if the experience:

(i) occurred after the person passed the uniform CPA examination and within the 10 years preceding the date of application; and

(ii) satisfies requirements established by board rule; and

(2) has met the continuing professional education requirements that apply to a license holder under this chapter for the three-year period preceding the date of application.

(b) The board shall issue a certificate by reciprocity to the extent required by a United States treaty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 16, eff. Sept. 1, 2001.

Sec. 901.260. CERTIFICATE BASED ON FOREIGN CREDENTIALS. (a) The board may issue a certificate to an applicant who holds a substantially equivalent foreign credential if:

(1) the foreign jurisdiction that granted the credential has an analogous provision allowing a person who holds a certificate issued by this state to obtain that foreign jurisdiction's comparable credential;

(2) the foreign credential:

(A) entitles the holder to issue reports on financial statements;

(B) was issued by a foreign jurisdiction that regulates the practice of public accountancy on the basis of education, examination, and experience requirements established by the jurisdiction; and

(C) has not expired or been revoked, suspended, limited, or probated; and

(3) the applicant:

(A) received the credential based on education and examination requirements that are comparable to or exceed those in effect in this state on the date that the foreign credential was granted;

(B) satisfied one of the following:

(i) completed an experience requirement in the jurisdiction that granted the foreign credential that is comparable to or exceeds the experience requirements established under this chapter;

(ii) completed at least four years of professional accounting experience in this state; or

(iii) within the 10 years preceding the date of the application, has met equivalent requirements prescribed by board rule;

(C) passed a uniform qualifying examination acceptable to the board covering national standards; and

(D) passed an examination acceptable to the board covering the laws, rules, and code of ethical conduct in effect in this state.

(b) An applicant for a certificate under Subsection (a) must list in the application each jurisdiction, foreign and domestic, in which the applicant has applied for or holds a credential to practice public accountancy. Each holder of a certificate issued under Subsection (a) shall notify the board in writing of the issuance, denial, revocation, suspension, limitation, or probation of a credential or the commencement of a disciplinary or enforcement action by any jurisdiction not later than the 30th day after the effective date of that action.

(c) The board's determination of whether a foreign credential is substantially equivalent to a certificate issued under this chapter is not subject to judicial review.

Added by Acts 2001, 77th Leg., ch. 1497, Sec. 17, eff. Sept. 1, 2001.

#### **SUBCHAPTER G. UNIFORM CPA EXAMINATION**

Sec. 901.301. ADMINISTRATION; BOARD RULES. (a) The board shall conduct or contract with another person to conduct uniform CPA examinations administered under this chapter.

(b) The board by rule may establish the:

- (1) manner in which a person may apply for the examination;
- (2) time, date, and place for the examination;
- (3) manner in which the examination is conducted; and
- (4) manner in which a person's examination score is

reported to the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 381, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1497, Sec. 18, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14.006(a), eff. Sept. 1, 2003.

Sec. 901.302. APPLICATION OF INTENT. (a) The board may establish an application of intent for a person pursuing a certificate.

(b) The board shall maintain an application of intent filed under this section as an active application until the second anniversary of the date the application is filed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.303. FILING FEE. The board by rule may set a filing fee in an amount not to exceed \$100 to be paid by an applicant at the time the applicant files an initial application to take the uniform CPA examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.304. EXAMINATION FEE. (a) For each examination or reexamination, the board by rule shall apportion an amount of the total examination fee among the parts of the examination that an applicant is eligible to take on a particular examination date. For each examination or reexamination, the board shall collect a fee set by board rule not to exceed the cost of administering the examination.

(b) Repealed by Acts 2003, 78th Leg., ch. 525, Sec. 28.

(c) The board by rule may provide for a refund of the examination fee paid by an applicant who:

- (1) fails to attend the examination; and
- (2) presents the board with a satisfactory reason for that failure.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 381, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1497, Sec. 19, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 525, Sec. 16, 28, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14.006(b), eff. Sept. 1, 2003.

Sec. 901.305. FREQUENCY OF EXAMINATION. A uniform CPA examination shall be administered under this chapter as often as necessary but at least once each year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 381, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1497, Sec. 20, eff. Sept. 1, 2001.

Sec. 901.306. CONTENT AND SECURITY OF EXAMINATION. (a) The board may use or require the use of all or part of the uniform CPA examination and any related service available from:

- (1) the American Institute of Certified Public Accountants;
- or
- (2) the National Association of State Boards of Accountancy.

(b) The examination must test the person's knowledge of accounting, auditing, and any other subject the board determines is appropriate.

(c) If the examination is secured by the preparer, the board may not release a copy of any question or answer to any person.

(d) The board by rule may adopt a system to maintain the security and integrity of the examination process.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 381, Sec. 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1497, Sec. 21, eff. Sept. 1, 2001.

Sec. 901.307. GRADING EXAMINATION. (a) The board by rule



shall:

- (1) adopt a method for grading the examination; and
- (2) establish the criteria for passing the examination.

(b) Rules adopted under this section must, to the extent possible, be uniform with those of other states.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 381, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1497, Sec. 22, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14.006(c), eff. Sept. 1, 2003.

Sec. 901.308. EXAMINATION RESULTS. (a) The board shall send to each examinee the examinee's results not later than the 30th day after the date the board receives the results.

(b) The board may withhold delivery of the examination results if:

- (1) board action is pending; and
- (2) the examinee is precluded from receiving the results until the action is resolved.

(c) If the notice of the examination results graded or reviewed by a national testing service will be delayed for more than 120 days after the examination date, the board shall notify the examinee of the reason for the delay before the 120th day.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 36, Sec. 4(2), eff. September 1, 2013.

(e) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 36, Sec. 4(2), eff. September 1, 2013.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 381, Sec. 6, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 36 (S.B. [228](#)), Sec. 4(2), eff. September 1, 2013.

Sec. 901.309. REEXAMINATION. A person who fails all or part of an examination may apply for a subsequent examination, subject to the board's satisfaction that the person meets the requirements of this chapter relating to the person's moral character and education.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.310. CONDITIONAL EXAMINATION CREDIT. (a) The board by rule shall award conditional credit to a person who:

- (1) passes two or more subjects in a single examination;
- (2) takes each part of the examination the person is eligible to take; and
- (3) attains a minimum grade of 50 percent on each part of the examination the person does not pass.

(b) The board shall award credit to a person who attains a passing score on a subsequent examination if the person:

- (1) takes each part of the examination the person is eligible to take; and
- (2) attains a minimum grade of 50 percent on each part of the examination that the person does not pass.

(c) The board shall consider a person to have passed an examination if the person receives credit for each subject by receiving conditional credit after September 1, 1989, and passing the remaining subjects within the six consecutive examinations following the examination for which the person receives conditional credit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.311. RESTRUCTURE OF EXAMINATION. If the uniform CPA examination is restructured, the board by rule shall determine the manner in which credit for a subject is integrated into the new structure.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.312. TRANSFER OF PARTIAL EXAMINATION CREDIT BETWEEN STATES. (a) The board may accept the partial completion of the uniform CPA examination given by the licensing authority of another state if:

- (1) the examination was prepared and graded by the American Institute of Certified Public Accountants or, if doing so would result in a greater degree of reciprocity with the examination results of other states, the National Association of State Boards of

Accountancy;

(2) the credit is active in the other state; and

(3) at the time the credit was earned, the applicant met the requirements in effect in the other state and the other state's standards are equal to or higher than the standards prescribed by this chapter.

(b) The board may transfer to the licensing authority of another state active credits earned as a result of partially completing the uniform CPA examination in this state.

(c) The board by rule shall establish:

(1) a fee in an amount not to exceed \$100 to receive credits from another licensing authority; and

(2) a fee in an amount not to exceed \$50 to transfer credits to another licensing authority.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER H. FIRM LICENSE REQUIREMENTS**

Sec. 901.351. FIRM LICENSE REQUIRED. (a) A firm may not provide attest services or use the title "CPA's," "CPA Firm," "Certified Public Accountants," "Certified Public Accounting Firm," or "Auditing Firm" or a variation of one of those titles unless the firm holds a firm license issued under this subchapter or practices in this state under a privilege under Section 901.461.

(a-1) A firm is required to hold a firm license under this subchapter if the firm:

(1) establishes or maintains an office in this state; or

(2) performs for an entity with its principal office in this state:

(A) a financial statement audit or other engagement that is to be performed in accordance with the Statements on Auditing Standards;

(B) an examination of prospective financial information that is to be performed in accordance with the Statements on Standards for Attestation Engagements; or

(C) an engagement that is to be performed in accordance with auditing standards of the Public Company Accounting Oversight Board or its successor.

(b) The board shall grant or renew a firm license to practice

as a certified public accountancy firm to:

(1) a firm that applies and demonstrates the necessary qualifications in accordance with this subchapter; or

(2) a firm originally licensed as a certified public accountancy firm in another state that:

(A) is required to hold a firm license under Subsection (a-1); and

(B) demonstrates the necessary qualifications in accordance with this subchapter.

(c) A firm license issued under Subsection (b)(2) is automatically revoked and may not be renewed if the firm does not maintain a license as a certified public accountancy firm in the other state.

(d) A firm license must be renewed annually.

(e) The board by rule shall specify:

(1) the form of the application for a firm license;

(2) the fee for an original or renewal firm license, which may be based on the number of owners, members, partners, shareholders, or employee license holders in this state, not to exceed \$25 for each of those persons; and

(3) the requirements for renewal of a firm license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 23, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. [2144](#)), Sec. 3, eff. September 1, 2007.

Sec. 901.352. APPLICATION FOR FIRM LICENSE OR REGISTRATION.

(a) An applicant for a firm license or registration must provide the board with satisfactory evidence of eligibility for a firm license or registration.

(b) The board may examine an application and may refuse to issue a firm license or register an applicant who does not meet the standards imposed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 23, eff. Sept. 1, 2001.

Sec. 901.353. RESIDENT MANAGER. (a) An office established or maintained in this state by a firm of certified public accountants, a firm of public accountants, or a person described by Section 901.355 must be under the direct supervision of a resident manager who:

- (1) is an owner, member, partner, shareholder, or employee of the firm or person that occupies the office; and
- (2) is licensed under this chapter.

(b) A resident manager may serve in that capacity in only one office at a time except as authorized by board rule. The board by rule may establish a registration procedure under which a person may serve as resident manager of more than one office at a time.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 23, eff. Sept. 1, 2001.

Sec. 901.354. FIRM LICENSE INFORMATION AND ELIGIBILITY. (a) An applicant for initial issuance or renewal of a firm license must show that a majority of the ownership of the firm, in terms of financial interests and voting rights, belongs to persons who hold certificates issued under this chapter or are licensed in another state. A firm and its owners shall comply with board rules regardless of whether the firm includes owners who are not license holders.

(b) A certified public accountancy firm may include individuals as owners who are not license holders if:

(1) the firm designates to the board as responsible for the firm's license and the supervision of the firm:

- (A) a license holder who resides in this state; or
- (B) if the firm is required under Section 901.351(a-1)(2) to hold a firm license, an individual practicing under a privilege under Section 901.462;

(2) each owner who is not a license holder and who is a resident of this state as determined by board rule:

- (A) is actively involved in the firm or an affiliated entity;
- (B) is of good moral character as demonstrated by a lack of history of dishonest or felonious acts;
- (C) holds a baccalaureate or graduate degree conferred by a college or university acceptable to the board or equivalent

education as determined by the board;

(D) maintains any professional designation held by the individual in good standing with the appropriate organization or regulatory body that is identified or used in an advertisement, letterhead, business card, or other firm-related communication;

(E) has passed an examination on the rules of professional conduct as determined by board rule;

(F) complies with the rules of professional conduct as determined by board rule; and

(G) maintains professional continuing education applicable to license holders as required by board rule; and

(3) the firm and the owners who are not license holders comply with board disciplinary actions and other requirements the board may impose by rule.

(c) The board by rule may adopt a system to investigate the background of individual owners who are not license holders under this chapter.

(d) The board may obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation identification division, and other law enforcement agencies to investigate the qualifications of an individual who is not a license holder under this chapter.

(e) The board may require an individual who is not a license holder under this chapter to submit a complete set of fingerprints. If the individual does not provide the complete set of fingerprints on request, the board may refuse to allow that individual to become an owner of a certified public accountancy firm and may cancel or refuse to issue or renew a firm license to the firm.

(f) An applicant for issuance or renewal of a firm license under this section must register each office of the firm in this state and show that all attest services performed in this state and each office in this state are under the supervision of a person who holds a certificate issued under this chapter or by another state.

(g) An application for a firm license under this chapter must be made on an affidavit of the owner, an officer, or the general partner of the firm, as applicable, stating:

(1) the name of the firm;

(2) the firm's post office address in this state if the firm has an office in this state;

(3) the address of the firm's principal office;

(4) the address of each office of the firm in this state if the firm has an office in this state;

(5) the name of the resident manager of each office of the firm in this state; and

(6) the name, residence, and post office address of:

(A) each partner, member, shareholder, or other owner; and

(B) if the firm is a partnership, each shareholder of a partner that is a professional corporation.

(h) A sole proprietorship is eligible for a firm license if the sole proprietor and each resident manager of an office of the sole proprietorship in this state are certified public accountants in good standing.

(i) The board shall determine whether an applicant is eligible for a firm license under this section. The board by rule shall define "good standing" for purposes of this section.

(j) A certified public accountancy firm shall notify the board not later than the 31st day after the date on which information in the affidavit is changed, including information regarding the admission or withdrawal of an owner or resident manager.

(k) A certified public accountancy firm that is no longer in compliance with this section because of a change in firm ownership or personnel that occurs after the firm receives or renews a firm license shall report that fact to the board not later than the 30th day after the date the firm ceases to be in compliance and shall take corrective action to bring the firm into compliance. Failure to bring the firm into compliance within a reasonable time as determined by board rule is grounds for the suspension or revocation of the firm's firm license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 23, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 4, eff. September 1, 2007.

Sec. 901.355. REGISTRATION FOR CERTAIN FOREIGN APPLICANTS. (a) The holder of a certificate, license, or degree authorizing the person to practice public accountancy in a foreign country may

register with the board as the holder of a certificate, license, or degree issued by the foreign country, if the board determines that the standards under which the applicant was certified or otherwise authorized to practice public accountancy were at least as high as the standards of this state at the time that authority was granted.

(b) To register with the board under this section, the person must pay:

(1) the fee for issuance of a license as provided by Section 901.154; and

(2) a processing fee in an amount set by the board not to exceed \$250.

(c) A person registered under this section may renew the registration in the manner provided for renewal of a license under Subchapter I.

(d) A person's registration under this section is automatically revoked and may not be renewed if the person does not maintain the authority to practice public accountancy in the other country. The board shall adopt rules to ensure that the person maintains that authority.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 23, eff. Sept. 1, 2001.

#### **SUBCHAPTER I. LICENSE REQUIREMENTS, ISSUANCE, AND RENEWAL**

Sec. 901.401. LICENSE REQUIRED. (a) An individual who holds a certificate issued under this chapter must also hold a license issued under this chapter.

(b) Each office in this state of a certified public accountancy firm or a firm of public accountants must hold a license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 24, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. [2144](#)), Sec. 5, eff. September 1, 2007.

Sec. 901.402. ELIGIBILITY REQUIREMENTS; GENERAL PROHIBITION.

(a) On payment of the required fees, the board shall issue a license



to an applicant who:

- (1) holds a certificate issued under this chapter; or
- (2) holds a firm license issued under this chapter.

(b) The board may not issue a license to or renew the license of a person who does not meet the licensing requirements of:

- (1) this chapter; or
- (2) the rules adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 25, eff. Sept. 1, 2001.

Sec. 901.403. APPLICATION FOR AND RENEWAL OF LICENSE. (a) The board shall specify:

- (1) the form of the application for a license;
- (2) the term of a license; and
- (3) the requirements for renewal of a license.

(b) The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the board shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 26, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 525, Sec. 17, eff. Sept. 1, 2003.

Sec. 901.404. NOTICE OF LICENSE EXPIRATION. (a) Not later than the 30th day before the expiration date of a person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address according to the board's records.

(b) The board shall determine the amount of the renewal fee and shall mail notice of that amount to the person within the time provided by Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 18, eff. Sept. 1, 2003.

Sec. 901.405. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for at least one year but less than two years may renew the license by paying to the board a renewal fee that is equal to three times the normally required renewal fee.

(e) A person whose license has been expired for two years or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(f) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. A person described by this subsection whose license has been revoked under Section 901.502(3) or (4) may obtain a new license under this subsection. A person described by this subsection must pay to the board a fee that is equal to two times the normally required renewal fee for the license and is not subject to additional fees under Section 901.408.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 19, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. [2144](#)), Sec. 6, eff. September 1, 2007.

Sec. 901.406. FEE INCREASE. (a) The fee for the issuance of a certificate under this chapter and the fee for the issuance or renewal of a license under this chapter is the amount of the fee set by the board under Section 901.154 and a fee increase of \$200.

(b) For each fee increase collected under this section, \$50 shall be deposited to the credit of the foundation school fund and \$150 shall be deposited in the general revenue fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.407. ADDITIONAL FEE. (a) Each license holder shall pay to the board a biennial fee of \$200 in each year that the license holder is not required to pay a fee for the issuance or renewal of a license. The fee provided for by this section is due not later than the first anniversary of the date the license holder was last required to pay a fee for the issuance or renewal of the license.

(b) Not later than the 31st day before the date the additional fee is due, the board shall send written notice that the fee is due to the license holder at the license holder's last known address according to the board's records.

(c) The board shall impose a late fee in an amount not less than \$50 on a license holder who does not pay the additional fee on or before the date the fee is due. The board by rule may impose additional late fees.

(d) Each additional fee collected under this section shall be deposited as provided by Section 901.406(b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.408. CONSEQUENCE OF FAILURE TO PAY CERTAIN FEES. (a) A person, other than a person described by Section 901.405(f), who fails to pay the license renewal fee or the additional fee imposed under Section 901.407, as applicable, and any late fee before the first anniversary of the due date of the renewal fee or additional fee may renew the person's license only by submitting to the board an application for renewal accompanied by payment of:

- (1) all accrued fees, including late fees; and
- (2) the direct administrative costs incurred by the board in renewing the person's license.

(b) The board by rule shall prescribe the information to be included in an application for renewal under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 7, eff. September 1, 2007.

Sec. 901.409. FEE REDUCTION FOR RETIRED OR DISABLED PERSONS. The board by rule may establish a reduced fee to issue or renew the license of a person who does not engage in the practice of public accountancy because of retirement or permanent disability.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.410. FEE EXEMPTION FOR CERTAIN LICENSE HOLDERS. The fee increase imposed under Section 901.406 and the additional fee imposed under Section 901.407 do not apply to a license holder who is:

(1) an employee of the federal government, the government of another state, or a municipal or county government of this state and who is restricted by virtue of that employment from engaging in the practice of public accountancy outside the scope of employment; or

(2) an employee of a state agency that has authorized the payment of the fee increase and additional fee for the license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1018 (H.B. 1316), Sec. 1, eff. June 15, 2007.

Sec. 901.411. CONTINUING PROFESSIONAL EDUCATION. (a) A license holder who is an individual shall participate in a program of continuing professional education designed to maintain professional competency. The program must comply with rules adopted by the board.

(b) The board may recognize a continuing professional education

course only if the course directly contributes to the license holder's professional competence.

(c) The board by rule shall provide for the reporting of continuing professional education by a license holder to coincide with the person's license renewal date.

(d) The board by rule may exempt certain license holders, including license holders who are disabled, retired, or not associated with accounting, as defined by board rule, from all or part of the requirements of this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 27, eff. Sept. 1, 2001.

#### **SUBCHAPTER J. PRACTICE OF PUBLIC ACCOUNTANCY**

Sec. 901.451. USE OF TITLE OR ABBREVIATION FOR "CERTIFIED PUBLIC ACCOUNTANT." (a) A person may not assume or use the title or designation "certified public accountant," the abbreviation "CPA," or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant unless the person holds a certificate under this chapter.

(b) A person may not provide attest services or assume or use the title "certified public accountants," the abbreviation "CPAs," or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountancy firm unless:

(1) the person holds a firm license issued under this chapter or practices in this state under a privilege under Section 901.461;

(2) ownership of the person complies with the requirements of this chapter and rules adopted by the board; and

(3) the person complies with board rules authorizing the practice.

(c) The title or designation "certified public accountant" and the abbreviation "CPA" may not be used in connection with an office that is required to be under the supervision of a resident manager under Section 901.353 unless the resident manager holds a certificate and a license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1497, Sec. 29, eff. Sept. 1, 2001.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 9, eff.  
September 1, 2007.

Sec. 901.452. USE OF TITLE OR ABBREVIATION FOR "PUBLIC ACCOUNTANT." A person may not assume or use the title or designation "public accountant" or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that the person is a public accountant, or a firm composed of public accountants, unless:

(1) the person is certified and licensed under this chapter; and

(2) each of the person's offices in this state for the practice of public accounting is maintained and practices under a firm license as required under Subchapter H.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 29, eff. Sept. 1, 2001.

Sec. 901.453. USE OF OTHER TITLES OR ABBREVIATIONS. (a) Except as provided by Subsection (b), a person may not assume or use:

(1) a title or designation likely to be confused with "certified public accountant" or "public accountant," including "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," or "accredited accountant"; or

(2) an abbreviation likely to be confused with "CPA," including "CA," "PA," "EA," "RA," "LA," or "AA."

(b) A person may hold the person out to the public as an "accountant," "auditor," or any combination of those terms or assert that the person has expertise in accounting or auditing only if:

(1) the person holds a license issued under this chapter and each of the person's offices in this state for the practice of public accounting is maintained and practices under a firm license as required under Subchapter H; or

(2) the person practices under a privilege under Section 901.461 or 901.462.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 29, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 10, eff. September 1, 2007.

Sec. 901.454. TITLE USED BY CERTAIN OUT-OF-STATE OR FOREIGN ACCOUNTANTS. (a) A person who is an accountant of another state may use the title under which the accountant is generally known in the state from which the accountant received a certificate, license, or degree if:

(1) the person holds a license issued under this chapter or practices in this state under a privilege under Section 901.461 or 901.462; and

(2) any of the person's offices established or maintained in this state for the practice of public accountancy are licensed under this chapter.

(b) A person who holds a certification, degree, license, or other credential granted in a foreign jurisdiction that entitles the person to engage in the practice of public accountancy or its equivalent in that jurisdiction may use in this state any title or designation under which the person practices in the foreign jurisdiction, followed by a translation of the title or designation into English if it is in a different language and by the name of that jurisdiction, if:

(1) the person's activities in this state are limited to the provision of professional accounting services to persons who are residents, governments, or business entities of that foreign jurisdiction; and

(2) the person does not perform attest services or issue reports on the financial statements of any other person in this state.

(c) A person registered under Section 901.355 shall use the title held in the country from which the person received a certificate, license, or degree, and shall indicate the name of the country.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 29, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 11, eff. September 1, 2007.

Sec. 901.455. NAME REQUIREMENTS AND RESTRICTIONS. (a) The name or designation assumed or used by a license holder must include:

- (1) the individual's name, if the license holder is an individual;
- (2) the name of at least one current or former partner, if the license holder is a partnership; or
- (3) the name of at least one current or former shareholder, if the license holder is a corporation.

(b) A license holder may not assume or use a name that is misleading as to the legal form of the license holder's firm or as to the persons who are partners, officers, or shareholders of the firm. A firm licensed under this chapter may assume or use the designation "and company" or "and associates," or any abbreviation of those terms, only if at least two persons licensed under this chapter are involved in the practice of the firm.

(c) A corporation that is licensed under this chapter may practice public accountancy under a corporate name indicating that it is engaged in that practice.

(d) A license holder may not use a trade name or descriptive words indicating the character or grade of service offered, except as authorized by board rule.

(e) A firm that practices under Section 901.461 must use the firm name that it uses in the state in which it is licensed and has its principal place of business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 30, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 12, eff. September 1, 2007.

Sec. 901.456. REPORTS ON FINANCIAL STATEMENTS; USE OF NAME OR SIGNATURE ON CERTAIN DOCUMENTS. (a) Only a license holder or a person who practices under a privilege under Section 901.461 or



901.462 may issue a report on a financial statement of another person or otherwise perform or offer to perform an attest service.

(b) A person who is not a license holder and who does not practice under a privilege under Section 901.461 or 901.462:

(1) may not use language in any statement related to the financial affairs of a person that is conventionally used by license holders in reports on financial statements;

(2) may prepare financial statements; and

(3) may issue nonattest transmittals or information regarding nonattest transmittals if the transmittals or information do not purport to be in compliance with standards for accounting and review services adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board.

(c) The following safe harbor language may be used by a person who is not a license holder without violating Subsection (b):

"(I/We) have prepared the accompanying balance sheet of (client's name) as of (date) and the related statements of income, retained earnings, and cash flow changes in financial position for the (period then ended). These financial statements, which are the representation of management and which are presented to be used for federal income tax purposes, (are/are not) in agreement with the company's financial records. Management has elected to omit substantially all informative disclosures with respect to these financial statements. If the omitted disclosures were included in the above financial statements, they might influence the user's conclusion concerning the company's financial position, results of operations, and/or changes in financial position. (I/We) do not express any form of assurance with respect to these financial statements."

(d) Unless a person is in compliance with this chapter, the person may not sign on or affix to an accounting or financial statement, or an opinion on, report on, or certificate to an accounting or financial statement, the person's name or a trade or assumed name used by the person in the person's profession or business with any wording indicating that the person:

(1) is an accountant or auditor; or

(2) has expert knowledge in accounting or auditing.

(e) This section does not prohibit:

(1) a partner, officer, employee, or principal of an organization from signing a statement or report regarding the

financial affairs of the organization with wording that designates the position, office, or title held by the person in the organization;

(2) any act of a public official or public employee in the performance of the person's duties as a public official or public employee; or

(3) the performance by a person who is not a license holder of a service that is not an attest service and that involves the use of bookkeeping skills, including:

(A) the preparation of tax returns;

(B) management advisory services; or

(C) the preparation of financial statements without the issuance of reports.

(f) A license holder or an individual who practices under a privilege under Section 901.462 who performs attest services must provide those services in accordance with standards adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 31, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. [2144](#)), Sec. 13, eff. September 1, 2007.

Sec. 901.457. ACCOUNTANT-CLIENT PRIVILEGE. (a) A license holder or a partner, member, officer, shareholder, or employee of a license holder may not voluntarily disclose information communicated to the license holder or a partner, member, shareholder, or employee of the license holder by a client in connection with services provided to the client by the license holder or a partner, member, shareholder, or employee of the license holder, except with the permission of the client or the client's representative.

(b) This section does not prohibit a license holder from disclosing information that is required to be disclosed:

(1) by the professional standards for reporting on the examination of a financial statement;

(2) under a summons or subpoena under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments, the

Securities Act of 1933 (15 U.S.C. Section 77a et seq.) and its subsequent amendments, the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) and its subsequent amendments, or The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes);

(3) under a court order signed by a judge if the order:

(A) is addressed to the license holder;

(B) mentions the client by name; and

(C) requests specific information concerning the

client;

(4) in an investigation or proceeding conducted by the board;

(5) in an ethical investigation conducted by a professional organization of certified public accountants;

(6) in the course of a peer review under Section 901.159 or in accordance with the requirements of the Public Company Accounting Oversight Board or its successor; or

(7) in the course of a practice review by another certified public accountant or certified public accountancy firm for a potential acquisition or merger of one firm with another, if both firms enter into a nondisclosure agreement with regard to all client information shared between the firms.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 31, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 36 (S.B. 228), Sec. 2, eff. September 1, 2013.

Sec. 901.458. LOSS OF INDEPENDENCE. (a) In this section, "direct labor cost" means:

(1) the total compensation paid to a person who performs services; and

(2) the employer payroll expenses related to that compensation, including workers' compensation insurance premiums, social security contributions, costs of participating in retirement plans, group insurance costs, and unemployment taxes.

(b) A person creates a presumption of loss of independence if the person:

(1) holds a certificate or firm license issued under this

chapter; and

(2) performs or offers to perform an attest service for compensation that is less than the direct labor cost reasonably expected to be incurred in performing the service.

(c) This section does not apply to the donation of services to a charitable organization as defined by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 32, eff. Sept. 1, 2001.

Sec. 901.459. APPLICABILITY OF PARTNERSHIP REQUIREMENTS TO PARTNER. Each partner in a partnership governed by this chapter is subject to the statutory requirements and rules that apply to the partnership.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.460. PERFORMING ATTEST SERVICES. (a) A certificate holder may perform attest services only in a certified public accountancy firm.

(b) An individual who is a license holder or practices under a privilege under Section 901.462 and who is responsible for supervising attest services or signs or authorizes another person to sign an accountant's reports on financial statements on behalf of a certified public accountancy firm must meet the competency requirements of the professional standards that apply to those services.

Added by Acts 2001, 77th Leg., ch. 1497, Sec. 33, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. [2144](#)), Sec. 14, eff. September 1, 2007.

Sec. 901.461. PRACTICE BY CERTAIN OUT-OF-STATE FIRMS. (a) A certified public accountancy firm that is licensed and has its primary place of business in another state and is not required to hold a firm license under Section 901.351(a-1) may practice in this state without a firm license or notice to the board if the firm's

practice in this state is performed by an individual who holds a license under this chapter or who practices under a privilege under Section 901.462.

(b) A firm described by Subsection (a) may exercise all the practice privileges of a firm license holder, except that the firm:

(1) may not perform the services described by Section 901.351(a-1); and

(2) may perform the services described by Sections 901.002(a)(1)(B) and (D) for an entity with its home office in this state only if:

(A) the firm meets the requirements of Sections 901.354(a) and (b);

(B) the firm complies with the board's peer review program under Section 901.159; and

(C) the services are performed by an individual who holds a license under this chapter or practices under a privilege under Section 901.462.

(c) A firm practicing under a privilege under this section, as a condition of the privilege of practicing without a firm license:

(1) is subject to the personal and subject matter jurisdiction and disciplinary authority of the board;

(2) must comply with this chapter and board rules; and

(3) is considered to have appointed the regulatory agency of the state that issued the firm's license as the firm's agent on whom process may be served in any action or proceeding by the board against the firm.

(d) A firm practicing under a privilege under this section shall promptly cease offering or rendering professional services in this state if the firm's license to practice as a certified public accountancy firm in the state in which the firm's primary place of business is no longer valid.

Added by Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. [2144](#)), Sec. 15, eff. September 1, 2007.

Sec. 901.462. PRACTICE BY OUT-OF-STATE PRACTITIONER WITH SUBSTANTIALLY EQUIVALENT QUALIFICATIONS. (a) An individual who holds a certificate or license as a certified public accountant issued by another state and whose principal place of business is not

in this state may exercise all the privileges of certificate and license holders of this state without obtaining a certificate or license under this chapter if:

(1) the National Association of State Boards of Accountancy's National Qualification Appraisal Service has verified that the other state has education, examination, and experience requirements for certification or licensure that are comparable to or exceed the requirements for licensure as a certified public accountant of The American Institute of Certified Public Accountants/National Association of State Boards of Accountancy Uniform Accountancy Act and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter; or

(2) the individual obtains from the National Association of State Boards of Accountancy's National Qualification Appraisal Service verification that the individual's education, examination, and experience qualifications are comparable to or exceed the requirements for licensure as a certified public accountant of The American Institute of Certified Public Accountants/National Association of State Boards of Accountancy Uniform Accountancy Act and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter.

(b) An individual who meets the requirements of Subsection (a)(1) or (2) and who offers or renders professional services in person or by mail, telephone, or electronic means may practice public accountancy in this state without notice to the board.

(c) An individual practicing under the privilege under this section, as a condition of the privilege of practicing without a certificate or license:

(1) is subject to the personal and subject matter jurisdiction and disciplinary authority of the board;

(2) must comply with this chapter and the board's rules;  
and

(3) is considered to have appointed the regulatory agency of the state that issued the individual's certificate or license as the agent on whom process may be served in any action or proceeding by the board against the individual.

(d) An individual who practices under a privilege under this section shall promptly cease offering or rendering professional

services in this state if the individual's certificate or license in the state of the individual's principal place of business is no longer valid.

(e) An individual practicing under this section must practice through a firm that holds a license under this chapter if, for an entity with its principal office in this state, the individual performs:

(1) a financial statement audit or other engagement that is to be performed in accordance with the Statements on Auditing Standards;

(2) an examination of prospective financial information that is to be performed in accordance with the Statements on Standards for Attestation Engagements; or

(3) an engagement that is to be performed in accordance with auditing standards of the Public Company Accounting Oversight Board or its successor.

Added by Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. [2144](#)), Sec. 15, eff. September 1, 2007.

#### **SUBCHAPTER K. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES**

Sec. 901.501. DISCIPLINARY POWERS OF BOARD. (a) On a determination that a ground for discipline exists under Section 901.502, after notice and hearing as provided by Section 901.509, the board may:

(1) revoke a certificate, firm license, or practice privilege issued under this chapter;

(2) suspend under any terms a certificate, firm license, practice privilege, or license issued under this chapter for a period not to exceed five years;

(3) refuse to renew a license;

(4) place a license holder on probation;

(5) reprimand a license holder;

(6) limit the scope of a license holder's practice;

(7) require a license holder to complete a peer review program conducted in the manner prescribed by the board;

(8) require a license holder to complete a continuing education program specified by the board;

(9) impose on a license holder the direct administrative

costs incurred by the board in taking action under Subdivisions (1) through (8);

(10) require a license holder to pay restitution as provided by Section 901.6015;

(11) impose an administrative penalty under Subchapter L;  
or

(12) impose any combination of the sanctions provided by this subsection.

(b) If a person's license suspension is probated, the board may require the person to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board;  
or

(3) continue or renew professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 34, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 525, Sec. 20, eff. Sept. 1, 2003.

Sec. 901.502. GROUND FOR DISCIPLINARY ACTION. The board may discipline a person under Section 901.501 for:

(1) fraud or deceit in obtaining a certificate, firm license, or license under this chapter;

(2) fraud, dishonesty, or gross negligence in the performance of services as a license holder, including:

(A) knowingly participating in the preparation of a false or misleading financial statement or tax return; or

(B) failing to file the license holder's own income tax return;

(3) the failure of a person who is certified or required to hold a firm license under this chapter to obtain a license not later than the third anniversary of the date on which the person was certified or required to obtain a firm license;

(4) the failure of a person who is licensed under this chapter to renew the license not later than the third anniversary of the date on which the person most recently obtained or renewed the



license;

(5) a violation of Subchapter J;

(6) a violation of a rule of professional conduct adopted by the board;

(7) a revocation or suspension of the certificate or firm license or a revocation, suspension, or refusal to renew the license of the person's partner, member, or shareholder;

(8) a revocation, cancellation, placement on probation, limitation on the scope of practice, or suspension by another state, or a refusal of renewal by another state, of the authority issued by that state to the person, or to the person's partner, member, or shareholder, to engage in the practice of public accountancy for a reason other than the failure to pay the appropriate authorization fee;

(9) a revocation or suspension of, or a voluntary consent decree concerning, the right of the person, or of the person's partner, member, or shareholder, to practice before a state or federal agency for a reason the board determines warrants its action;

(10) a final conviction of or the imposition of deferred adjudication for an offense under the laws of any state or the United States that:

(A) is a felony; or

(B) includes fraud or dishonesty as an element of the offense;

(11) conduct indicating lack of fitness to serve the public as a professional accountant; or

(12) a violation by a license holder or an owner of a certified public accountancy firm who is not a license holder of:

(A) this chapter;

(B) professional standards adopted by the board; or

(C) a rule or order adopted by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 34, eff. Sept. 1, 2001.

Sec. 901.503. BOARD ACTION INVOLVING APPLICANT. (a) On a determination that a ground for discipline exists under Subsection (b), after notice and hearing as provided by Section 901.509, the board may:

(1) deny an individual's application to take the uniform CPA examination;

(2) prohibit an individual from taking the uniform CPA examination for a period not to exceed five years; or

(3) void an individual's uniform CPA examination grades.

(b) The board may discipline an individual under Subsection (a) for:

(1) fraud or deceit on an application for the uniform CPA examination;

(2) cheating on the uniform CPA examination;

(3) a final conviction of or the imposition of deferred adjudication for an offense under the laws of any state or the United States that:

(A) is a felony; or

(B) includes fraud or dishonesty as an element of the offense; or

(4) conduct indicating lack of fitness to serve the public as a professional accountant.

(c) The board shall provide for the refund of the examination fee paid by a person whose application for examination is denied under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 21, eff. Sept. 1, 2003.

Sec. 901.504. LICENSE REVOCATION BASED ON VIOLATION OF CHAPTER. After notice and hearing as provided by Section 901.509, the board:

(1) may revoke a license that was issued or renewed in violation of this chapter or a rule adopted under this chapter; and

(2) shall revoke the firm license of a sole proprietorship, partnership, corporation, limited liability company, or other business entity that does not meet each qualification for a firm license prescribed by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 34, eff. Sept. 1, 2001.

Sec. 901.5045. EMERGENCY SUSPENSION. (a) On determining that a license holder is engaged in or about to engage in an act of fraud

or a violation of this chapter and that the license holder's continued practice constitutes an immediate threat to the public welfare, the board may issue an order suspending the license holder's license without notice or a hearing. The board shall immediately serve notice of the suspension on the license holder.

(b) The notice required by Subsection (a) must:

(1) be personally served on the license holder or be sent by registered or certified mail, return receipt requested, to the license holder's last known address according the board's records;

(2) state the grounds for the suspension; and

(3) inform the license holder of the right to a hearing on the suspension order.

(c) A license holder whose license is suspended under this section is entitled to request a hearing on the suspension not later than the 30th day after the date of receipt of notice of the suspension. Not later than the fifth day after the date a hearing is requested, the board shall issue a notice of hearing as provided by Section 901.509.

(d) The hearing shall be held not later than the fifth day after the date notice of hearing is issued, unless the parties agree to a later date. A hearing on a suspension order under this section is subject to Chapter 2001, Government Code. If the hearing is before an administrative law judge, after the hearing, the administrative law judge shall recommend to the board whether to uphold, vacate, or modify the suspension order.

(e) A suspension order issued under this section remains in effect until further action is taken by the board. If the administrative law judge's recommendation under Subsection (d) is to vacate the order, the board shall determine whether to vacate the order not later than the second day after the date of the recommendation.

Added by Acts 2003, 78th Leg., ch. 525, Sec. 22, eff. Sept. 1, 2003.

Sec. 901.505. PROCEDURE PENDING FINAL CONVICTION OF CERTAIN OFFENSES. (a) On conviction of a person of an offense under the laws of any state or the United States that is a felony or that includes fraud or dishonesty as an element of the offense, after notice and hearing as provided by Section 901.509, the board may:

(1) suspend a certificate or firm license issued under this chapter; or

(2) suspend or refuse to renew a license issued under this chapter.

(b) The period of the suspension or refusal to renew begins on the date of conviction and ends on the date the conviction becomes final or is reversed, set aside, or modified as provided by Subsection (d).

(c) If the conviction becomes final, the board may, without further notice and hearing, take disciplinary action under Section 901.501.

(d) If the conviction is reversed, set aside, or modified so that the underlying offense is not a felony or an offense that includes fraud or dishonesty as an element of the offense, the board shall reinstate the certificate, firm license, or license suspended under this section. A reinstatement under this subsection does not limit the board's right to take other disciplinary action authorized by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 35, eff. Sept. 1, 2001.

Sec. 901.506. VOLUNTARY SURRENDER OF CERTIFICATE OR FIRM LICENSE. (a) Subject to board approval, a person who holds a certificate or firm license issued under this chapter may resign and surrender the certificate or firm license to the board at any time and for any reason.

(b) A person who resigns and surrenders a certificate or firm license may not apply for reinstatement of the certificate or firm license. The person may be issued a new certificate or firm license on completion of all requirements for the issuance of an original certificate or firm license. The board may not issue a certificate to an individual who previously resigned a certificate unless:

(1) after the date of resignation, the individual completes the examination requirement for a new certificate; or

(2) on application, the board waives the examination requirement.

(c) A person who applies for a new certificate or firm license must, if applicable, disclose in the application the fact that the

person previously resigned and surrendered a certificate or firm license during the course of a disciplinary investigation or proceeding conducted by the board. The board shall consider that fact in determining whether to issue a new certificate or firm license to the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 36, eff. Sept. 1, 2001.

Sec. 901.507. REINSTATEMENT. On receipt of a written application, and after notice and hearing, the board may:

- (1) issue a new certificate to an individual whose certificate was revoked;
- (2) issue a new firm license to a person whose firm license was revoked;
- (3) reinstate a suspended license or modify the terms of the suspension;
- (4) approve a previously denied application to take the uniform CPA examination; or
- (5) reinstate an individual's previously voided uniform CPA examination grades.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 36, eff. Sept. 1, 2001.

Sec. 901.508. RIGHT TO HEARING. (a) If the board proposes to take disciplinary action against a person under this subchapter, the person is entitled to a hearing before the board or a hearings officer appointed by the board.

(b) The board shall establish procedures by which a decision to take disciplinary action under this subchapter is made by or is appealable to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.509. NOTICE OF HEARING. (a) The board shall provide written notice of a hearing under this subchapter to the person who is the subject of the proposed disciplinary action not later than the

21st day before the date of the hearing.

(b) The notice must state:

- (1) the time and place of the hearing; and
- (2) the nature of each charge against the person.

(c) The notice may be served in person or by registered or certified mail to the person's last known address.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.510. LEGAL REPRESENTATION AT HEARING. The attorney general or an attorney employed by the board shall represent the board at each hearing under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.511. DISCIPLINARY ACTION FOR ACT COMMITTED IN ANOTHER STATE. (a) A license holder of this state who offers to perform or performs professional accounting services or who uses the license holder's title as a certified public accountant in another state or jurisdiction is subject to disciplinary action in this state for an act committed in the other state or jurisdiction for which the license holder would be subject to discipline as a license holder of the other state or jurisdiction.

(b) The board shall investigate any complaint made by the regulatory agency of another state or jurisdiction concerning a license holder of this state.

Added by Acts 2001, 77th Leg., ch. 1497, Sec. 37, eff. Sept. 1, 2001.

#### **SUBCHAPTER L. ADMINISTRATIVE PENALTY**

Sec. 901.551. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on a person regulated under this chapter who violates this chapter or a rule or order adopted under this chapter in a manner that constitutes a ground for disciplinary action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.552. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$100,000 for each violation.

(b) In determining the amount of the penalty, the board shall consider:

- (1) the seriousness of the violation, including:
  - (A) the nature, circumstances, extent, and gravity of any prohibited act; and
  - (B) the hazard or potential hazard to the public;
- (2) the economic damage to property caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

(c) The board by rule shall adopt a schedule for purposes of this subchapter that prescribes ranges in the amounts of administrative penalties to be imposed for specified types of conduct and circumstances.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 23, eff. Sept. 1, 2003.

Sec. 901.553. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If, after examination of a possible violation and the facts relating to that violation, the board determines that a violation has occurred, the board shall issue a preliminary report stating:

- (1) the facts on which the determination is based;
- (2) the fact that an administrative penalty is to be imposed; and
- (3) the amount of the penalty.

(b) Not later than the 10th day after the date the report is issued, the board shall send a copy of the report by certified mail to the person charged with the violation, together with a statement of the person's right to a hearing relating to the alleged violation and the amount of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a)

Not later than the 20th day after the date the person receives the report, the person may:

- (1) make a written request for a hearing; or
- (2) pay the administrative penalty to the board.

(b) Failure to request a hearing or pay the penalty within the time provided by this section waives the right to a hearing under this chapter.

(c) If the board determines without a hearing that the person committed a violation and a penalty is to be imposed, the board shall:

- (1) provide written notice to the person of the board's findings; and
- (2) enter an order requiring the person to pay the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.555. HEARING. (a) If the person requests a hearing, the board shall conduct a hearing in the manner provided for a contested case hearing under Chapter 2001, Government Code.

(b) If the board determines after a hearing that the person committed the alleged violation, the board shall:

- (1) provide written notice to the person of the findings established by the hearing and the amount of the administrative penalty imposed; and
- (2) enter an order requiring the person to pay any penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.556. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final as provided by Section 2001.144, Government Code, the person shall:

- (1) pay the administrative penalty; or
- (2) file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(2) may stay enforcement of the penalty by:

- (1) paying the penalty to the board for placement in an escrow account;



(2) giving to the board a supersedeas bond in a form approved by the board that:

(A) is for the amount of the penalty; and

(B) is effective until judicial review of the board's order is final; or

(3) filing with the board an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond.

(c) A person who fails to take action as provided by this section waives the right to judicial review of the board's order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.557. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the board may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.558. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the administrative penalty is reduced or is not upheld by the court, the board shall:

(1) remit the appropriate amount, plus accrued interest, to the person if the person paid the penalty; or

(2) execute a release of the bond if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a) is paid at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER M. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 901.601. CEASE AND DESIST ORDER. (a) If it appears to the board that a person is engaging in an act or practice that

constitutes the practice of public accountancy without a license under this chapter, the board, after notice and an opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity.

(b) A violation of an order under this section constitutes grounds for imposition of an administrative penalty under Subchapter L. Notwithstanding Section 901.552, the amount of an administrative penalty for a violation of an order under this section may not exceed \$25,000.

(c) The board by rule shall adopt a schedule for purposes of this section that prescribes ranges in the amounts of administrative penalties to be imposed for specified types of conduct and circumstances that violate an order under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 38, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 525, Sec. 24, eff. Sept. 1, 2003.

Sec. 901.6015. RESTITUTION. (a) The board may order a license holder to pay restitution under Section 901.501(a)(10) to a person harmed by the license holder's:

- (1) violation of this chapter; and
- (2) failure to fulfill the terms of a contract with the person.

(b) The amount of restitution ordered under this section may not exceed the actual amount paid by the person to the license holder under the contract.

Added by Acts 2003, 78th Leg., ch. 525, Sec. 25, eff. Sept. 1, 2003.

Sec. 901.602. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter. Each violation is a separate offense.

(b) Except as otherwise provided by this subsection, an offense under this section is a Class B misdemeanor. An offense under this section that involves intentional fraud is punishable as:

- (1) a state jail felony if it is shown on the trial of the offense that the violation resulted in a monetary loss of less than \$10,000 or did not result in a monetary loss;

(2) a felony of the third degree if it is shown on the trial of the offense that the violation resulted in a monetary loss of at least \$10,000 but less than \$100,000; or

(3) a felony of the second degree if it is shown on the trial of the offense that the violation resulted in a monetary loss of at least \$100,000.

(c) A complaint filed under this section must be filed in a district court in:

(1) Travis County, if the complaint is filed against a person who is licensed under this chapter or is not a resident of this state; or

(2) the county in which the person resides, if the complaint is filed against a person who is a resident of this state but is not licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 39, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 525, Sec. 26, eff. Sept. 1, 2003.

Sec. 901.603. INTERVENTION IN ACTION. Subject to approval by the board, a license holder or a professional organization of certified public accountants may intervene in an action by the board or may bring an action in the name of the license holder or professional organization to enforce any provision of this chapter against a person who does not hold a license or firm license.

Added by Acts 2001, 77th Leg., ch. 1497, Sec. 40, eff. Sept. 1, 2001.

Sec. 901.604. SINGLE ACT AS EVIDENCE OF PRACTICE. In an action brought under this chapter, evidence of a single act prohibited by this chapter is sufficient to justify a penalty, injunction, restraining order, or conviction without evidence of a general course of conduct.

Added by Acts 2001, 77th Leg., ch. 1497, Sec. 40, eff. Sept. 1, 2001.

Sec. 901.605. APPOINTMENT OF SECRETARY OF STATE AS AGENT. A person who is not a resident of this state and who applies for a

certificate or firm license is considered to have appointed the secretary of state as the applicant's agent for service of process in any action or proceeding against the applicant arising out of any transaction connected with or incidental to professional accounting services performed by the applicant while the applicant holds a certificate or firm license.

Added by Acts 2001, 77th Leg., ch. 1497, Sec. 40, eff. Sept. 1, 2001.

Sec. 901.606. IMMUNITY FROM LIABILITY. (a) A person acting in good faith who voluntarily reports or assists in the investigation of a report of an alleged violation of this chapter or who testifies or otherwise participates in an administrative or judicial proceeding arising from a report or investigation of an alleged violation of this chapter is immune from civil or criminal liability that might otherwise be incurred or imposed.

(b) A person who reports the person's own violation of this chapter or who acts in bad faith or with malicious purpose in reporting an alleged violation of this chapter is not immune from civil or criminal liability.

Added by Acts 2003, 78th Leg., ch. 525, Sec. 27, eff. Sept. 1, 2003.

#### **SUBCHAPTER N. SCHOLARSHIPS FOR FIFTH-YEAR ACCOUNTING STUDENTS**

Sec. 901.651. DEFINITION. In this subchapter, "fifth-year accounting student" means a student enrolled in the additional hours of study required by Section 901.254.

Transferred from Education Code, Subchapter N, Chapter 61 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. [2440](#)), Sec. 2, eff. September 1, 2009.

Sec. 901.652. PUBLIC PURPOSE. The scholarships required by this subchapter serve a public purpose of the state as described by Section 901.155.

Transferred from Education Code, Subchapter N, Chapter 61 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. [2440](#)), Sec. 2, eff.

September 1, 2009.

Sec. 901.653. SCHOLARSHIPS. The board shall establish and administer, using funds collected and appropriated for that purpose and in accordance with this subchapter and board rules, scholarships for fifth-year accounting students.

Transferred from Education Code, Subchapter N, Chapter 61 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. 2440), Sec. 2, eff. September 1, 2009.

Sec. 901.654. FACTORS. (a) Scholarships shall be established and administered in a manner that the board determines best serves the public purpose of the scholarships.

(b) In determining what best promotes the public purpose, the board shall consider at a minimum the following factors relating to each person applying for a scholarship under this section:

- (1) financial need;
- (2) ethnic or racial minority status; and
- (3) scholastic ability and performance.

Transferred from Education Code, Subchapter N, Chapter 61 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. 2440), Sec. 2, eff. September 1, 2009.

Sec. 901.655. RULES. (a) The board shall adopt rules as necessary for the administration of this subchapter.

(b) The board shall adopt rules relating to the establishment of the scholarships under Section 901.653, including rules providing eligibility criteria and the determination of the amount of each scholarship.

Transferred from Education Code, Subchapter N, Chapter 61 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. 2440), Sec. 2, eff. September 1, 2009.

Sec. 901.656. SCHOLARSHIP REGULATIONS. (a) The board, in

consultation with the advisory committee appointed under Section 901.657, shall determine the maximum amount of any scholarship awarded under this subchapter. The scholarship may be spent by the recipient on the expenses for tuition, fees, books, supplies, and living expenses incurred by the student in connection with the student's fifth year of an accounting program. Scholarships shall be made available to eligible students attending:

(1) any institution of higher education; or

(2) any nonprofit independent institution approved by the Texas Higher Education Coordinating Board under Section 61.222, Education Code.

(b) The board may award a scholarship under this subchapter only to an eligible student who intends to take the written examination conducted by the board for the purpose of granting a certificate of "certified public accountant." An applicant for a scholarship under this subchapter shall state such an intent by filing a form provided by the board stating an intent to take the examination.

(c) A scholarship under this subchapter shall be paid to the recipient in the form of periodic partial payments throughout the school year. The board by rule shall determine the manner in which these payments are made.

Transferred from Education Code, Subchapter N, Chapter 61 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. [2440](#)), Sec. 2, eff. September 1, 2009.

Sec. 901.657. ADVISORY COMMITTEE. (a) The board shall appoint an eight-member advisory committee to advise the board concerning scholarships provided under this subchapter. The advisory committee consists of:

(1) a presiding officer named by the board;

(2) one representative named by the board;

(3) one representative named by the Texas Society of Certified Public Accountants;

(4) a Texas representative of the American Accounting Association named by that organization;

(5) one representative named by the National Association of Black Accountants;

(6) one representative named by the American Association of Hispanic Certified Public Accountants; and

(7) two representatives named by the Texas Higher Education Coordinating Board who are the chairmen of accounting departments at Texas colleges and universities, at least one of whom must be a representative of a private college or university and at least one other of whom must be a representative from a college or university that primarily serves minority students.

(b) The costs of participation on an advisory committee of a member representing a particular organization or agency shall be borne by that member of the organization or agency the member represents.

(c) In addition to any other duties assigned by the board, the advisory committee specifically shall advise the board on:

(1) how the scholarships provided for under this subchapter should be established and administered to best promote the public purpose of the scholarships;

(2) the amount of money needed to adequately fund the scholarships and the maximum amount that may be awarded in any given year to an individual student; and

(3) any priorities among the factors identified by Section 901.654.

Transferred from Education Code, Subchapter N, Chapter 61 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. [2440](#)), Sec. 2, eff. September 1, 2009.

Sec. 901.658. FUNDING. The board may:

(1) use without appropriation, in accordance with this subchapter and Section 901.155, any money from the trust fund established under Section 901.155; and

(2) accept gifts, grants, and donations of real or personal property from any entity, subject to limitations or conditions set by law, for the purposes of this subchapter.

Transferred from Education Code, Subchapter N, Chapter 61 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. [2440](#)), Sec. 2, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 150 (H.B. [1685](#)), Sec. 2, eff.

September 1, 2013.

Sec. 901.659. MINORITY AND DISADVANTAGED STUDENT INTERNSHIPS.

(a) The board shall adopt rules to encourage internships for minority and disadvantaged students and certified public accountant examination candidates who notify the board not later than 90 days after the date of being accepted into an accounting internship program.

(b) The rules adopted by the board shall include standards for appropriate recognition of an accounting firm for its efforts in training and hiring minority or disadvantaged students.

Transferred from Education Code, Subchapter N, Chapter 61 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. 2440), Sec. 2, eff. September 1, 2009.

Sec. 901.660. REPORT ON ACCOUNTANT SCHOLARSHIP PROGRAM. (a)

Before January 15 of each odd-numbered year, the board shall report to the legislature concerning the scholarship program for fifth-year accounting students administered by the board under this subchapter.

(b) The report expenses shall be included in the administrative costs allocated to the board under Section 901.155. The report must include:

- (1) the number and amount of scholarships awarded in the two calendar years preceding the year in which the report is due; and
- (2) the number of minority students, by racial or ethnic background, who have been awarded scholarships under the program in that two-year period.

Added by Acts 1991, 72nd Leg., ch. 533, Sec. 33, eff. Sept. 1, 1991. Redesignated from Education Code, Section 61.081 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. 2440), Sec. 3, eff. September 1, 2009.

**SUBTITLE B. LEGAL SERVICES**  
**CHAPTER 951. PREPAID LEGAL SERVICES**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 951.001. SHORT TITLE. This chapter may be cited as the



Prepaid Legal Services Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 951.002. DEFINITIONS. In this chapter:

(1) "Board of directors" means the board of directors of the state bar.

(2) "Client" means an eligible member or beneficiary of a sponsoring organization.

(3) "Organization" means a nonprofit organization or combination of persons, incorporated or otherwise, including a professional association, trade association, or labor union.

(4) "Prepaid legal services program" means a plan under which:

(A) a sponsoring organization offers legal services benefits to its members or beneficiaries; and

(B) the services are financed by direct financial charge in advance of need.

(5) "State bar" means the State Bar of Texas.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 951.003. APPLICABILITY OF CHAPTER. (a) This chapter does not apply to:

(1) the employment of counsel by an organization to represent its members free of direct financial charge to those members; or

(2) legal services made available incidental to a contract of insurance in which the insurer has contracted to pay all or a substantial part of a judgment, if any, and the legal services are free of direct financial charge to the insured.

(b) A law pertaining to legal service contracts under Chapter 953 or insurance does not apply to a program under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1181, Sec. 3, eff. Sept. 1, 2003.

Sec. 951.004. SUPPLEMENTARY BYLAWS; RULES. (a) The board of

directors may adopt supplementary bylaws as necessary to administer and enforce this chapter.

(b) The state bar may:

- (1) adopt rules regulating the participation of a state bar member in group legal services programs; and
- (2) require periodic reporting on that participation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. REGULATION OF PILOT PROGRAM**

Sec. 951.051. APPROVAL OF PILOT PROGRAM. (a) The board may approve not more than five prepaid legal services pilot programs between classroom teachers associations and the state bar.

(b) A member of the state bar may provide legal services to a prepaid legal services program only if the organization sponsoring the program is approved by the board of directors.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 951.052. APPLICATION. (a) An applicant for approval of a prepaid legal services program must show that:

(1) the program money held by the organization sponsoring the program is secure, as evidenced by a fidelity bond for the officers of the organization authorized to manage the money;

(2) the program complies with the Disciplinary Rules of Professional Conduct;

(3) a client may obtain the services from any lawyer the client chooses; and

(4) each client is given, before entering into the program, full written information concerning:

(A) the services offered by the program;

(B) the total annual cost of the program to an individual client; and

(C) the required compliance of the program with this subsection.

(b) If the board of directors determines that an organization's application complies with this section, the board of directors shall approve the application. If the board of directors determines that the application does not substantially comply with this section, the

board of directors shall disapprove the application and provide the organization with written notice of the reasons for the disapproval.

(c) The board of directors shall approve or disapprove an application not later than the 60th day after the date the application is filed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 951.053. APPLICATION FEE. The board of directors may set a fee, in an amount reasonable and necessary to enforce this chapter, for an organization applying for approval of a prepaid legal services program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 951.054. REVOCATION OF PROGRAM APPROVAL. (a) On written notice to an organization of the reasons for revocation, the board of directors may revoke the approval of a program sponsored by the organization for failure to:

- (1) provide the services offered; or
- (2) comply with Section 951.052(a).

(b) On receipt of notice of revocation, the organization shall:

- (1) return to its clients the unspent money of the prepaid legal services program, including any available bond proceeds; and
- (2) certify to the board of directors the manner and amount of the redistribution of the money.

(c) If necessary, the board of directors shall supervise the redistribution of money under Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## **CHAPTER 952. LAWYER REFERRAL SERVICES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 952.001. SHORT TITLE. This chapter may be cited as the Texas Lawyer Referral Service Quality Assurance Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.002. DEFINITIONS. In this chapter:

(1) "Lawyer referral service" means a person or the service provided by the person that refers potential clients to lawyers regardless of whether the person uses the term "referral service" to describe the service provided.

(2) "State bar" means the State Bar of Texas.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.003. APPLICABILITY OF CHAPTER. A lawyer referral service does not include:

(1) an organization that recommends, furnishes, or pays for legal services for its members or beneficiaries and that satisfies the conditions of the Disciplinary Rules of Professional Conduct or other rules adopted by the supreme court;

(2) a plan of prepaid legal services insurance;

(3) a referral made by one lawyer to another lawyer that conforms with the Disciplinary Rules of Professional Conduct or other rules adopted by the supreme court;

(4) lawyers who jointly advertise their services in a manner that clearly shows that the advertising is intended solely to solicit clients for those lawyers; or

(5) a service of a pro bono publico legal assistance program that does not accept a fee from either the lawyer or the client.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. STATE BAR POWERS AND DUTIES**

Sec. 952.051. RULES; ENFORCEMENT. (a) The state bar shall adopt reasonable rules subject to the approval of the supreme court to administer this chapter.

(b) The state bar may enforce this chapter and the rules adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.052. FEES. The state bar may set fees, in amounts

that are reasonable and necessary to cover the costs of administering this chapter, for the issuance and renewal of a certificate under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. CERTIFICATION**

Sec. 952.101. CERTIFICATE REQUIRED. A person may not operate a lawyer referral service in this state unless the person holds a certificate issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.102. APPLICATION REQUIREMENTS; RENEWAL. (a) An applicant for a certificate or the renewal of a certificate issued under this chapter must:

(1) be operated by:

(A) a governmental entity; or

(B) a nonprofit entity exempt from the payment of federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 and its subsequent amendments by being listed as an exempt entity under Section 501(c)(3), 501(c)(4), or 501(c)(6) of that code;

(2) certify on the application provided by the state bar that the applicant operates primarily for the benefit of the public; and

(3) provide the state bar with a list containing the name, firm name, address, and business telephone number of at least 25 lawyers, each from different law firms, who have contracted with the applicant to receive referral services.

(b) The list required under Subsection (a)(3) must include each lawyer or firm that is a subscriber or potential subscriber to the applicant's services.

(c) A certificate is valid for one year from the date issued and may be renewed annually on the payment of the required renewal fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER D. REFERRAL SERVICE REQUIREMENTS**

Sec. 952.151. NOTICE REQUIREMENT. (a) A lawyer referral service shall include the following statement in any advertising or other promotional effort: "This service is certified as a lawyer referral service as required by the State of Texas under Chapter 952, Occupations Code."

(b) Advertising or other promotional materials of a lawyer referral service prepared before September 1, 1999, that comply with Section 12, Texas Lawyer Referral Service Quality Assurance Act (Article 320d, Vernon's Texas Civil Statutes), as that section existed on August 31, 1999, are not required to comply with Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.152. LAWYER PARTICIPATION. A lawyer who is licensed and in good standing in this state and who maintains an office in the geographical area served by a lawyer referral service may receive referrals of potential clients from the service if the lawyer:

- (1) complies with Section 952.155; and
- (2) pays a reasonable registration and membership fee not to exceed the amount set by state bar rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.153. PROOF OF FINANCIAL RESPONSIBILITY. A lawyer referral service may require a member, as a condition of membership, to:

- (1) obtain a policy of errors and omissions insurance; or
- (2) establish other proof of financial responsibility in an amount determined by the service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.154. SUBJECT MATTER AND OTHER PANELS. (a) A lawyer referral service shall establish specific subject matter panels.

- (b) A lawyer referral service may establish:
- (1) moderate-fee and no-fee panels;

- (2) alternative dispute resolution panels; and
- (3) other special panels that respond to the referral needs of the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.155. LIMITATIONS ON CLIENT FEES. (a) A lawyer may not charge a potential client referred to the lawyer by a referral service an amount that exceeds the total cost the client would have been required to pay, including legal fees and expenses, if a referral service had not referred the client.

(b) The combined amounts of any fee charged to a potential client by the lawyer or the referral service may not exceed \$20 for the first 30 minutes of the initial office visit with the lawyer.

(c) An agreement between a lawyer and a referral service to eliminate or restrict the fee for the first 30 minutes of an initial office visit with the lawyer does not violate any statute or rule, including Chapter 15, Business & Commerce Code.

(d) A fee charged under Subsection (b) may be used only to pay:

- (1) the reasonable operating expenses of the referral service; or
- (2) the expenses of a public service program, including a pro bono publico legal program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER E. COMPLAINT PROCEDURES AND ENFORCEMENT**

Sec. 952.201. EVALUATION AND COMPLAINT PROCEDURES. A lawyer referral service shall establish policies and procedures to:

- (1) evaluate client satisfaction with its services; and
- (2) address client complaints with regard to the referral service or the lawyers and firms that subscribe to the referral service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.202. SUSPENSION OR REMOVAL FROM LAWYER REFERRAL SERVICE. (a) A lawyer referral service shall establish written

policies and procedures to suspend or remove a lawyer or firm from the referral service's list of subscribers.

(b) The policies and procedures established under Subsection (a) must include the suspension and removal of a lawyer who fails to handle referred clients in a diligent and responsible manner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.203. INJUNCTIVE RELIEF. (a) The state bar or a lawyer referral service certified under this chapter may bring an action to enjoin a violation of this chapter and may recover costs and attorney's fees related to obtaining the injunction.

(b) Bond or other security may not be required of the state bar or a referral service as a condition for the issuance of an injunction under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## **CHAPTER 953. REGULATION OF FOR-PROFIT LEGAL SERVICE CONTRACT COMPANIES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 953.001. DEFINITIONS. In this chapter:

(1) "Administrator" means the person responsible for the administration of a legal service contract. The term includes a person responsible for any filing required by this chapter.

(2) "Company" means a person who:

(A) is contractually obligated to a legal service contract holder under the terms of a legal service contract;

(B) enters into a contract with a contracting attorney to provide or obtain covered legal services for a legal service contract holder; and

(C) operates as a for-profit legal service contract company.

(3) "Contracting attorney" means an attorney who has entered into a contract with a company to provide or obtain covered legal services for a legal service contract holder.

(4) "Department" means the Texas Department of Licensing and Regulation.

(5) "Executive director" means the executive director of



the Texas Department of Licensing and Regulation or the executive director's designee.

(6) "Financial security" means a surety bond, a certificate of deposit, or any other item approved by the executive director.

(7) "Legal service contract" means an agreement:

(A) that is entered into for a separately stated consideration; and

(B) under which the company obtains legal services for a legal service contract holder through a contracting attorney.

(8) "Legal service contract holder" means the person who purchases or otherwise holds a legal service contract or who is covered under a group legal service contract.

(9) "Person" means an individual or a partnership, company, corporation, association, or other private group.

(10) "Sales representative" means a person who sells or solicits legal service contracts to a person on behalf of a company.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.002. EXEMPTIONS. This chapter does not apply to:

(1) a nonprofit legal services corporation under Chapter 961, Insurance Code;

(2) an automobile club supplying services under Chapter 722, Transportation Code;

(3) a prepaid legal services program under Chapter 951;

(4) a lawyer referral service under Chapter 952;

(5) a retainer contract between an attorney and a client, and similar contracts made with a group of clients involved in the same or closely related legal matters; or

(6) a contingency fee contract between an attorney and a client.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.003. EXEMPTIONS FROM CERTAIN OTHER LAWS. The acts of marketing, selling, offering for sale, issuing, making, proposing to make, and administering a legal service contract that is regulated by this chapter are exempt from the Insurance Code and other laws of this state regulating the business of insurance.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.004. PREPAID LEGAL SERVICE CONTRACT PROGRAMS. (a) An insurer who issues or renews prepaid legal service contracts under Article 5.13-1, Insurance Code, shall notify the commissioner of insurance in writing not later than the 60th day before transferring regulation of the insurer's legal service contracts from the Texas Department of Insurance to the Texas Department of Licensing and Regulation. An insurer that complies with this section is exempt from the requirements of:

(1) Articles 21.49-2, 21.49-2A, 21.49-2B, 21.49-2D, and 21.49-2E, Insurance Code; and

(2) Chapter 827, Insurance Code.

(a) An insurer who issues or renews prepaid legal service contracts under Article 5.13-1, Insurance Code, shall notify the commissioner of insurance in writing not later than the 60th day before transferring regulation of the insurer's legal service contracts from the Texas Department of Insurance to the Texas Department of Licensing and Regulation. An insurer that complies with this section is exempt from the requirements of Chapters 551 and 827, Insurance Code.

(b) The exemptions described by Subsection (a) begin on the date the commissioner receives the notice under Subsection (a) and apply until the insurer registers with the department as required by Section 953.052.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.149, eff. September 1, 2005.

Sec. 953.005. POWERS AND DUTIES OF EXECUTIVE DIRECTOR. (a) The executive director may investigate a company, administrator, sales representative, or other person as necessary to enforce this chapter and protect legal service contract holders in this state.

(b) On request of the executive director, a company or sales representative shall make the records relevant to the regulation of legal service contracts in this state available to the executive

director as necessary to enable the executive director to reasonably determine compliance with this chapter.

(c) After contacting the company that has contracted with the contracting attorney, the executive director may refer a complaint received by the department concerning the performance of a contracting attorney to:

- (1) the State Bar of Texas;
- (2) the appropriate licensing agency of another jurisdiction, if applicable; or
- (3) any person designated by law to receive complaints from the public concerning the performance of an attorney.

(d) The executive director may adopt rules as necessary to implement this chapter.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

#### **SUBCHAPTER B. REGISTRATION REQUIREMENTS**

Sec. 953.051. REGISTRATION REQUIRED. (a) A person may not operate as a company or sales representative of legal service contracts sold in this state unless the person is registered with the department. A company's contract may only be sold by a sales representative who is registered with the department.

(b) A person who collects commissions for the sale of legal service contracts but who does not actively sell or solicit legal service contracts is not required to register under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.052. APPLICATION FOR REGISTRATION. (a) An applicant for registration must submit an application to the department. The application must be in the form prescribed by the executive director.

(b) An application for registration as a company must include evidence satisfactory to the executive director of compliance with the applicable financial security requirements prescribed by Subchapter C.

(c) An application for registration as a sales representative must include a list of the companies for which the sales representative will sell or solicit legal service contracts.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.053. FEES. (a) The executive director shall develop a tiered fee schedule of annual registration fees under which a company's registration fee is based on the number of legal service contracts the company sold in this state during the preceding 12-month period. The executive director shall set the amounts of the fees required by this subsection to cover the costs of administering this chapter.

(b) In addition to the annual registration fee required by Subsection (a), the executive director shall annually collect from each company a fee equal to the difference between an amount equal to 1.7 percent of the amount a company collects for legal service contracts sold by the company in this state in the current year and the amount the company paid to the state in franchise taxes in the same year. The executive director shall establish a schedule and procedure for collecting this fee.

(c) To be registered, a company must pay the appropriate fees required by this section.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.054. INFORMATION CONCERNING NUMBER OF LEGAL SERVICE CONTRACTS SOLD. Information concerning the number of legal service contracts sold by a company that is submitted under Section 953.053 is a trade secret to which Section 552.110, Government Code, applies.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.055. ADDITIONAL REQUIREMENTS FOR SALES REPRESENTATIVES. (a) The executive director may deny an application from a sales representative who:

- (1) made a material misrepresentation or fraudulent statement in the application;
- (2) has had a license revoked under the Insurance Code;
- (3) has had a license suspended or revoked under Section 82.062, Government Code; or
- (4) fails to pay the fee required under Subsection (b).

(b) Each registered sales representative shall pay an annual registration fee in the amount set by the executive director to cover the costs of administering this chapter.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.056. MODIFICATION OF REGISTRATION INFORMATION. The executive director may adopt rules regarding the procedures and fees a company or sales representative must follow and pay when requesting a modification to the company's or sales representative's registration information that is on file with the department.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.057. RENEWAL OF REGISTRATION. The executive director shall adopt rules for the renewal of a company's or sales representative's registration, including a rule that addresses late renewals.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

**SUBCHAPTER C. FINANCIAL SECURITY REQUIREMENTS FOR LEGAL SERVICE CONTRACT COMPANIES**

Sec. 953.101. FINANCIAL SECURITY REQUIREMENTS. (a) To ensure the faithful performance of a company's obligations to its legal service contract holders, each company must deposit and maintain a form of financial security with the executive director. The financial security deposited with the director must maintain at all times the following market values:

(1) a company generating \$300,000 or less in annual gross revenue in this state from the sale of legal service contracts in the preceding year shall deposit at least \$50,000 with the executive director;

(2) a company generating more than \$300,000 but less than \$750,000 in annual gross revenue in this state from the sale of legal service contracts in the preceding year shall deposit at least \$75,000 with the executive director; and

(3) a company generating \$750,000 or more in annual gross

revenue in this state from the sale of legal service contracts in the preceding year shall deposit at least \$100,000 with the executive director.

(b) For purposes of Subsection (a), if a company that had no gross revenue in this state from the sale of legal service contracts in the preceding year previously generated revenue from the sale of prepaid legal service contracts under Article 5.13-1, Insurance Code, the company shall deposit an amount of financial security based on the revenue generated from the sale of prepaid legal service contracts under the Insurance Code in the preceding year.

(c) The department is responsible for the safeguarding of financial security deposited with the executive director under this section. Financial security is not subject to taxation and is to be used exclusively to guarantee the company's performance of its obligations to its legal service contract holders.

(d) The executive director may order an increase in the amount of financial security required of a company under this section if the executive director finds that there has been a substantial change in the company, including an increase in the amount of fees the company is charging consumers or an increase in the company's annual gross revenue.

(e) Not later than the 30th day after the date the executive director orders a financial security increase under Subsection (d), the company may request a hearing on the issue. The executive director shall hold a hearing not later than the 30th day after the date a company requests a hearing.

(f) Failure of a company to meet the financial security requirements in this section not later than the 30th day after the date the executive director issues a final decision in the event of a hearing or the 30th day after the date the period for submitting a request for a hearing expires constitutes a ground for revocation of the company's registration.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.102. REPLACEMENT OR RENEWAL OF FINANCIAL SECURITY.

(a) If a company's financial security under Section 953.101 is issued or written for a specified term, not later than the 90th day before the date the term expires, the company shall:

- (1) replace the financial security; or
- (2) notify the executive director of the company's intention to renew the financial security.

(b) If, not later than the 60th day before the date the term of a company's financial security expires, the executive director does not receive satisfactory notification of a company's renewal or replacement of the financial security, the executive director may draw on the company's financial security to the extent necessary to ensure that the company's obligations to its legal service contract holders are met in accordance with this chapter.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.103. DURATION OF DEPOSIT OF FINANCIAL SECURITY. The executive director shall maintain a company's financial security deposit so long as the company continues to do business in this state. When a company ceases to do business in this state and furnishes the executive director with satisfactory proof that the company has discharged or otherwise adequately met all obligations to its legal service contract holders in this state, the executive director shall release the deposited financial security to the company.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.104. SUIT ON FINANCIAL SECURITY. (a) The state, on behalf of a legal service contract holder injured because of a company's violation of this chapter, may bring a suit for payment from the company's financial security deposit held by the executive director.

(b) The state is the only party that may bring suit for payment from a company's financial security deposit held by the executive director. This chapter does not create a private right of action.

(c) The state may only seek damages for the cost of the legal services the company failed to provide to a legal service contract holder under the terms of the legal service contract.

(d) The court shall determine the amount the executive director shall pay the consumer from the company's financial security deposit held by the executive director.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.105. ADDITIONAL FINANCIAL SECURITY REQUIREMENTS. (a) The executive director shall annually review:

(1) the audited financial statements of a company; and  
(2) a certified statement describing the company's reserves, if any.

(b) The statement described by Subsection (a)(2) must be made by an actuary who is a member in good standing of the American Academy of Actuaries.

(c) After reviewing the information described by Subsection (a), the executive director may require a company to maintain certain reserves in order for the company to obtain or maintain the company's registration.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

#### **SUBCHAPTER D. PRACTICE BY LEGAL SERVICE CONTRACT COMPANIES**

Sec. 953.151. COMPANY REQUIREMENTS. (a) A company may not sell, offer for sale, or issue a legal service contract in this state unless the company gives the legal service contract holder:

(1) a receipt for, or other written evidence of, the purchase of the contract; and  
(2) a copy of the legal service contract.

(b) A company shall perform the services as stated in the legal service contract.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.152. GROUP LEGAL SERVICE CONTRACTS. A company may issue group legal service contracts. The company shall provide a legal service contract holder who obtains a group contract with a document that describes the company's services and complies with the requirements of this chapter.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.



Sec. 953.153. CONTRACTING ATTORNEY REQUIREMENTS. A contracting attorney must:

- (1) be licensed in the jurisdiction in which the legal services are performed;
- (2) be in good standing with the entity that licenses attorneys in that jurisdiction; and
- (3) maintain professional liability and errors and omissions insurance with minimum annual limits of \$100,000 for each occurrence and \$300,000 in the aggregate.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.154. COMPANY INTERFERENCE WITH ATTORNEY'S DUTIES PROHIBITED. A company may not interfere with the attorney-client relationship or with the contracting attorney's independent exercise of professional judgment.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.155. COMPANY RECORDS. (a) A company shall maintain accurate accounts, books, and other records regarding transactions regulated under this chapter. The company's records must include:

- (1) a copy of each unique form of legal service contract filed with the executive director under Section 953.156;
- (2) the name and address of each legal service contract holder;
- (3) a list of the sales representatives authorized by the company to market, sell, or offer to sell the company's legal service contracts;
- (4) a copy of each contract entered into between the company and a contracting attorney; and
- (5) a list of complaints the company has received from legal service contract holders, including the name of the sales representative involved in the transaction leading to the complaint.

(b) The records required by this section may be maintained in an electronic medium or through other recordkeeping technology. If a record is not in a hard copy, the company must be able to reformat the record into a legible hard copy at the request of the executive director.

(c) Except as provided by Subsection (d), a company shall retain the records required by this section until at least the second anniversary of the termination date of the specified period of coverage under the legal service contract.

(d) A company that discontinues business in this state shall retain its records until the company furnishes the executive director with proof satisfactory to the executive director that the company has discharged all obligations to legal service contract holders in this state.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.156. FORM OF LEGAL SERVICE CONTRACT AND REQUIRED DISCLOSURES. (a) A legal service contract must be filed with the executive director before it is marketed, sold, offered for sale, administered, or issued in this state. Any subsequent endorsement or attachment to the contract must also be filed with the executive director before the endorsement or attachment is delivered to legal service contract holders.

(b) A legal service contract marketed, sold, offered for sale, administered, or issued in this state must:

(1) be written, printed, or typed in clear, understandable language that is easy to read;

(2) include the name and full address of the company;

(3) include the purchase price of the contract and the terms under which the contract is sold;

(4) include the terms and restrictions governing cancellation of the contract by the company or the legal service contract holder;

(5) identify:

(A) any administrator, if the administrator is not the company;

(B) the sales representative; and

(C) the name of the legal service contract holder;

(6) include the amount of any deductible or copayment;

(7) specify the legal services and other benefits to be provided under the contract, and any limitation, exception, or exclusion;

(8) specify the legal services, if any, for which the

company will provide reimbursement and the amount of that reimbursement;

(9) specify any restriction governing the transferability of the contract or the assignment of benefits;

(10) include the duties of the legal service contract holder;

(11) include the contact information for the department, including the department's toll-free number and electronic mail address, as well as a statement that the department regulates the company and the company's sales representatives;

(12) explain the method to be used in resolving the legal service contract holder's complaints and grievances;

(13) explain how legal services may be obtained under the legal service contract;

(14) include a provision stating that no change in the contract is valid until the change has been approved by an executive officer of the company and unless the approval is endorsed or attached to the contract;

(15) include any eligibility and effective date requirements, including a definition of eligible dependents and the effective date of their coverage;

(16) include the conditions under which coverage will terminate;

(17) explain any subrogation arrangements;

(18) contain a payment provision that provides for a grace period of at least 31 days;

(19) include conditions under which contract rates may be modified; and

(20) include any other items required by the executive director as determined by rule.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.157. TERMINATING A LEGAL SERVICE CONTRACT. A legal service contract holder may terminate the legal service contract if the legal service contract holder provides the company with written notice of the legal service contract holder's intention of terminating the contract not later than the seventh day after the date the legal service contract holder receives the contract.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.158. VOIDING A LEGAL SERVICE CONTRACT. (a) If a legal service contract holder terminates a legal service contract in accordance with Section 953.157 and the holder has not sought legal services under the contract before the contract is terminated, the contract is void.

(b) A legal service contract holder may void the legal service contract at a later time as provided by the contract.

(c) If a legal service contract is voided, the company shall refund to the legal service contract holder or credit to the account of the legal service contract holder the full purchase price of the contract. If the company does not pay the refund or credit the legal service contract holder's account before the 46th day after the date the contract is voided, the company is liable to the legal service contract holder for a penalty each month an amount remains outstanding. The monthly penalty may not exceed 10 percent of the amount outstanding.

(d) The right to void a legal service contract is not transferable.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.159. CANCELING A LEGAL SERVICE CONTRACT. (a) A company may cancel a legal service contract by mailing a written notice of cancellation to the legal service contract holder at the legal service contract holder's last known address according to the records of the company. The company must mail the notice before the fifth day preceding the effective date of the cancellation. The notice must state the effective date of the cancellation and the reason for the cancellation.

(b) The company is not required to provide prior notice of cancellation if the legal service contract is canceled because of:

- (1) nonpayment of the consideration for the contract;
- (2) a material misrepresentation by the legal service contract holder to the company;
- (3) a substantial breach of a duty by the legal service contract holder; or

(4) cancellation of the contract by the legal service contract holder.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.160. LIMITATIONS ON COMPANY NAME. (a) A company may not use a name that:

(1) includes "insurance," "casualty," "surety," or "mutual" or any other word descriptive of the insurance, casualty, or surety business; or

(2) is deceptively similar to the name or description of an insurance or surety corporation or to the name of any other company.

(b) This section does not apply to a company that, before September 1, 2003, included a word prohibited under this section in its name. A company described by this subsection must include in each legal service contract a statement substantially similar to the following: "This agreement is not an insurance contract."

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.161. MISLEADING STATEMENTS PROHIBITED. A company, a sales representative, or a representative of a sales representative may not, in the company's contracts or marketing:

(1) make, permit, or cause to be made any false or misleading statement; or

(2) deliberately omit a material statement if the omission would be considered misleading.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.162. APPOINTMENT AND RESPONSIBILITIES OF ADMINISTRATOR. (a) A company may appoint an administrator or designate a person to be responsible for:

(1) all or any part of the administration or sale of legal service contracts; and

(2) compliance with this chapter.

(b) The executive director may adopt rules regarding the registration of an administrator with the department.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

#### **SUBCHAPTER E. DISCIPLINARY ACTION**

Sec. 953.201. DISCIPLINARY ACTION. On a finding that a ground for disciplinary action exists under this chapter, the executive director may impose an administrative sanction, including any administrative penalty, as provided by Chapter 51.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.202. EMERGENCY CEASE AND DESIST ORDER. (a) The executive director may issue an emergency cease and desist order to enforce this chapter if the executive director determines that an emergency exists requiring immediate action to protect the public.

(b) The executive director may issue the emergency cease and desist order without notice and hearing if the executive director determines that an immediate issuance is necessary under the circumstances.

(c) The executive director shall set the time and place for a hearing to affirm, modify, or set aside an emergency cease and desist order that was issued without a hearing.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.203. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The executive director may institute an action against a company or sales representative for injunctive relief under Section 51.352 to restrain a violation or a threatened violation of this chapter or an order issued or rule adopted under this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the executive director may institute an action for a civil penalty as provided by Section 51.352.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.204. ADMINISTRATIVE PROCEDURE. Sections 51.310, 51.353, and 51.354 apply to a disciplinary action taken under this

chapter.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.205. APPEAL. A person affected by a ruling, order, decision, or other action of the executive director or department may appeal by filing a petition in a district court in Travis County.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

#### **CHAPTER 954. PETROLEUM AND MINERAL LAND SERVICES**

Sec. 954.001. EXCEPTION TO PRACTICE OF LAW. For the purposes of the definition in Section 81.101, Government Code, the "practice of law" does not include acts relating to the lease, purchase, sale, or transfer of a mineral or mining interest in real property or an easement or other interest associated with a mineral or mining interest in real property if:

(1) the acts are performed by a person who does not hold the person out as an attorney licensed to practice law in this state or in another jurisdiction; and

(2) the person is not a licensed attorney.

Added by Acts 2003, 78th Leg., ch. 696, Sec. 1, eff. June 20, 2003. Renumbered from Occupations Code, Section 953.001 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(75), eff. September 1, 2005.

### **TITLE 6. REGULATION OF ENGINEERING, ARCHITECTURE, LAND SURVEYING, AND RELATED PRACTICES**

#### **SUBTITLE A. REGULATION OF ENGINEERING AND RELATED PRACTICES**

##### **CHAPTER 1001. ENGINEERS**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1001.001. SHORT TITLE. This chapter may be cited as The Texas Engineering Practice Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Professional Engineers.

(2) "Engineer" means a person licensed to engage in the practice of engineering in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.003. PRACTICE OF ENGINEERING. (a) In this section:

(1) "Design coordination" includes the review and coordination of technical submissions prepared by others, including the work of other professionals working with or under the direction of an engineer with professional regard for the ability of each professional involved in a multidisciplinary effort.

(2) "Engineering survey" includes any survey activity required to support the sound conception, planning, design, construction, maintenance, or operation of an engineered project. The term does not include the surveying of real property or other activity regulated under Chapter 1071.

(b) In this chapter, "practice of engineering" means the performance of or an offer or attempt to perform any public or private service or creative work, the adequate performance of which requires engineering education, training, and experience in applying special knowledge or judgment of the mathematical, physical, or engineering sciences to that service or creative work.

(c) The practice of engineering includes:

(1) consultation, investigation, evaluation, analysis, planning, engineering for program management, providing an expert engineering opinion or testimony, engineering for testing or evaluating materials for construction or other engineering use, and mapping;

(2) design, conceptual design, or conceptual design coordination of engineering works or systems;

(3) development or optimization of plans and specifications for engineering works or systems;

(4) planning the use or alteration of land or water or the design or analysis of works or systems for the use or alteration of land or water;

(5) responsible charge of engineering teaching or the teaching of engineering;



- (6) performing an engineering survey or study;
- (7) engineering for construction, alteration, or repair of real property;
- (8) engineering for preparation of an operating or maintenance manual;
- (9) engineering for review of the construction or installation of engineered works to monitor compliance with drawings or specifications;
- (10) a service, design, analysis, or other work performed for a public or private entity in connection with a utility, structure, building, machine, equipment, process, system, work, project, or industrial or consumer product or equipment of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature;
- (11) providing an engineering opinion or analysis related to a certificate of merit under Chapter 150, Civil Practice and Remedies Code; or
- (12) any other professional service necessary for the planning, progress, or completion of an engineering service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.001(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 259 (H.B. [1817](#)), Sec. 1, eff. September 1, 2005.

Sec. 1001.0031. PRACTICES OF ENGINEERING AND ARCHITECTURE. (a) Except as provided by Subsection (d) or (e), the practice of engineering does not include, and engineers may not engage in or offer to engage in, the practice of architecture as defined by Sections 1051.001(7)(A), (B), and (C), as that definition existed on April 1, 2011, and by Section 1051.0016(a).

(b) An engineer may not prepare or provide a complete, comprehensive set of building plans for a building designed for human use or occupancy unless:

- (1) the plans and specifications as described by Section 1051.001(7)(A) or (B) are prepared by, or under the supervision of, an architect;

(2) the building is part of a project described by Section 1051.601(b) or a building described by Section 1051.606(a)(4); or

(3) the engineer has received administrative approval by the Texas Board of Architectural Examiners to practice architecture under Section 1051.607.

(c) An engineer is responsible for the engineering plans and specifications of a building unless the work is exempt under Section 1001.053 or 1001.056. In this section, the term "engineering plans and specifications" means:

(1) plans for a structural, mechanical, electrical, electronic, fire suppression, or geotechnical system in a building;

(2) specifications of structural elements and connections of a building;

(3) foundation design;

(4) hydrologic management calculations and design of surface water control and detention necessary for compliance with ordinances and regulations;

(5) design of building drain and waste system plumbing, fresh water plumbing, graywater systems, and mechanical aspects of moving water in and out of a structure, other than simple roof drainage;

(6) evaluation of structural framing members before the addition of roof-mounted equipment or a heavier roof covering;

(7) design of changes in roof pitch by the addition of structural framing members;

(8) evaluation and repair of damaged roof structural framing;

(9) design of electrical and signal and control systems;

(10) shop drawings by manufacturers or fabricators of materials and products to be used in the building features designed by the engineer; and

(11) specifications listing the nature and quality of materials and products for construction of features of the building elements or systems designed by an engineer.

(d) The preparation of engineering plans and specifications for the following tasks is within the scope of practice of both engineering and architecture:

(1) site plans depicting the location and orientation of a building on the site based on:

(A) a determination of the relationship of the intended

use with the environment, topography, vegetation, climate, and geographic aspects; and

(B) the legal aspects of site development, including setback requirements, zoning and other legal restrictions, and surface drainage;

(2) the depiction of the building systems, including structural, mechanical, electrical, and plumbing systems, in:

(A) plan views;

(B) cross-sections depicting building components from a hypothetical cut line through a building; and

(C) the design of details of components and assemblies, including any part of a building exposed to water infiltration or fire-spread considerations;

(3) life safety plans and sheets, including accessibility ramps and related code analyses; and

(4) roof plans and details depicting the design of roof system materials, components, drainage, slopes, and directions and location of roof accessories and equipment not involving structural engineering calculations.

(e) The following activities may be performed by either an engineer or an architect:

(1) programming for construction projects, including:

(A) identification of economic, legal, and natural constraints; and

(B) determination of the scope of functional elements;

(2) recommending and overseeing appropriate construction project delivery systems;

(3) consulting with regard to, investigating, and analyzing the design, form, materials, and construction technology used for the construction, enlargement, or alteration of a building or its environment; and

(4) providing expert opinion and testimony with respect to issues within the responsibility of the engineer or architect.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1157 (H.B. [2284](#)), Sec. 1, eff. September 1, 2011.

Sec. 1001.004. LEGISLATIVE PURPOSE AND INTENT; LIBERAL CONSTRUCTION OF CHAPTER. (a) The legislature recognizes the vital

impact that the rapid advance of knowledge of the mathematical, physical, and engineering sciences as applied in the practice of engineering has on the lives, property, economy, and security of state residents and the national defense.

(b) The purpose of this chapter is to:

- (1) protect the public health, safety, and welfare;
- (2) enable the state and the public to identify persons authorized to practice engineering in this state; and
- (3) fix responsibility for work done or services or acts performed in the practice of engineering.

(c) The legislature intends that:

- (1) the privilege of practicing engineering be entrusted only to a person licensed and practicing under this chapter;
  - (2) only a person licensed under this chapter may:
    - (A) engage in the practice of engineering;
    - (B) be represented in any way as any kind of "engineer"; or
    - (C) make any professional use of the term "engineer";
- and

(3) this chapter be strictly complied with and enforced.

(d) This chapter shall be liberally construed to carry out the intent of the legislature.

(e) This chapter does not:

- (1) prevent a person from identifying the person in the name and trade of any engineers' labor organization with which the person is affiliated;
- (2) prohibit or otherwise restrict a person from giving testimony or preparing an exhibit or document for the sole purpose of being placed in evidence before an administrative or judicial tribunal, subject to the board's disciplinary powers under Subchapter J regarding negligence, incompetency, or misconduct in the practice of engineering;
- (3) repeal or amend a law affecting or regulating a licensed state land surveyor; or
- (4) affect or prevent the practice of any other legally recognized profession by a member of the profession who is licensed by the state or under the state's authority.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 1, eff. Sept. 1,

2003.

Sec. 1001.005. APPLICATION OF SUNSET ACT. The Texas Board of Professional Engineers is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2025.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 1.05, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 402 (S.B. 204), Sec. 1, eff. September 1, 2013.

#### **SUBCHAPTER B. EXEMPTIONS**

Sec. 1001.051. LIMITATION ON EXEMPTION. An exemption under this subchapter applies only to a person who does not offer to the public to perform engineering services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 2, eff. Sept. 1, 2003.

Sec. 1001.052. EMPLOYEE OF LICENSE HOLDER. A person who is an employee or subordinate of an engineer is exempt from the licensing requirements of this chapter if the person's practice does not include responsible charge of design or supervision.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.053. PUBLIC WORKS. The following work is exempt from this chapter:

(1) a public work that involves electrical or mechanical engineering, if the contemplated expense for the completed project is

\$8,000 or less;

(2) a public work that does not involve electrical or mechanical engineering, if the contemplated expense for the completed project is \$20,000 or less; or

(3) road maintenance or improvement undertaken by the commissioners court of a county.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 273, Sec. 1, eff. June 18, 2003.

Sec. 1001.054. FEDERAL OFFICER OR EMPLOYEE. An officer or employee of the United States is exempt from the licensing requirements of this chapter during the time the officer or employee is engaged in the practice of engineering for the United States in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.055. MECHANICAL, ELECTRICAL, OR OTHER EQUIPMENT. (a) A person is exempt from the licensing requirements of this chapter if the person is installing, operating, repairing, or servicing a locomotive or stationary engine, steam boiler, diesel engine, internal combustion engine, refrigeration compressor or system, hoisting engine, electrical engine, air conditioning equipment or system, or mechanical, electrical, electronic, or communications equipment or apparatus.

(b) This exemption does not permit a person to:

(1) sign an engineering plan or specification if the person is not an engineer; or

(2) use the term "engineer" or "engineering" in any manner prohibited by this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.056. CONSTRUCTION OR REPAIR OF AND PLANS FOR CERTAIN BUILDINGS. (a) A person, sole proprietorship, firm, partnership, joint stock association, or private corporation is exempt from the licensing requirements of this chapter if:

(1) a representation that engineering services have been or will be offered to the public is not made or implied; and

(2) the person or entity is erecting, constructing, enlarging, altering, or repairing or is drawing plans or specifications for:

(A) a private dwelling;

(B) apartments not exceeding eight units for each building in the case of one-story buildings;

(C) apartments not exceeding four units for each building and having a maximum height of two stories;

(D) a garage or other structure pertinent to a building described by Paragraph (A), (B), or (C);

(E) a private building to be used exclusively for:

(i) farm, ranch, or agricultural purposes; or

(ii) storage of raw agricultural commodities; or

(F) a building having no more than one story that:

(i) is not a building exempt from the licensing requirements of this chapter under Section 1001.053 or subject to Section 1001.407;

(ii) has a total floor area of not more than 5,000 square feet; and

(iii) does not contain a clear span between supporting structures greater than 24 feet on the narrow side.

(b) If a structure described by Subsections (a)(2)(F)(i) and (ii) contains unsupported spans greater than 24 feet, only the trusses, beams, or other roof supporting members must be engineered or pre-engineered.

(c) The exemption provided by this section does not apply to a person or entity that is:

(1) providing engineering design or inspection services necessary to comply with windstorm certification standards for a residential dwelling under Subchapter F, Chapter 2210, Insurance Code; or

(2) providing engineering design relating to constructing, enlarging, altering, or repairing, or drawing plans or specifications for, a residential dwelling slab located on expansive soil that meets the expansive soil classification provisions of the International Residential Code as applied in the jurisdiction in which the residential dwelling is located, unless the construction, enlargement, alteration, repair, or drawing of plans or

specifications meets the International Residential Code requirements as applied in the jurisdiction in which the residential dwelling is located.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1142 (H.B. 2649), Sec. 1, eff. June 19, 2009.

Sec. 1001.057. EMPLOYEE OF PRIVATE CORPORATION OR BUSINESS ENTITY. (a) This chapter shall not be construed to apply to the activities of a private corporation or other business entity, or the activities of the full-time employees or other personnel under the direct supervision and control of the business entity, on or in connection with:

(1) reasonable modifications to existing buildings, facilities, or other fixtures to real property not accessible to the general public and which are owned, leased, or otherwise occupied by the entity; or

(2) activities related only to the research, development, design, fabrication, production, assembly, integration, or service of products manufactured by the entity.

(b) A person who claims an exemption under this section and who is determined to have directly or indirectly represented the person as legally qualified to engage in the practice of engineering or who is determined to have violated Section 1001.301 may not claim an exemption until the 10th anniversary of the date the person made that representation.

(c) This exemption does not prohibit:

(1) a licensed professional engineer who intends to incorporate manufactured products into a fixed work, system, or facility that is being designed by the licensee on public property or the property of others from requiring the manufacturer to have plans or specifications signed and sealed by a licensed professional engineer; or

(2) the board from requiring, by rule, that certain manufactured products delivered to or used by the public must be designed and sealed by a licensed professional engineer, if necessary to protect the public health, safety, and welfare.



(d) For purposes of this section, "products manufactured by the entity" also includes computer software, firmware, hardware, semiconductor devices, and the production, exploration, and transportation of oil and gas and related products.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 3, eff. Sept. 1, 2003.

Sec. 1001.058. EMPLOYEE OF CERTAIN UTILITIES OR AFFILIATES.

(a) A regular full-time employee of a privately owned public utility or cooperative utility or of the utility's affiliate is exempt from the licensing requirements of this chapter if the employee:

(1) performs services exclusively for the utility or affiliate; and

(2) does not have the final authority to approve, or the ultimate responsibility for, engineering designs, plans, or specifications that are to be:

(A) incorporated into fixed works, systems, or facilities on the property of others; or

(B) made available to the public.

(b) A person who claims an exemption under this section and who is determined to have directly or indirectly represented the person as legally qualified to engage in the practice of engineering or who is determined to have violated Section 1001.301 may not claim an exemption until the 10th anniversary of the date the person made that representation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 4, eff. Sept. 1, 2003.

Sec. 1001.059. QUALIFIED SCIENTISTS. A qualified scientist engaged in scientific research and investigation of the physical or natural sciences is exempt from the licensing requirements of this chapter. This exemption includes the usual work and activities of a meteorologist, seismologist, geologist, chemist, geochemist, physicist, or geophysicist.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.060. SOIL AND WATER CONSERVATION. Agricultural work performed in carrying out soil and water conservation practices is exempt from this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.061. TELEPHONE COMPANIES. (a) An operating telephone company, an affiliate of the company, or an employee of the company or affiliate is exempt from this chapter with respect to any plan, design, specification, or service that relates strictly to the science and art of telephony.

(b) This exemption includes the use of a job title or personnel classification by a person included under Subsection (a) if the person does not use:

(1) the title or classification in connection with an offer to the public to perform engineering services; and

(2) a name, title, or word that tends to convey the impression that a person not licensed under this chapter is offering to the public to perform engineering services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.062. CERTAIN EMPLOYEES WORKING FROM ENGINEER'S PLANS. (a) A regular full-time employee of a private business entity who is engaged in erecting, constructing, enlarging, altering, repairing, rehabilitating, or maintaining an improvement to real property in accordance with plans or specifications that have an engineer's seal is exempt from this chapter.

(b) This exemption includes the use of a job title or personnel classification by the employee if the employee does not use the title or classification in connection with an offer to the public to perform engineering services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.063. ARCHITECTS, LANDSCAPE ARCHITECTS, AND INTERIOR DESIGNERS. This chapter or a rule adopted under this chapter does not prevent or otherwise restrict a person licensed as an architect under Chapter 1051, a landscape architect under Chapter 1052, or an interior designer under Chapter 1053 from performing an act, service, or work that is within the definition of the person's practice under those chapters.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.064. STATE LAND SURVEYORS. A licensed state land surveyor is exempt from this chapter in performing a state land surveyor's duties.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.065. EMPLOYEES OF INSTITUTIONS OF HIGHER EDUCATION.

(a) In this section, "institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003, Education Code.

(b) An employee of an institution of higher education or a private or independent institution of higher education who is performing research or instructional work within the scope of the person's employment by the institution is exempt from the licensing requirements of this chapter.

Acts 2003, 78th Leg., ch. 1276, Sec. 14A.002(a), eff. Sept. 1, 2003.

Sec. 1001.066. CERTAIN NASA-RELATED ACTIVITIES. This chapter does not:

(1) apply to a business entity or the business entity's employees to the extent that the entity's products or services consist of space vehicles or space services provided to, or space technology transfer programs required by, the National Aeronautics and Space Administration; or

(2) prohibit the use of the term "engineer" or "engineering" in a job title or personnel classification by an employee described by Subdivision (1) to the extent that the use of

the title or classification is related to activities described by that subdivision.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 5, eff. Sept. 1, 2003.

Sec. 1001.067. CERTAIN FIRE DEPARTMENT EMPLOYEES. This chapter does not prohibit the professional use of the term "fire engineer" by a member of a fire department in a municipality with a population of one million or more that has adopted Chapter 143, Local Government Code, and to which Subchapter G of that chapter does not generally apply, who:

- (1) holds the position of fire apparatus operator; and
- (2) is not otherwise engaged in the practice of engineering.

Added by Acts 2009, 81st Leg., R.S., Ch. 1142 (H.B. [2649](#)), Sec. 2, eff. June 19, 2009.

Sec. 1001.068. CERTAIN OUT-OF-STATE ENGINEERS ENGAGED IN EVALUATING OIL AND GAS RESOURCES. (a) In this section, "evaluation of oil and gas resources" includes:

- (1) the quantification of the volume of oil and gas reserves and resources in the subsurface of the earth;
- (2) the determination of production forecasts for the reserves or resources; and
- (3) the evaluation of the economic impact of the production forecasts.

(b) This chapter does not apply to the evaluation of oil and gas resources if the evaluation:

- (1) is done by an engineer licensed in a state that does not prohibit engineers licensed under this chapter from engaging in the evaluation of oil and gas resources in that state;
- (2) does not involve design, construction, or engineering assessments on the surface; and
- (3) does not present a risk to public health or safety.

Added by Acts 2011, 82nd Leg., R.S., Ch. 161 (H.B. [2067](#)), Sec. 1, eff. May 28, 2011.

**SUBCHAPTER C. TEXAS BOARD OF PROFESSIONAL ENGINEERS**

Sec. 1001.101. BOARD MEMBERSHIP. (a) The Texas Board of Professional Engineers consists of nine members appointed by the governor with the advice and consent of the senate as follows:

- (1) six engineers; and
- (2) three members who represent the public.

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 6, eff. Sept. 1, 2003.

Sec. 1001.102. MEMBER ELIGIBILITY. (a) A person may not be a public member of the board if the person or the person's spouse:

- (1) is registered, certified, or licensed by a regulatory agency in the field of engineering;
- (2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the board; or
- (4) uses or receives a substantial amount of tangible goods, services, or money from the board other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

(b) An engineer member of the board must:

- (1) be a citizen of the United States and a resident of this state for at least 10 years before the date of appointment; and
- (2) have been engaged in the practice of engineering for at least 10 years before the date of appointment.

(c) For purposes of Subsection (b)(2), a person who has graduated from an approved engineering school may be considered to have engaged in the practice of engineering for two years.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 7, eff. Sept. 1, 2003.

Sec. 1001.103. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(a-1) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of engineering; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of engineering.

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 8, eff. Sept. 1, 2003.

Sec. 1001.104. TERMS; VACANCY. (a) Board members serve staggered six-year terms, with the terms of one-third of the members expiring each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.105. PARTICIPATION OF PUBLIC MEMBERS. (a) The board by majority vote may limit the participation of public members in evaluating license applications.

(b) This section does not apply to the evaluation of license applications at an official meeting of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.106. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

- (1) does not have at the time of taking office the qualifications required by Sections 1001.101 and 1001.102;
- (2) does not maintain during service on the board the qualifications required by Sections 1001.101 and 1001.102;
- (3) is ineligible for membership under Section 1001.102 or 1001.103;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 9, eff. Sept. 1, 2003.

Sec. 1001.107. PER DIEM. A board member is entitled to receive a per diem as set by the General Appropriations Act for each day that the member engages in the business of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 837 (H.B. 899), Sec. 1, eff.  
September 1, 2007.

Sec. 1001.108. OFFICERS. The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor. The board shall elect annually from its members an assistant presiding officer, a treasurer, and a secretary.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 10, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 837 (H.B. 899), Sec. 2, eff.  
September 1, 2007.

Sec. 1001.110. MEETINGS. The board shall hold at least two regular meetings each year. Special meetings shall be held at the time provided by the board's bylaws.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.111. FILING OF OATH. Before assuming the duties of office, each board member shall file with the secretary of state a copy of the constitutional oath of office taken by the member.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.112. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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



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

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

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 11, eff. Sept. 1, 2003.

#### **SUBCHAPTER D. BOARD PERSONNEL**

Sec. 1001.151. PERSONNEL. (a) The board shall employ clerical or other assistants as necessary to perform the board's work.

(b) A salary paid under this section may not exceed the salary paid for similar work in other departments.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.152. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of each nonentry level position

with the board at least 10 days before the date of any public posting.

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.153. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 12, eff. Sept. 1, 2003.

Sec. 1001.154. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide to members of the board and to board employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 12, eff. Sept. 1, 2003.

Sec. 1001.155. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

(a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

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

personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 12, eff. Sept. 1, 2003.

#### **SUBCHAPTER E. BOARD POWERS AND DUTIES**

Sec. 1001.201. GENERAL POWERS AND DUTIES. (a) The board shall administer and enforce this chapter.

(b) The board may spend money for any purpose the board considers reasonably necessary for the proper performance of its duties under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.202. RULES. The board may adopt and enforce any rule or bylaw necessary to perform its duties, govern its proceedings, and regulate the practice of engineering.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.203. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board by rule shall prescribe standards for compliance with Subchapter A, Chapter 2254, Government Code.

(b) Except as provided by Subsection (a), the board may not adopt rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.

(c) In its rules to prohibit false, misleading, or deceptive practices, the board may not include a rule that:

- (1) restricts the use of any medium for advertising;
- (2) restricts the use of a license holder's personal appearance or voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the license holder; or
- (4) restricts the license holder's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 13, eff. Sept. 1, 2003.

Sec. 1001.2035. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.  
The board shall adopt rules and guidelines as necessary to comply with Chapter 53.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 14, eff. Sept. 1, 2003.

Sec. 1001.204. FEES. (a) The board shall establish the following fees in amounts reasonable and necessary to cover the costs of administering this chapter:

- (1) license fee;
- (2) annual and late renewal fees;
- (3) reciprocal license fee;
- (4) duplicate license fee;
- (5) engineer-in-training certificate fee;
- (6) roster of engineers fee;
- (7) examination fee;
- (8) registration fee for engineering firm; and
- (9) inactive status fee.

(b) Fee revenue may not exceed the amount reasonable and necessary to administer this chapter.

(c) General revenue of the state may not be used to pay the costs of administering this chapter in an amount that exceeds the amount of fees received under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 15, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 259 (H.B. 1817), Sec. 2, eff. September 1, 2005.

Sec. 1001.205. REDUCED FEES: ELDERLY, DISABLED, INACTIVE STATUS. (a) For purposes of this section, a person is disabled if the person has a mental or physical impairment that substantially limits the ability of the person to earn a living as an engineer, other than an impairment caused by a current addiction to the use of alcohol or an illegal drug or controlled substance.

(b) The board by rule may adopt reduced license fees and annual renewal fees for engineers who are:

(1) at least 65 years of age; or

(2) disabled and not actively engaged in the practice of engineering.

(c) A person entitled to reduced fees under Subsection (b)(2) shall notify the board that the person has resumed the active practice of engineering not later than the 15th day after the date the person resumes active practice.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.206. FEE INCREASE. (a) The fee for a license under this chapter, for the annual renewal of that license, and for a reciprocal license under this chapter is increased by \$200. The fee increase shall be collected at the time of the issuance or renewal of the license.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

(c) The fee increase imposed by Subsection (a) does not apply to an engineer who:

(1) meets the qualifications for an exemption under Section 1001.057 or 1001.058 but does not claim that exemption;

(2) is disabled as described by Section 1001.205;

(3) is on inactive status as provided by Section 1001.355;

or

(4) is 65 years of age or older.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 16, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 837 (H.B. 899), Sec. 3, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 402 (S.B. 204), Sec. 2, eff. September 1, 2013.

Sec. 1001.207. STANDARDS OF CONDUCT AND ETHICS. The board may establish standards of conduct and ethics for engineers in keeping with the purposes and intent of this chapter and to ensure strict compliance with and enforcement of this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.208. ROSTER OF ENGINEERS. (a) The board shall prepare and publish a roster of persons, including business entities, licensed, registered, certified, or enrolled by the board. The roster shall include the name, business address, and other identifying information required by board rule.

(b) The board shall make the roster available to the public without cost in an online computer database format.

(c) The board shall provide a physical copy of the roster on request and may charge a reproduction and shipping fee for providing a physical copy of the roster.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.209. REGISTER OF APPLICANTS. The board shall maintain a register of license applications that shows:

- (1) the name, age, and residence of each applicant;
- (2) the date of the application;
- (3) the applicant's place of business;
- (4) the applicant's educational and other qualifications;
- (5) whether an examination was required;
- (6) whether the applicant was issued or denied a license;
- (7) the date of board action; and

(8) any other information the board considers necessary.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.210. CONTINUING EDUCATION PROGRAMS. (a) The board shall recognize, prepare, or administer continuing education programs for its license holders. A license holder must participate in the programs to the extent required by the board to keep the person's license.

(b) The board may not require a license holder to obtain more than 15 hours of continuing education annually. The board shall permit a license holder to certify at the time the license is renewed that the license holder has complied with the board's continuing education requirements.

(c) The board shall permit a license holder to receive continuing education credit for educational, technical, ethical, or professional management activities related to the practice of engineering, including:

(1) successfully completing or auditing a course sponsored by an institution of higher education;

(2) successfully completing a course certified by a professional or trade organization;

(3) attending a seminar, tutorial, short course, correspondence course, videotaped course, or televised course;

(4) participating in an in-house course sponsored by a corporation or other business entity;

(5) teaching a course described by Subdivisions (1)-(4);

(6) publishing an article, paper, or book on the practice of engineering;

(7) making or attending a presentation at a meeting of a technical or engineering management society or organization or writing a paper presented at such a meeting;

(8) participating in the activities of a professional society or association, including serving on a committee of the organization; and

(9) engaging in self-directed study.

(d) A license holder may not receive more than five continuing education credit hours annually for engaging in self-directed study.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 17, eff. Sept. 1, 2003.

Sec. 1001.211. RECORDS. (a) The board shall maintain a record of its proceedings.

(b) The board's records shall be available to the public at all times.

(c) The board's records are prima facie evidence of the proceedings of the board set forth in the records. A transcript of the records certified by the secretary of the board under seal is admissible in evidence with the same effect as if it were the original.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.212. CONFIDENTIALITY OF CERTAIN INFORMATION RELATED TO LICENSE APPLICATION. (a) A statement made by a person providing a reference for an applicant and other pertinent information compiled by or submitted to the board relating to an applicant for a license under this chapter is privileged and confidential.

(b) Information described by Subsection (a) may be used only by the board or its employees or agents who are directly involved in the application or licensing process. The information is not subject to discovery, subpoena, or other disclosure.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.213. SUBPOENA. (a) The board may request and, if necessary, compel by subpoena:

(1) the attendance of a witness for examination under oath; and

(2) the production for inspection or copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) The board, acting through the attorney general, may bring an action to enforce a subpoena issued under Subsection (a) against a person who fails to comply with the subpoena.

(c) Venue for an action brought under Subsection (b) is in a



district court in:

- (1) Travis County; or
- (2) the county in which the board may hold a hearing.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.214. TECHNOLOGY POLICY. The board shall develop and implement a policy requiring the executive director and board employees to research and propose appropriate technological solutions to improve the board's ability to perform its functions. The technological solutions must:

- (1) ensure that the public is able to find information about the board on the Internet;
- (2) ensure that persons who want to use the board's services are able to:
  - (A) interact with the board through the Internet; and
  - (B) access any service that can be provided effectively through the Internet; and
- (3) be cost-effective and developed through the board's planning processes.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 18, eff. Sept. 1, 2003.

Sec. 1001.215. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:

- (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and
- (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

- (1) coordinate the implementation of the policy adopted

under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 18, eff. Sept. 1, 2003.

#### **SUBCHAPTER F. CONSUMER INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 1001.251. CONSUMER INTEREST INFORMATION. (a) The board shall prepare information of consumer interest describing the regulatory functions of the board and the procedures by which consumer complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

(c) The board shall maintain on the board's Internet website:

(1) information regarding the procedure for filing a complaint with the board; and

(2) a form that a person may use to file a complaint with the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 19, eff. Sept. 1, 2003.

Sec. 1001.252. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules that permit the board to receive and investigate a confidential complaint against a license holder or other person who may have violated this chapter. The board shall maintain the confidentiality of the complaint during the investigation.

(b) The board by rule shall specify:

(1) the manner by which a person may contact the board for assistance in filing a complaint;

(2) the place at which a complaint must be filed;

(3) the proper form of a complaint; and

(4) the information that must be included in a complaint.

(c) The board's procedures must permit a member of the public

who desires to file a complaint to:

(1) speak to an investigator on the staff of the board if the person desires to do so; or

(2) easily and conveniently access the board's complaint process without being required to speak to an investigator on the staff of the board if the person does not desire to speak to an investigator.

(d) The board shall consider any written grievance against a license holder or other person filed with the board as a complaint.

(e) A complaint must include information sufficient for the board to determine whether it has the authority to resolve the complaint. A complaint that contains sufficient information for the board to commence an investigation is not required to include all of the information necessary for the board to determine the validity of the complaint.

(f) On receipt of a complaint, the board shall determine whether the board has the authority to resolve the complaint. If the board does not have the authority to resolve the complaint, the board shall dismiss the complaint. If the board has the authority to resolve the complaint, the board shall initiate a disciplinary proceeding against the person who is the subject of the complaint.

(g) The board by rule shall prescribe a method for prioritizing complaints for purposes of complaint investigation. In establishing priorities:

(1) a complaint that alleges an action that could potentially harm the public takes precedence over a complaint that does not allege an action that could potentially harm the public; and

(2) with regard to complaints that do not allege an action that could potentially harm the public, a complaint filed by a member of the public takes precedence over a complaint filed by the staff of the board.

(h) The board's staff is responsible for conducting all phases of complaint investigation, including gathering evidence necessary to determine the validity of the complaint.

(i) The board may employ or contract with advisors, consultants, engineers, or other persons to provide technical assistance in investigations and disciplinary proceedings. Except for an action involving fraud, conspiracy, or malice, a person whose services are obtained by the board under this subsection is immune

from civil liability and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding made, or other action taken in the course of performing the person's official duties.

(j) The board's staff shall regularly report to the board on each complaint dismissed by board staff, including:

- (1) the name of the complainant;
- (2) the name of the person who is the subject of the complaint;
- (3) the basis of the complaint; and
- (4) the reason for the dismissal of the complaint.

(k) Except as provided by Subsection (l), a complaint filed with the board is public information.

(l) For any complaint determined to be frivolous or without merit, the complaint and other enforcement case information related to that complaint are confidential. The information may be used only by the board or by its employees or agents directly involved in the enforcement process for that complaint. The information is not subject to discovery, subpoena, or other disclosure.

(m) In this section, "frivolous complaint" means a complaint that the executive director and investigator, with board approval, determined:

- (1) was made for the purpose of harassment; and
- (2) does not demonstrate harm to any person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 20, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 259 (H.B. 1817), Sec. 3, eff. September 1, 2005.

Sec. 1001.253. COMPLAINT INFORMATION. (a) The board shall:

- (1) assign a number to each complaint filed with the board;
- and
- (2) ensure that each phase of the processing of a complaint is appropriately documented.

(b) The board shall maintain a file on each written complaint filed with the board. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the board;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint.

(c) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(d) The board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 20, eff. Sept. 1, 2003.

Sec. 1001.254. STATISTICAL ANALYSIS OF COMPLAINTS. (a) The board shall develop and maintain a complaint tracking system to monitor the processing of complaints filed with the board.

(b) The board shall include with the board's annual financial report under Section 2101.011, Government Code, a statistical analysis of the complaints filed with the board during the preceding year, including:

- (1) the number of complaints filed;
- (2) a categorization of complaints filed according to the basis of the complaint and the number of complaints in each category;
- (3) the number of complaints filed by board staff;
- (4) the number of complaints filed by persons other than board staff;
- (5) the average length of time required to resolve a complaint;
- (6) the number of complaints resolved and the manner in

which they were resolved, including:

(A) the number of complaints dismissed and the reasons for dismissal; and

(B) the number of complaints resulting in disciplinary action, the disciplinary action taken, and whether the disciplinary action taken was imposed by stipulation, agreed settlement, consent order, default, or order following a contested case hearing; and

(7) the number of complaints filed that are unresolved, the number of those complaints filed by board staff, the number of those complaints filed by persons other than board staff, and the average length of time that the unresolved complaints have been on file.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 21, eff. Sept. 1, 2003.

Sec. 1001.255. PUBLIC PARTICIPATION. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 21, eff. Sept. 1, 2003.

#### **SUBCHAPTER G. LICENSE REQUIREMENTS**

Sec. 1001.301. LICENSE REQUIRED. (a) A person may not engage in the practice of engineering unless the person holds a license issued under this chapter.

(b) Except as provided by Subsection (f), a person may not, unless the person holds a license issued under this chapter, directly or indirectly use or cause to be used as a professional, business, or commercial identification, title, name, representation, claim, asset, or means of advantage or benefit any of, or a variation or abbreviation of, the following terms:

- (1) "engineer";
- (2) "professional engineer";
- (3) "licensed engineer";
- (4) "registered engineer";
- (5) "registered professional engineer";
- (6) "licensed professional engineer"; or
- (7) "engineered."

(c) Except as provided by Subsection (f), a person may not

directly or indirectly use or cause to be used an abbreviation, word, symbol, slogan, or sign that tends or is likely to create an impression with the public that the person is qualified or authorized to engage in the practice of engineering unless the person holds a license and is practicing under this chapter.

(d) A person may not receive any fee or compensation or the promise of any fee or compensation for engaging in the practice of engineering unless the person holds a license issued under this chapter.

(e) A person, sole proprietorship, firm, partnership, association, or corporation that engages in or offers or attempts to engage in conduct described by this section is conclusively presumed to be engaged in the practice of engineering.

(f) Notwithstanding the other provisions of this chapter, a regular employee of a business entity who is engaged in engineering activities but is exempt from the licensing requirements of this chapter under Sections 1001.057 or 1001.058 is not prohibited from using the term "engineer" on a business card, cover letter, or other form of correspondence that is made available to the public if the person does not:

(1) offer to the public to perform engineering services;  
or

(2) use the title in any context outside the scope of the exemption in a manner that represents an ability or willingness to perform engineering services or make an engineering judgment requiring a licensed professional engineer.

(g) Subsection (f) does not authorize a person to use a term listed in Subsections (b)(2)-(6) or a variation or abbreviation of one of those terms.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 22, eff. Sept. 1, 2003.

Sec. 1001.302. LICENSE ELIGIBILITY REQUIREMENTS. (a) An applicant for a license under this chapter must submit evidence satisfactory to the board showing at least that the applicant has:

(1) graduated from:

(A) an engineering curriculum approved by the board as

having satisfactory standing; or

(B) an engineering or related science curriculum at a recognized institution of higher education, other than a curriculum approved by the board under Paragraph (A);

(2) passed the examination requirements prescribed by the board; and

(3) engaged in the active practice of engineering for at least:

(A) four years, if the applicant graduated from a curriculum described by Subdivision (1)(A); or

(B) eight years, if the applicant graduated from a curriculum described by Subdivision (1)(B).

(b) To satisfy the requirement of Subsection (a)(3), an applicant must submit a specific record showing engineering work of a character satisfactory to the board indicating that the applicant is competent to be placed in responsible charge of that work.

(c) For purposes of determining an applicant's qualifications under Subsection (a)(3), the board may not consider as active practice in engineering work:

(1) engineering teaching;

(2) the mere execution, as a contractor, of work designed by an engineer; or

(3) the supervision, as a foreman or superintendent, of the construction of work designed by an engineer.

(d) A person is not eligible to be licensed as an engineer unless the person is of good character and reputation.

(e) A person who has the necessary license qualifications described by this chapter is eligible for the license regardless of whether the person is practicing at the time the person applies for the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.003(a), eff. Sept. 1, 2003.

Sec. 1001.303. APPLICATION FOR LICENSE. (a) An applicant for a license under this chapter must submit an application on a form prescribed and provided by the board.

(b) The application must contain:



(1) personal information about the applicant, as required by board rule;

(2) a description of the applicant's education;

(3) a detailed summary of the applicant's actual engineering work;

(4) a description of any engineering license or registration previously issued to the applicant and any denial, revocation, or suspension of an engineering license or registration held by the applicant;

(5) a description of any criminal offense of which the applicant has been convicted; and

(6) at least three references from engineers having personal knowledge of the applicant's character, reputation, general suitability for a license, and engineering experience.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 23, eff. Sept. 1, 2003.

Sec. 1001.3035. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) The board shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The board may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The board shall conduct a criminal history check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect

from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history check.

Added by Acts 2013, 83rd Leg., R.S., Ch. 402 (S.B. 204), Sec. 5, eff. September 1, 2013.

Sec. 1001.304. EXAMINATION. (a) The board shall administer examinations to determine the qualifications of applicants for a license.

(b) The board shall prescribe the scope of the examination and the methods of procedure with special reference to an applicant's ability to design and supervise engineering works to ensure the safety of life, health, and property.

(c) On payment of the examination fee, the board shall administer an oral or written examination to a qualified applicant at a time and place determined by the board.

(d) The board by rule shall ensure that the examination is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), and its subsequent amendments.

(e) The board shall:

(1) adopt policies and guidelines detailing the procedures for the examination process, including examination admission, examination administration, and national examination requirements; and

(2) post on the board's Internet website the policies that reference the examination procedures of the board or, if applicable, the national organization selected by the board to administer an examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 24, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 402 (S.B. 204), Sec. 3, eff. September 1, 2013.

Sec. 1001.305. WAIVER OF EXAMINATION REQUIREMENT. The board by rule may waive all or part of the examination requirement for an

applicant for the issuance or reissuance of a license. The board may not waive the requirement unless the board first determines that:

- (1) the applicant possesses sufficient qualifications to justify the waiver; and
- (2) issuing or reissuing the license to the applicant does not pose a threat to the public health, safety, or welfare.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.306. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes a licensing examination under this chapter, the board shall notify the person of the results of the examination.

(a-1) If the examination is graded or reviewed by a testing service:

(1) the board shall notify the person of the results of the examination not later than the 14th day after the date the board receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall notify the person of the reason for the delay before the 90th day.

(b) The board may require a testing service to notify a person of the results of the person's examination.

(c) If requested in writing by a person who fails a licensing examination administered under this chapter, the board shall furnish the person with an analysis of the person's performance on the examination.

(d) Examination results reported under this section must include a numerical score and an indication of whether the person passed or failed the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 25, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 837 (H.B. 899), Sec. 4, eff. September 1, 2007.

Sec. 1001.307. REEXAMINATION. The board may permit

reexamination of an applicant on payment of an appropriate reexamination fee in an amount set by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.308. ISSUANCE OF LICENSE. (a) On payment of the license fee, the board shall issue a license authorizing the practice of engineering to an applicant who, in the board's opinion, has met all the requirements of this subchapter.

(b) A license shall:

- (1) show the full name of the license holder;
- (2) have a serial number; and
- (3) be signed by the presiding officer and the secretary of the board under the board's seal.

(c) A license is evidence that the person named on the license is entitled to all rights and privileges of an engineer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.309. CERTIFICATION OR ENROLLMENT OF ENGINEERS-IN-TRAINING. (a) The board shall certify or enroll as an engineer-in-training an applicant who meets the requirements of Subsection (b) if the applicant is otherwise qualified.

(b) The board shall consider as minimum evidence that an applicant is qualified for certification or enrollment as an engineer-in-training if the applicant:

- (1) complies with the education and character requirements of Section 1001.302; and
- (2) has passed the board's examination in the fundamentals of engineering.

(c) The fee for an engineer-in-training certificate or enrollment must accompany the application.

(d) The certification or enrollment of an engineer-in-training is valid for eight years.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 402 (S.B. 204), Sec. 4, eff. September 1, 2013.

Sec. 1001.310. TEMPORARY OR PROVISIONAL LICENSE. (a) The board by rule may adopt standards and procedures for issuing a temporary or provisional license under this chapter.

(b) The board may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as an engineer for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the board relating to the practice of engineering; and

(3) is sponsored by a person licensed by the board under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(c) The board may waive the requirement of Subsection (b)(3) for an applicant if the board determines that compliance with that subsection would be a hardship to the applicant.

(d) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this chapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 1001.311(b); or

(2) the provisional license holder meets the following requirements:

(A) the provisional license holder passes an examination that tests the provisional license holder's knowledge and understanding of the laws and rules relating to the practice of engineering in this state;

(B) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this chapter; and

(C) the provisional license holder satisfies any other licensing requirements under this chapter.

(e) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the

180-day period if the results of an examination have not been received by the board before the end of that period.

(f) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 25, eff. Sept. 1, 2003.

Sec. 1001.311. APPLICATION BY NONRESIDENT. (a) A person who holds a license or certificate of registration issued by another state or a foreign country may apply for a license in this state.

(b) The board may waive any prerequisite to obtaining a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 25, eff. Sept. 1, 2003.

Sec. 1001.312. REPLACEMENT LICENSE. The board, subject to board rules, may issue a new license to replace a license that is lost, destroyed, or mutilated.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

#### **SUBCHAPTER H. LICENSE RENEWAL**

Sec. 1001.351. ANNUAL RENEWAL REQUIRED. (a) The board shall provide for the annual renewal of a license or registration issued under this chapter.

(b) The board by rule may adopt a system under which licenses and registrations expire on various dates during the year. For the year in which the license or registration expiration date is changed, the board shall prorate license or registration fees on a monthly basis so that each license or registration holder pays only that

portion of the license or registration fee that is allocable to the number of months during which the license or registration is valid. On renewal of the license or registration on the new expiration date, the total license or registration renewal fee is payable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 26, eff. Sept. 1, 2003.

Sec. 1001.352. NOTICE OF LICENSE EXPIRATION. Not later than the 30th day before the date a person's license is scheduled to expire, the board shall send written notice of the impending expiration to the person at the person's last known address according to the records of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 27, eff. Sept. 1, 2003.

Sec. 1001.353. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required annual renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board the required annual renewal fee, a late renewal fee, and any applicable increase in fees as required by Section 1001.206.

(c) A person whose license has been expired for more than 90 days but less than two years may renew the license by paying to the board the required annual renewal fee, a late renewal fee, and any applicable increase in fees as required by Section 1001.206 for each delinquent year or part of a year.

(d) A person whose license has been expired for two years or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 27, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 259 (H.B. 1817), Sec. 4, eff. September 1, 2005.

Sec. 1001.3535. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. (a) An applicant renewing a license issued under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history check of the applicant as provided by Section 1001.3035.

(b) The board may not renew the license of a person who does not comply with the requirement of Subsection (a).

(c) A license holder is not required to submit fingerprints under this section for the renewal of the license if the license holder has previously submitted fingerprints under:

- (1) Section 1001.3035 for the initial issuance of the license; or
- (2) this section as part of a prior license renewal.

Added by Acts 2013, 83rd Leg., R.S., Ch. 402 (S.B. 204), Sec. 6, eff. September 1, 2013.

Sec. 1001.354. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination.

(b) The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 28, eff. Sept. 1, 2003.

Sec. 1001.355. INACTIVE STATUS. (a) An engineer may request inactive status at any time. A license holder on inactive status may not practice engineering.

(b) A license holder on inactive status must pay an annual fee



set by the board.

(c) A license holder on inactive status is not required to:

- (1) comply with the continuing education requirements adopted by the board; or
- (2) take an examination for reinstatement to active status.

(d) To return to active status, a license holder on inactive status must:

- (1) file with the board a written notice requesting reinstatement to active status;
- (2) pay the fee for the annual renewal of the license and the fee increase required by Section 1001.206; and
- (3) provide evidence satisfactory to the board that the person has complied with the continuing education requirements adopted by the board.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 28, eff. Sept. 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 837 (H.B. 899), Sec. 5, eff. September 1, 2007.

#### **SUBCHAPTER I. PRACTICE OF ENGINEERING**

Sec. 1001.401. USE OF SEAL. (a) On receiving a license, a license holder shall obtain a seal in a design authorized by the board, showing the license holder's name and the legend "Licensed Professional Engineer" or "Registered Professional Engineer."

(b) A plan, specification, plat, or report issued by a license holder for a project to be constructed or used in this state must include the license holder's seal placed on the document. A license holder is not required to use a seal required by this section if the project is to be constructed or used in another state or country.

(c) A person may not place a seal on a document if the license of the license holder named on the seal has expired or has been suspended or revoked.

(d) A license holder is not required to use a seal under this section for a project for which the license holder is not required to hold a license under an exemption provided by Subchapter B.

(e) A license holder shall not be required to provide or hold any additional certification, other than a license issued under this chapter, to seal an engineering plan, specification, plat, or report.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 259 (H.B. 1817), Sec. 5, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 837 (H.B. 899), Sec. 6, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1142 (H.B. 2649), Sec. 3, eff. June 19, 2009.

Sec. 1001.402. ENFORCEMENT BY CERTAIN PUBLIC OFFICIALS. A public official of the state or of a political subdivision of the state who is responsible for enforcing laws that affect the practice of engineering may accept a plan, specification, or other related document only if the plan, specification, or other document was prepared by an engineer, as evidenced by the engineer's seal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.403. PROFESSIONAL IDENTIFICATION. A person licensed under this chapter shall use the term "Engineer," "Professional Engineer," or "P.E." in the professional use of the person's name on a sign, directory, listing, document, contract, pamphlet, stationery, advertisement, signature, or another similar written or printed form of identification.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.404. ELIGIBILITY FOR APPOINTED STATE POSITION. An engineer is eligible to hold any appointive engineering position with the state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.405. PRACTICE BY BUSINESS ENTITY; REGISTRATION. (a) In this section, "business entity" includes a sole proprietorship, firm, partnership, corporation, or joint stock association.

(b) A business entity may not engage in the practice of

engineering in this state unless:

- (1) the business entity is registered with the board; and
- (2) the practice is carried on only by engineers.

(c) A business entity may register under this section by filing an application with the board on a form provided by the board. In addition to any other information required by board rule, the application must list the name and address of each officer or director of the business entity and each engineer who engages in the practice of engineering on behalf of the business entity.

(d) The registration of a business entity issued under this section expires on the first anniversary of the date the registration is issued. The registration may be renewed by the filing of an updated application under Subsection (c).

(e) A business entity may not represent to the public that it is engaged in the practice of engineering under any business name or use or cause to be used the term "engineer," "engineering," "engineering services," "engineering company," "engineering, inc.," "professional engineers," "licensed engineer," "registered engineer," "licensed professional engineer," "registered professional engineer," or "engineered," or any abbreviation or variation of those terms, or directly or indirectly use or cause to be used any of those terms in combination with other words, letters, signs, or symbols as a part of any sign, directory, listing, contract, document, pamphlet, stationery, advertisement, signature, or business name unless:

- (1) the business entity is registered under this section;
- (2) the business entity is actively engaged in the practice of engineering; and

(3) each service, work, or act performed by the business entity that is part of the practice of engineering is either personally performed by an engineer or directly supervised by an engineer who is a regular full-time employee of the business entity.

(f) This section does not prohibit an engineer from performing engineering services on a part-time basis.

(g) Notwithstanding the other provisions of this section, the board by rule may provide that a business entity that has not previously registered with the board and that is engaged in the practice of engineering in violation of Subsection (b) is not subject to disciplinary action for the violation if the business entity registers with the board not later than the 30th day after the date the board gives written notice to the business entity of the

registration requirement. This subsection does not apply to a business entity whose registration has expired.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 29, eff. Sept. 1, 2003.

Sec. 1001.406. GRADUATE ENGINEERS. (a) A graduate of a university recognized by the American Association of Colleges and Universities who has a degree from an engineering program accredited by the Accreditation Board for Engineering and Technology (ABET) has the right to:

(1) disclose any college degree received by the person;  
and

(2) use the term "graduate engineer" on the person's stationery or business cards or in personal communications of any character.

(b) A graduate engineer who is employed in a firm registered under this chapter and who is working under the direct supervision of a licensed professional engineer may use the term "engineer" on the person's stationery or business cards or in personal communications of any character.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 30, eff. Sept. 1, 2003.

Sec. 1001.407. CONSTRUCTION OF CERTAIN PUBLIC WORKS. The state or a political subdivision of the state may not construct a public work involving engineering in which the public health, welfare, or safety is involved, unless:

(1) the engineering plans, specifications, and estimates have been prepared by an engineer; and

(2) the engineering construction is to be performed under the direct supervision of an engineer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

**SUBCHAPTER J. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES**

Sec. 1001.451. DISCIPLINARY POWERS OF BOARD. On a determination that a ground for disciplinary action exists under Section 1001.452, the board may:

- (1) deny an application for a license;
- (2) revoke, suspend, or refuse to renew a license;
- (3) probate the suspension of a license; or
- (4) formally or informally reprimand a license holder.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.452. GROUNDS FOR DISCIPLINARY ACTION. A person is subject to disciplinary action under Section 1001.451 for:

- (1) a violation of this chapter or a board rule;
- (2) fraud or deceit in obtaining a license;
- (3) a documented instance of retaliation by an applicant against an individual who has served as a reference for that applicant;
- (4) gross negligence, incompetency, or misconduct in the practice of engineering; or
- (5) a failure to timely provide plans or specifications to the Texas Department of Licensing and Regulation as required by Article 9102, Revised Statutes.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.4525. PROBATION. (a) If a person's license suspension is probated, the board may require the person to:

- (1) report regularly to the board on matters that are the basis of the probation;

- (2) limit practice to the areas prescribed by the board;

or

- (3) continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(b) The board by rule shall adopt written guidelines to ensure that probation is administered consistently.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 31, eff. Sept. 1, 2003.

Sec. 1001.4526. RESTITUTION. (a) Subject to Subsection (b), the board may order a person licensed or registered under this chapter to pay restitution to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) The amount of restitution ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the person for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a restitution order.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 31, eff. Sept. 1, 2003.

Sec. 1001.4527. RECUSAL OF BOARD MEMBER. (a) A board member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint:

(1) may not vote on the matter at a board meeting related to the complaint; and

(2) shall state at the meeting why the member is prohibited from voting on the matter.

(b) A statement under Subsection (a)(2) shall be entered into the minutes of the meeting.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 31, eff. Sept. 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 837 (H.B. 899), Sec. 7, eff. September 1, 2007.

Sec. 1001.4528. EMERGENCY SUSPENSION. (a) The board or a three-member panel of board members designated by the board shall temporarily suspend the license, certificate, or registration of a person if the board or panel determines from the evidence or information presented to it that continued practice by the person would constitute a continuing and imminent threat to the public welfare.

(b) A license, certificate, or registration may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2013, 83rd Leg., R.S., Ch. 402 (S.B. 204), Sec. 7, eff. September 1, 2013.

Sec. 1001.453. REVIEW OF LICENSE HOLDER'S STATUS. (a) The board by rule may review the status of a license holder the board believes:

(1) may have been issued a license through fraud or error; or

(2) may constitute a threat to the public health, safety, or welfare.

(b) The board may suspend or revoke a license held by a person whose status is reviewed under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.454. RIGHT TO HEARING. (a) If the board proposes to suspend or revoke a person's license, the person is entitled to a hearing.

(b) Proceedings for the suspension or revocation of a license are governed by Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.455. APPEAL OF LICENSE REVOCATION. A person whose license has been revoked may file suit to annul or vacate the board's order revoking the license. The person may file the suit in the

district court of the county in which:

- (1) the person resides; or
- (2) the alleged conduct that is the ground for revocation

occurred.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.456. REISSUANCE OF REVOKED LICENSE. The board may reissue a license to a person whose license has been revoked if the board has sufficient reason to reissue the license. At least six board members must vote for reissuance of the license. A new license may be issued in accordance with board rules.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

#### **SUBCHAPTER K. ADMINISTRATIVE PENALTY**

Sec. 1001.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts or resistance to efforts to correct the violation; and



(6) any other matter that justice may require.

(c) The board may include in the amount of the penalty the actual costs of investigating and prosecuting the violation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 402 (S.B. 204), Sec. 8, eff. September 1, 2013.

Sec. 1001.503. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court and that is:

(i) for the amount of the penalty; and

(ii) effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after

the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or give a supersedeas bond.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.504. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.505. DETERMINATION BY COURT. (a) If a court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If a court does not sustain the determination that a violation occurred, the court shall order that an administrative penalty is not owed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.506. REMITTANCE OF PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall:

(1) order the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond:

(A) if the person gave a supersedeas bond and the penalty is not upheld by the court; or

(B) after the person pays the penalty if the person gave a supersedeas bond and the penalty is reduced.

(b) The interest paid under Subsection (a)(1) is at the rate charged on loans to depository institutions by the New York Federal

Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.508. ADMINISTRATIVE PROCEDURE. (a) A proceeding under this subchapter is subject to Chapter 2001, Government Code.

(b) The board shall adopt rules of procedure for imposing an administrative penalty. The rules must conform to the requirements of Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

#### **SUBCHAPTER L. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 1001.551. INJUNCTION. (a) In addition to any other action authorized by law, the board may bring an action in the board's name to enjoin a person from violating this chapter or a board rule.

(b) An action under this section must be brought in a district court of Travis County.

(c) To sustain an action under this section, the board is not required to allege or prove that:

- (1) an adequate remedy at law does not exist; or
- (2) substantial or irreparable damage would result from the continued violation.

(d) In an action for an injunction under this section, the defendant may assert and prove as a complete defense to the action that the board deprived the defendant of a license by a board action or proceeding that was:

- (1) arbitrary or capricious;
- (2) contrary to law; or
- (3) conducted without due process of law.

(e) Either party to an action under this section may appeal to the appellate court with jurisdiction of the action.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.5511. CEASE AND DESIST ORDER. If it appears to the board that a person who is not licensed, certified, or registered under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of engineering, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

Added by Acts 2013, 83rd Leg., R.S., Ch. 402 (S.B. 204), Sec. 9, eff. September 1, 2013.

Sec. 1001.552. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) engages in the practice of engineering without being licensed or exempted from the licensing requirement under this chapter;

(2) violates this chapter;

(3) presents or attempts to use as the person's own the license or seal of another; or

(4) gives false evidence of any kind to the board or a board member in obtaining a license.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.553. REPORT OF VIOLATION. A public official shall report a violation of this chapter to the proper authorities.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.554. PRESENTATION OF COMPLAINTS BY BOARD; ASSISTANCE AT TRIAL. (a) A member of the board may present to a prosecuting officer a complaint relating to a violation of this chapter.

(b) The board through its members, officers, counsel, and agents and subject to the control of the prosecuting officer may assist in the trial of a case involving an alleged violation of this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.555. ATTORNEY GENERAL AS LEGAL ADVISOR;  
REPRESENTATION BY ATTORNEY GENERAL. (a) The attorney general shall:

- (1) act as legal advisor of the board;
- (2) provide legal assistance to the board as necessary to enforce this chapter and make it effective; and
- (3) represent the board in an action brought to enforce this chapter.

(b) This section does not affect the duties of local prosecuting officers.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.556. APPEAL BOND. The board is not required to give an appeal bond in a cause arising under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

#### **SUBCHAPTER M. ADVISORY OPINIONS**

Sec. 1001.601. BOARD ADVISORY OPINIONS. (a) On its own initiative or at the request of any interested person, the board shall prepare a written advisory opinion about:

- (1) an interpretation of this chapter; or
- (2) the application of this chapter to a person in regard to a specified existing or hypothetical factual situation.

(b) The board shall respond to requests for opinions within 180 days unless the board affirmatively states the board's reason:

- (1) for not responding to the request within 180 days; or
- (2) for not responding to the request at all.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 32, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 259 (H.B. [1817](#)), Sec. 6, eff. September 1, 2005.

Sec. 1001.602. MAINTENANCE OF OPINIONS; SUMMARY. The board

shall:

(1) number and classify each advisory opinion issued under this subchapter; and

(2) annually compile a summary of the opinions in a single reference document that is available on the Internet.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 32, eff. Sept. 1, 2003.

Sec. 1001.603. ATTORNEY GENERAL'S OPINIONS. The authority of the board to issue an advisory opinion under this subchapter does not affect the authority of the attorney general to issue an opinion as authorized by law.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 32, eff. Sept. 1, 2003.

Sec. 1001.604. RELIANCE ON ADVISORY OPINION. It is a defense to prosecution or to imposition of a civil penalty that a person reasonably relied on a written advisory opinion of the board relating to:

(1) the provision of the law the person is alleged to have violated; or

(2) a fact situation that is substantially similar to the fact situation in which the person is involved.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 32, eff. Sept. 1, 2003.

#### **SUBCHAPTER N. WINDSTORM-RELATED DESIGN SERVICES**

Sec. 1001.651. DEFINITIONS. In this subchapter:

(1) "Association" means the Texas Windstorm Insurance Association.

(2) "Plan of operation" means the plan of operation of the association.

(3) "Windstorm certification standards" means the building specifications and building codes applicable to insurable property under Subchapter F, Chapter 2210, Insurance Code, and the plan of operation, and applicable rules of the Texas Department of Insurance.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 56, eff.

September 28, 2011.

Sec. 1001.652. QUALIFICATIONS; ROSTER. (a) The board shall:

- (1) review the plan of operation and the windstorm certification standards; and
- (2) in consultation with the Texas Department of Insurance, adopt rules establishing criteria for determining whether an engineer possesses the knowledge, understanding, and professional competence to be qualified to provide engineering design services related to compliance with applicable windstorm certification standards under Subchapter F, Chapter 2210, Insurance Code.

(b) The board shall prepare and publish a roster of engineers who satisfy the criteria adopted under Subsection (a)(2) and shall make the roster available to the public without cost in an online computer database format.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 56, eff. September 28, 2011.

Sec. 1001.653. COMPLIANCE WITH BUILDING CODES; ENFORCEMENT.

(a) The board, in consultation with the Texas Department of Insurance, shall adopt rules requiring an engineer who is providing engineering design services to comply with windstorm certification standards.

(b) The board may inspect a structure to ensure an engineer's compliance with Subsection (a).

(c) If the board determines that an engineer's engineering design services related to windstorm certification standards do not comply with the standards, the board may:

- (1) issue an emergency order prohibiting the engineer from entering into a contract to provide design services related to compliance with applicable windstorm certification standards for a period not to exceed 30 days;

- (2) remove the engineer from the roster described by Section 1001.652(b); or

- (3) determine that a structure was not constructed, altered, remodeled, enlarged, repaired, or added to according to the applicable windstorm certification standards and report that finding

to the association and the Texas Department of Insurance.

(d) The board shall give the engineer notice of any action under this section.

(e) A violation of this subchapter, including a violation of the windstorm inspection standards, is grounds for disciplinary action under Section 1001.452.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 56, eff. September 28, 2011.

## **CHAPTER 1002. GEOSCIENTISTS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1002.001. SHORT TITLE. This chapter may be cited as the Texas Geoscience Practice Act.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Professional Geoscientists.

(2) "Certified geoscientist" means a geoscientist who has been certified in a discipline of geoscience by a professional organization, society, or association that maintains a certification program.

(3) "Geoscience" means the science of the earth and its origin and history, the investigation of the earth's environment and its constituent soils, rocks, minerals, fossil fuels, solids, and fluids, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the earth.

(3-a) "Geoscience firm" means a firm, corporation, or other business entity as defined by the board and registered by the board to engage in the public practice of geoscience.

(4) "Geoscientist" means a person qualified to engage in the public practice of geoscience because of the person's knowledge, acquired through education and practical experience, of geoscience, mathematics, and the supporting physical, chemical, mineralogical, morphological, and life sciences.

(4-a) "Geoscientist in training" means a person registered



by the board on the basis of education and who meets other requirements established by the board but who is not fully qualified to become a licensed geoscientist under this chapter.

(5) "Licensed geoscientist" or "professional geoscientist" means a person who holds a license issued by the board under this chapter.

(6) "Practice for the public":

(A) means providing professional geoscientific services:

(i) for a governmental entity in this state;

(ii) to comply with a rule established by this state or a political subdivision of this state; or

(iii) for the public or a firm or corporation in this state if the practitioner assumes the ultimate liability for the work product; and

(B) does not include services provided for the express use of a firm or corporation by an employee or consultant if the firm or corporation assumes the ultimate liability for the work product.

(7) "Public practice of geoscience" means the practice for the public of geoscientific services or work, including consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work and the responsible supervision of those tasks.

(8) "Responsible charge" means the independent control and direction of geoscientific work or the supervision of geoscientific work by the use of initiative, skill, and independent judgment.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 504 (S.B. 940), Sec. 1, eff. September 1, 2009.

Sec. 1002.003. APPLICATION OF SUNSET ACT. The Texas Board of Professional Geoscientists is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2019.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept.

1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1227 (H.B. 1116), Sec. 4.01, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 4.07, eff. June 17, 2011.

Sec. 1002.004. APPLICATION OF CHAPTER. (a) In this section:

(1) "Driller" has the meaning assigned by Section 1901.001.

(2) "Engineer" has the meaning assigned by Section

1001.002.

(3) "Installer" has the meaning assigned by Section

1902.001.

(4) "Licensed driller" means a person who holds a license issued by the state under Chapter 1902.

(5) "Licensed installer" means a person who holds a license issued under Chapter 1902.

(6) "Practice of engineering" has the meaning assigned by Section 1001.003.

(7) "Professional surveying" has the meaning assigned by Section 1071.002.

(b) This chapter does not authorize the practice of professional surveying by a licensed geoscientist. This chapter does not apply to a qualified and registered surveyor who confines the surveyor's practice to acts of surveying allowed under Chapter 1071.

(c) This chapter does not authorize the practice of engineering by a licensed geoscientist.

(d) This chapter does not require an engineer, or a person acting under the supervision of an engineer, who performs service or work that is both engineering and geoscience to be licensed as a geoscientist or to work under the supervision of a licensed geoscientist.

(e) A recommendation, design, analysis, redesign, or review and evaluation, the supervision, or a summary analysis of an engineered structure or work, the performance of which requires engineering education, training, and experience in the application of special knowledge of mathematical, physical, and engineering sciences, is engineering and is subject to Chapter 1001.

(f) This chapter does not permit a licensed geoscientist to

perform an engineering analysis supporting an engineering design unless the action is under the supervision of an engineer.

(g) This chapter does not permit a licensed geoscientist to provide construction quality control and evaluation, to perform materials engineering and testing, or to design, develop, or perform engineering review and evaluation of engineering plans and engineering specifications for an engineered structure or work unless the action is under the supervision of an engineer.

(h) With regard to an environmental and pollution remediation project, this chapter:

(1) permits the characterization, study, appraisal, investigation, analysis, and geoscientific review and evaluation of and the making of recommendations regarding the geoscientific components of the project by a licensed geoscientist; and

(2) does not permit the design, development, or performance of engineering review and evaluation of a component of the project consisting of an engineered structure, work, or process or a related constructed improvement by a licensed geoscientist.

(i) With regard to a geoscientific investigation of geological conditions affecting an engineered structure, work, or process, this chapter:

(1) permits the characterization, study, appraisal, investigation, analysis, and geoscientific review and evaluation of and the making of recommendations regarding the geoscientific components of the engineered structure, work, or process by a licensed geoscientist; and

(2) does not permit the design, development, or performance of engineering review and evaluation of the engineered structure, work, or process or a related constructed improvement by a licensed geoscientist.

(j) The board and the Texas Board of Professional Engineers by rule, memorandum of understanding, or other appropriate procedure or document shall jointly resolve any conflict between this chapter or a rule adopted under this chapter and Chapter 1001 or a rule adopted under that chapter.

(k) This chapter does not authorize a licensed geoscientist to act as or offer to perform services as a driller or installer. This chapter does not apply to a licensed driller or licensed installer who confines the driller's or installer's activities to activities regulated under Chapter 1901 or 1902, respectively.

(1) The board and the executive director of the Texas Department of Licensing and Regulation by rule, memorandum of understanding, or other appropriate procedure or document shall jointly resolve any conflict between this chapter or a rule adopted under this chapter and Chapter 51, 1901, or 1902 or a rule adopted under one of those chapters.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER B. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS**

Sec. 1002.051. BOARD MEMBERSHIP. (a) The Texas Board of Professional Geoscientists shall administer this chapter.

(b) The board is composed of nine members appointed by the governor with the advice and consent of the senate.

(c) Six members of the board must be licensed geoscientists.

(d) Three members of the board must be members of the public.

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

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.052. MEMBER ELIGIBILITY. (a) A member of the board must:

(1) be a citizen of the United States;

(2) have been a resident of this state for at least the three years preceding appointment; and

(3) be at least 25 years of age.

(b) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in a discipline of geoscience;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization

regulated by or receiving money from the board; or

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

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "society or trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used in Section 13, Fair Labor Standards Act of 1938 (29 U.S.C. Section 213), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a society or trade association in a discipline of geoscience; or

(2) the person's spouse is an officer, manager, or paid consultant of a society or trade association in a discipline of geoscience.

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

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.054. TERMS. (a) Members of the board serve staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year.

(b) A member of the board may not serve more than two consecutive full terms.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.055. GROUND FOR REMOVAL. (a) It is a ground for removal from the board that a member:

- (1) is no longer qualified for appointment to the board;
- (2) engages in misconduct, is determined to be incompetent, neglects the member's official duties, or engages in malfeasance;
- (3) commits a violation of this chapter resulting in disciplinary action or a felony; or
- (4) fails without excuse to attend at least half of the regularly scheduled meetings held in a calendar year while the member is a member of the board.

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

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the assistant presiding officer, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.056. REIMBURSEMENT FOR TRAVEL EXPENSES. A member of the board is entitled to reimbursement for the travel expenses incurred by the member while conducting the business of the board, as provided by the General Appropriations Act.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.057. OFFICERS. (a) The board shall elect biennially

from its own membership a presiding officer, assistant presiding officer, and secretary-treasurer. A member may not hold one of those positions for more than two consecutive two-year periods. A member serves in the position at the will of the board and may be removed from the position by a two-thirds majority vote of the board.

(b) The board may appoint an assistant secretary and other assistants who are not members of the board to assist the board and exercise its authority in carrying out the board's powers and duties.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.058. OFFICE. The board shall maintain its office in Austin.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.059. MEETINGS. The board shall hold at least two regular meetings in each calendar year. A special meeting may be held at a time permitted by board rule.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.060. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

- (1) the legislation that created the board;
- (2) the programs operated by the board;
- (3) the role and functions of the board;
- (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigative authority;
- (5) the current budget for the board;

- (6) the results of the most recent formal audit of the board;
  - (7) the requirements of:
    - (A) the open meetings law, Chapter 551, Government Code;
    - (B) the public information law, Chapter 552, Government Code;
    - (C) the administrative procedure law, Chapter 2001, Government Code; and
    - (D) other laws relating to public officials, including conflict-of-interest laws; and
  - (8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.
- (c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL**

Sec. 1002.101. EXECUTIVE DIRECTOR. The board shall appoint an executive director, who shall be responsible for managing the day-to-day affairs of the board, including:

- (1) arranging for and supervising the necessary support, secretarial, and clerical services;
- (2) obtaining space for holding examinations, meetings, and conferences;
- (3) printing or purchasing examinations;
- (4) printing and mailing forms, information, and licenses;
- (5) sending notices, collecting fees, and issuing receipts;
- (6) conducting the correspondence of the board, including replying to routine requests for information;
- (7) maintaining the minutes and records of the board;
- (8) keeping records of receipts and disbursements; and
- (9) providing necessary investigative services.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept.



1, 2003.

Sec. 1002.102. RECEIPTS AND DISBURSEMENTS. The executive director shall receive, administer, and account for all money received under this chapter and shall transfer the money to the comptroller.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.103. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.104. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide to members of the board and to board employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.105. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.  
(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement of employees within the board. The program must require intra-agency posting of all positions concurrently with any public posting.

(b) The executive director or the executive director's designee

shall develop a system of annual performance evaluations based on documented employee performance. All decisions regarding merit pay for a board employee must be based on that system.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must be:

(1) updated annually;

(2) reviewed by the Commission on Human Rights for compliance with Subsection (b)(1); and

(3) filed with the governor.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER D. BOARD POWERS AND DUTIES**

Sec. 1002.151. GENERAL RULEMAKING AUTHORITY. The board shall adopt and enforce rules consistent with this chapter and necessary for the performance of its duties.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.152. FEES. The board may set reasonable and necessary fees to be charged applicants and license holders under this chapter, including fees for application, examination, licensure, and renewal of a license. The board shall base a fee for examination in a discipline of geoscience on the costs associated with preparing, administering, and grading that examination.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.153. CODE OF PROFESSIONAL CONDUCT. (a) The board by rule shall adopt a code of professional conduct that is binding on all license holders under this chapter.

(b) The board may enforce the code by imposing sanctions as provided by this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.154. ENFORCEMENT; REFERRAL OF COMPLAINTS AND INVESTIGATIONS. (a) The board shall enforce this chapter. Any member of the board may present to a prosecuting officer a complaint relating to a violation of this chapter. The board through its members, officers, counsel, or agents may assist in the trial of a case involving the violation of this chapter, subject to the control of the prosecuting officer.

(a-1) Complaints and investigations under this chapter are of two types:

(1) complaints received from a member of the public; and

(2) complaints and investigations that are initiated by the board as a result of information that becomes known to the board or board staff and that may indicate a violation.

(a-2) The board by rule shall prioritize complaints and investigations. Rules adopted under this subsection must provide that:

(1) a complaint that alleges an action that may harm the public takes precedence over a complaint that does not allege an action that may harm the public or may harm the public to a lesser degree; and

(2) with regard to complaints that do not allege an action that may harm the public, a complaint filed by a member of the public takes precedence over a complaint initiated by the board.

(b) Notwithstanding Subsection (a), the board shall refer a complaint or investigation involving the unlicensed practice of geoscience by a person who is licensed as an engineer, surveyor, driller, installer, or member of another similar profession to the agency that issued the license to the person.

(c) The board may administer oaths and affirmations and issue subpoenas to compel the attendance of witnesses and the production of evidence.

(d) The attorney general shall act as legal advisor to the board and shall provide legal assistance as necessary in enforcing this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 504 (S.B. 940), Sec. 2, eff. September 1, 2009.

Sec. 1002.155. RECOGNITION OF USE OF DESIGNATIONS. (a) The board by rule may recognize the use of the designations used by a professional organization, society, or association that maintains a certification program in a discipline of geoscience if:

(1) the requirements for that certification are acceptable to the board;

(2) the full name or recognized abbreviation of the organization, society, or association granting the certification is stated following or in conjunction with the use of the designation or abbreviation; and

(3) the designation or abbreviation is not used in a manner that is misleading or that creates an impression that the person is licensed to practice geoscience for the public unless the person is licensed under this chapter.

(b) The board by rule shall recognize the title "geological engineer," "geotechnical engineer," "hydraulic engineer," or "agricultural engineer" or another legitimate engineering title as a legitimate engineering title separate from geoscience, the use of

which requires licensure as an engineer.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.156. ESTABLISHMENT OF DISCIPLINES. The board by rule shall establish the disciplines of geoscience in which a person may be licensed and the requirements for eligibility for a license in each discipline.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.157. AGREEMENTS TO DEVELOP UNIFORM STANDARDS. The board may enter into agreements with licensing or registration boards in other states and other appropriate organizations, societies, associations, and agencies to develop uniform standards for:

- (1) the licensing or registration of geoscientists;
- (2) accrediting educational programs;
- (3) establishing reciprocal and temporary licenses;
- (4) developing regional or national examinations;
- (5) evaluating applicants; or
- (6) other purposes consistent with this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.158. AUTHORITY TO INCUR ADMINISTRATIVE EXPENSES. In administering this chapter, the board may:

- (1) appoint committees;
- (2) employ personnel, contractors, and consultants;
- (3) lease or purchase furnishings, equipment, and supplies;
- (4) lease office space; and
- (5) incur other similar expenses.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.159. ROSTER OF LICENSE HOLDERS. (a) The board shall maintain a roster stating the name, discipline of geoscience, and place of business of each licensed geoscientist.

(b) The board shall maintain copies of the roster and shall provide a copy on request to a state agency, a county or municipal clerk or building official, or a license holder. The board may charge a license holder a reasonable fee set by the board for providing the copy.

(c) The board shall provide a copy of the roster to another person on written request, subject to payment of a reasonable fee set by the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.160. LIST OF GOVERNMENTAL ENTITIES WITH COMPARABLE REQUIREMENTS AND WITH WHICH RECIPROCITY AGREEMENTS EXIST. The board shall maintain a list of each state or foreign country in which the requirements and qualifications for licensure or registration are comparable to those established in this state and with which a reciprocity agreement exists.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 1002.201. PUBLIC INTEREST INFORMATION. (a) The board shall:

(1) prepare information of public interest describing:

- (A) the regulatory functions of the board; and
- (B) the board's procedures by which complaints are filed with and resolved by the board; and

(2) make the information available to the public and appropriate state agencies.

(b) The board shall maintain on the board's Internet website:

(1) information regarding the procedure for filing a complaint with the board; and

(2) a means by which a person may electronically file a complaint with the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 733 (S.B. 138), Sec. 1, eff. September 1, 2013.

Sec. 1002.202. COMPLAINTS. (a) A person may file a complaint alleging a violation of this chapter or a rule adopted under this chapter.

(b) A complaint from a member of the public must be:

(1) in writing;

(2) sworn to by the person making the complaint; and

(3) filed with the secretary-treasurer or electronically through the board's Internet website.

(c) A complaint that is initiated by the board or board staff must be:

(1) in writing; and

(2) signed by the person who became aware of information that may indicate a violation.

(d) A complaint must contain sufficient information for the board to determine whether the board has the jurisdiction and authority to resolve the complaint. If the board does not have the jurisdiction and authority, the board shall dismiss the complaint. A complaint must have sufficient information for the board to commence an investigation, though the amount of information ultimately required for the board to determine the validity of the complaint may be more than the information initially included with the complaint.

(d-1) The board shall accept a complaint regardless of whether the complaint is notarized.

(e) The board shall maintain the confidentiality of a complaint from the time of receipt through the conclusion of the investigation of the complaint. Complaint information is not confidential after the date formal charges are filed.

(f) For any complaint determined to be frivolous or without merit, the complaint and other information related to the complaint are confidential. The information is not subject to discovery, subpoena, or other disclosure. A complaint is considered to be frivolous if the executive director and investigator, with board approval, determine that the complaint:

- (1) was made for the likely purpose of harassment; and
- (2) does not demonstrate apparent harm to any person.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 504 (S.B. 940), Sec. 3, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 733 (S.B. 138), Sec. 2, eff. September 1, 2013.

Sec. 1002.203. RECORDS OF COMPLAINTS. (a) The board shall maintain a file on each complaint filed with the board. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint was received by the board;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint.

(b) The board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.204. COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(b) The board shall investigate all complaints brought to its



attention and may employ investigators, expert witnesses, and hearing officers, appoint advisory committees, and conduct hearings to determine whether disciplinary or other action should be taken.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.205. PUBLIC PARTICIPATION. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.206. COMPLAINT EDUCATION. (a) In this section, "state agency" has the meaning assigned by Section 57.001.

(b) The board shall work with each state agency that uses the services of a person licensed under this chapter and other appropriate state agencies as determined by the board, including a state agency with which the board has entered into a memorandum of understanding that addresses the coordination of activities or complaints, to educate the agency's employees regarding the procedures by which complaints are filed with and resolved by the board.

Added by Acts 2013, 83rd Leg., R.S., Ch. 733 (S.B. 138), Sec. 3, eff. September 1, 2013.

Sec. 1002.207. DUTY OF STATE AGENCY TO REPORT POTENTIAL VIOLATION. (a) In this section, "state agency" has the meaning assigned by Section 57.001.

(b) A state agency that becomes aware of a potential violation of this chapter or a rule adopted under this chapter shall forward any information relating to the potential violation and any subsequently obtained information to the board.

(c) Information forwarded by a state agency under this section that is privileged or confidential remains privileged or confidential

following receipt by the board. The privilege or confidentiality extends to any board communication concerning the information forwarded, regardless of the form, manner, or content of the communication.

(d) The forwarding of privileged or confidential information by a state agency does not waive a privilege in or create an exception to the confidentiality of the information.

(e) A state agency's provision of information or failure to provide information under this section does not give rise to a cause of action against the agency.

Added by Acts 2013, 83rd Leg., R.S., Ch. 733 (S.B. 138), Sec. 3, eff. September 1, 2013.

#### **SUBCHAPTER F. LICENSE REQUIREMENTS**

Sec. 1002.251. LICENSE REQUIRED. (a) Unless exempted by this chapter, a person may not engage in the public practice of geoscience unless the person holds a license issued under this chapter.

(b) Unless the person is licensed under this chapter, a person may not:

(1) use the term "Licensed Professional Geoscientist" or the initials "P.G." as part of a professional, business, or commercial identification or title; or

(2) otherwise represent to the public that the person is qualified to:

(A) practice as a geoscientist; or

(B) engage in the public practice of geoscience.

(c) A person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by municipal or county ordinance, state or federal law, state agency rule, or federal regulation that incorporates or is based on a geoscientific study or geoscientific data unless the person is licensed under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.252. EXEMPTIONS. The following activities do not require a license under this chapter:

(1) geoscientific work performed by an employee or a subordinate of a license holder under this chapter if the work does not include the responsible charge of geoscientific work and is performed under the direct supervision of a licensed geoscientist who is responsible for the work;

(2) geoscientific work performed by an officer or employee of the United States practicing solely as such an officer or employee;

(3) geoscientific work performed exclusively in exploring for and developing oil, gas, or other energy resources, base metals, or precious or nonprecious minerals, including sand, gravel, or aggregate, if the work is done in and for the benefit of private industry;

(4) geoscientific research conducted through an academic institution, local, state, or federal governmental agency, nonprofit research institution, or for-profit organization, including submission of a report on the research to a public agency, unless the work is covered by Section 1002.251(c);

(5) teaching geoscience or a related physical or natural science;

(6) work customarily performed by a cartographer, technician, or physical or natural scientist, including a geologist, geophysicist, soil scientist, chemist, archaeologist, geographer, or oceanographer, if the work does not include the public practice of geoscience;

(7) work performed by an archaeologist, geoscientist, or other person conducting a stratigraphic or historical geological investigation for archaeological purposes;

(8) testifying or preparing and presenting an exhibit or document for the sole purpose of being placed in evidence before an administrative or judicial tribunal or hearing if the testimony, exhibit, or document does not imply that the person is licensed under this chapter;

(9) the evaluation by a state agency, as defined by Section 2001.003, Government Code, or by a hearing examiner of an exhibit or document offered or placed in evidence before an administrative tribunal; or

(10) the determination of the suitability of a site for a specific on-site sewage disposal system by a person who has successfully completed site evaluation training approved by the Texas

Commission on Environmental Quality and is:

- (A) registered by the commission as:
  - (i) an installer, if the commission recognizes only one level of installer; or
  - (ii) the highest level of installer recognized by the commission, if the commission recognizes more than one level of installer;
- (B) a designated representative; or
- (C) a registered professional sanitarian.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.253. LICENSE APPLICATION. (a) An applicant for a license under this chapter, including an applicant for a temporary or reciprocal license, must apply on a form prescribed by the board that is signed and sworn to by the applicant before a notary public.

(b) The application must include:

- (1) information concerning the applicant's education;
- (2) a detailed summary of the applicant's relevant work experience; and
- (3) a signed statement that the applicant has read and will comply with the code of professional conduct adopted under this chapter.

(c) The application must be accompanied by:

- (1) not fewer than five reference letters, of which not fewer than three are from geoscientists, or other professionals acceptable to the board, who have personal knowledge of the applicant's relevant work experience; and
- (2) the appropriate application fee.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.254. EXAMINATIONS. (a) The board may prepare, administer, and grade oral and written examinations required or permitted under this chapter.

(b) The board may adopt or recognize, in whole or in part, an examination prepared, administered, or graded by another

organization, on a regional or national basis, that the board determines appropriate to measure the qualifications of an applicant for a license under this chapter if:

- (1) the examination questions, the correct answers, and the applicant's completed examination are available to the board; and
- (2) the board retains the authority to determine a passing grade for a license in this state.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.255. LICENSE ELIGIBILITY. (a) To be eligible for a license under this chapter, an applicant must:

- (1) be of good moral and ethical character as attested to by letters of reference submitted in behalf of the applicant or as otherwise determined by the board;
  - (2) have:
    - (A) graduated from a course of study in a discipline of geoscience satisfactory to the board that consists of at least four years of study and includes at least 30 semester hours or 45 quarter hours of credit in geoscience, of which at least 20 semester hours or 30 quarter hours of credit must be in upper-level college courses in that discipline; or
    - (B) satisfactorily completed other equivalent educational requirements as determined by the board;
  - (3) have a documented record of at least five years of qualifying work experience, as provided by Section 1002.256, that demonstrates that the applicant is qualified to assume responsible charge of geoscientific work;
  - (4) pass an examination required by the board covering the fundamentals and practice of the appropriate discipline of geoscience; and
  - (5) meet any other requirements established by the board.
- (b) The board may accept qualifying work experience in lieu of the education required by Subsection (a)(2).

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.256. QUALIFYING WORK EXPERIENCE. (a) The board shall apply the following standards in evaluating the work experience of an applicant for a license under Section 1002.255:

(1) each year of work experience acceptable to the board constitutes one year of qualifying work experience if the experience was acquired under the direct supervision of:

(A) a geoscientist who is licensed in this state or in another state under requirements for licensure or registration that are comparable to those in this chapter;

(B) a geoscientist who meets the educational and work experience requirements for licensure but is not required to be licensed under this chapter; or

(C) another professional acceptable to the board;

(2) each year of work experience acceptable to the board and acquired before September 1, 2003, constitutes one year of qualifying work experience if the experience:

(A) was acquired under the direct supervision of:

(i) a geoscientist who meets the educational and work experience requirements for a license under this chapter;

(ii) a geoscientist who is licensed or registered under comparable requirements in another state; or

(iii) another professional acceptable to the board;

or

(B) would constitute the responsible charge of professional geoscientific work as determined by the board; and

(3) each year of full-time graduate study in a discipline of geoscience that is acceptable to the board constitutes one year of qualifying work experience.

(b) The board may accept research in or the teaching of a discipline of geoscience at the college or university level as qualifying work experience if the research or teaching, in the judgment of the board, is comparable to work experience obtained in the practice of geoscience.

(c) For purposes of Subsection (a)(3), the board may not accept more than two years of full-time graduate study in a discipline of geoscience as qualifying work experience.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.257. RECIPROCAL LICENSE. (a) The board by rule may authorize the licensing of a person who has not met the examination requirement of Section 1002.255(a)(4) if the person is licensed or registered to practice a discipline of geoscience under the law of another state or a foreign country.

(b) The board may issue a license to an applicant who provides proof of licensure or registration under requirements that the board determines to be substantially similar to those established by this chapter and who pays the required fees.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.258. TEMPORARY LICENSE. (a) The board may issue a temporary license to a person who:

(1) is not a resident of this state and does not have an established place of business in this state but who seeks to engage in the public practice of geoscience in this state for a temporary period; or

(2) applies for a reciprocal license and seeks to engage in the public practice of geoscience pending a determination on the application for the reciprocal license.

(b) An applicant for a temporary license must:

(1) apply to the board for a temporary license, provide proof of licensure or registration in another state or a foreign country and pay the required fees;

(2) agree to comply with the signature requirements of Section 1002.263(b) and to affix the person's seal from the jurisdiction in which the person is licensed or registered on all work completed while practicing under the temporary license; and

(3) file the required information and reports and comply with other requirements established by the board concerning the person's temporary practice.

(c) A temporary license issued under Subsection (a)(1) expires on the 90th day after the date of issuance. A temporary license issued under Subsection (a)(2) expires on the date the reciprocal license is issued or denied.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.259. WAIVER OF REQUIREMENTS. (a) Except for the payment of required fees, the board may waive any of the requirements for licensure by a two-thirds vote of the entire board if the applicant makes a written request and shows good cause and the board determines that the applicant is otherwise qualified for a license.

(b) Each requirement waived under this section and the basis for the waiver must be recorded in the applicant's record and in the proceedings of the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.260. CONFIDENTIALITY OF CERTAIN INFORMATION. A statement made by a person who provides a reference for an applicant for a license under this chapter or provides any information compiled by or submitted to the board relating to an applicant is privileged and confidential and may be used only by the board or an employee or agent of the board who is directly involved in the application or licensure process. Confidential information under this section is not subject to discovery, subpoena, or other disclosure in any proceeding.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.261. ISSUANCE OF LICENSE. (a) The board shall issue a license to an applicant who meets the requirements of this chapter on payment of the applicable license fee.

(b) The license must:

- (1) show the full name of the license holder;
- (2) have a serial number;
- (3) state the license holder's discipline of geoscience;

and

(4) be signed by an appropriate officer of the board under the board's seal.

(c) The issuance by the board of a license is prima facie evidence that during the term of the license the license holder is



entitled to all the rights and privileges of a licensed geoscientist.

(d) A licensed geoscientist may engage in the practice of any discipline of geoscience regardless of the discipline of geoscience stated on the person's license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.262. LICENSE DURATION; EXPIRATION. (a) A license is valid for a period not to exceed three years and expires according to a schedule established by board rule.

(b) On expiration, a license is invalid and may not be renewed except as provided by this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.263. SEAL. (a) On issuance of a license, the license holder must obtain a seal of a design established by the board bearing:

- (1) the license holder's name;
- (2) the license number;
- (3) the words "Licensed Professional Geoscientist"; and
- (4) the license holder's discipline of geoscience.

(b) A geoscientific report, document, or other record, as defined by the board, that is offered to the public and prepared or issued by or under the supervision of a licensed geoscientist must, in accordance with rules adopted by the board, include the full name, signature, and license number of the license holder who prepared the report, document, or other record or under whose supervision it was prepared and bear an impression of the license holder's seal.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.264. REPLACEMENT OF LOST, DESTROYED, OR MUTILATED LICENSE. The board shall issue a new license to replace a license that has been lost, destroyed, or mutilated, subject to the rules and

fees adopted by the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER G. LICENSE RENEWAL**

Sec. 1002.301. LICENSE RENEWAL. (a) Not later than the 60th day before the date the license expires, the board shall notify a license holder of:

- (1) the date the license expires; and
- (2) the amount of the fee required for renewal.

(b) The board shall renew the license of a license holder who before the date the license expires or within a period not to exceed 60 days after the expiration date:

- (1) submits the required renewal application and fee and a penalty for late renewal, if required; and
- (2) meets the requirements for renewal established by the board.

(c) The board by rule may establish conditions and fees for the reissuance of a license that has lapsed, expired, or been suspended or revoked.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.302. CONTINUING PROFESSIONAL EDUCATION. As a condition for renewal of a license, the board may require each license holder to participate in continuing professional education on a periodic or other basis.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER H. PUBLIC PRACTICE OF GEOSCIENCE**

Sec. 1002.351. PUBLIC PRACTICE OF GEOSCIENCE BY FIRM OR CORPORATION. (a) A firm or corporation may engage in the public practice of geoscience only if:

- (1) the geoscientific work is performed by, or under the

supervision of, a licensed geoscientist who is in responsible charge of the work and who signs and seals all geoscientific reports, documents, and other records as required by this chapter; or

(2) the principal business of the firm or corporation is the public practice of geoscience as determined by board rule and a principal of the firm or an officer or director of the corporation is a licensed geoscientist and has overall supervision and control of the geoscientific work performed in this state.

(b) The board may adopt rules relating to the public practice of geoscience by a firm or corporation. Rules adopted under this section must recognize that this chapter does not apply to an engineer or engineering firm that performs service or work that is both engineering and geoscience. A firm that engages in the practice of both engineering and geoscience is exempt from any firm registration requirements created under this subsection.

(c) Except as provided by this section, an individual, firm, or corporation may not represent to the public that the individual, firm, or corporation is a licensed geoscientist or able to perform geoscientific services or prepare a geoscientific report, document, or other record that requires the signature and seal of a license holder under Section 1002.263(b).

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.352. GEOSCIENTIST IN TRAINING. The board by rule shall establish criteria by which an individual who expresses the intent to become a licensed geoscientist under this chapter may register with the board as a geoscientist in training.

Added by Acts 2009, 81st Leg., R.S., Ch. 504 (S.B. 940), Sec. 4, eff. September 1, 2009.

Sec. 1002.353. ADVISORY OPINIONS. (a) On its own initiative or at the request of any interested person, the board shall prepare a written advisory opinion regarding:

- (1) an interpretation of this chapter; or
- (2) the application of this chapter to a person with respect to a specified existing or hypothetical factual situation.

(b) The board shall respond to a request for an opinion not later than the 180th day after the date the request is submitted to the board unless the board affirmatively states the board's reason for not responding to the request within that period or not responding to the request at all.

(c) The board shall:

(1) number and classify each advisory opinion issued under this subchapter; and

(2) annually compile a summary of the opinions in a single document that is available on the Internet.

(d) The authority of the board to issue an advisory opinion under this subchapter does not affect the authority of the attorney general to issue an opinion as authorized by law.

(e) It is a defense to prosecution or to imposition of an administrative penalty that a person reasonably relied on a written advisory opinion of the board relating to:

(1) the provision of the law the person is alleged to have violated; or

(2) a fact situation that is substantially similar to the fact situation in which the person is involved.

Added by Acts 2009, 81st Leg., R.S., Ch. 504 (S.B. 940), Sec. 4, eff. September 1, 2009.

#### **SUBCHAPTER I. LICENSE DENIAL AND DISCIPLINARY PROCEDURES**

Sec. 1002.401. DENIAL OF LICENSE. (a) The board may deny a license:

(1) to an applicant who fails to satisfy a requirement of this chapter; or

(2) on a determination by the board that there is probable cause to believe that an applicant has violated:

(A) this chapter;

(B) a provision of this chapter to which a license holder would be subject; or

(C) a comparable provision in the licensing or registration law of another state.

(b) The board may not issue a license pending the disposition of a complaint alleging a violation in this or another state if the board has notice of the alleged violation.

(c) The board shall notify an applicant who is denied a license of the reason for denial in writing not later than the 30th day after the date of the board's decision. Not later than the 30th day after the date of receipt of the notice, the applicant may make a written request for a hearing. In the absence of a request for a hearing, the board's action is final.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.402. GROUND FOR DISCIPLINARY ACTION. The board may impose appropriate sanctions for:

- (1) the practice of fraud or deceit in obtaining a license as a geoscientist;
- (2) incompetence, misconduct, fraud, gross negligence, or repeated incidents of negligence in the public practice of geoscience;
- (3) conviction of a license holder of a crime involving moral turpitude or a felony;
- (4) the imposition of an administrative or civil penalty or a criminal fine, or imprisonment or probation instead of a fine, for a misdemeanor relating to or arising out of the public practice of geoscience;
- (5) the issuance of a cease and desist order or a similar sanction relating to or arising out of the public practice of geoscience;
- (6) using the seal of another license holder or using or allowing the use of the license holder's seal on geoscientific work not performed by or under the supervision of the license holder;
- (7) aiding or abetting a person in a violation of this chapter;
- (8) the revocation or suspension of a license, the denial of renewal of a license, or other disciplinary action taken by a state agency, board of registration, or similar licensing agency for geoscientists or a profession or occupation related to the public practice of geoscience;
- (9) practicing or offering to practice geoscience or representing to the public that the person or the person's firm or corporation is licensed or qualified to practice geoscience if the

person is not licensed under this chapter or the person's firm or corporation does not employ a licensed geoscientist as required under this chapter; or

(10) violating this chapter, a rule adopted under this chapter, including the code of professional conduct, or a comparable provision of the laws or rules regulating the practice of geoscience in another state or country.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.403. DISCIPLINARY ACTIONS. (a) The board may take the following disciplinary actions:

(1) refuse to issue or renew a license;

(2) permanently revoke a license;

(3) suspend a license for a specified time, not to exceed three years, to take effect immediately notwithstanding an appeal if the board determines that the license holder's continued practice constitutes an imminent danger to the public health, safety, or welfare;

(4) issue a public or private reprimand to an applicant, a license holder, or an individual, firm, or corporation practicing geoscience under this chapter;

(5) impose limitations, conditions, or restrictions on the practice of an applicant, a license holder, or an individual, firm, or corporation practicing geoscience under this chapter;

(6) require that a license holder participate in a peer review program under rules adopted by the board;

(7) require that a license holder obtain remedial education and training prescribed by the board;

(8) impose probation on a license holder requiring regular reporting to the board;

(9) require restitution, in whole or in part, of compensation or fees earned by a license holder, individual, firm, or corporation practicing geoscience under this chapter;

(10) impose an appropriate administrative penalty as provided by Subchapter J for a violation of this chapter or a rule adopted under this chapter on a license holder or a person who is not licensed and is not exempt from licensure under this chapter; or

(11) issue a cease and desist order.

(b) The board may not impose a sanction for a ground described by Section 1002.402(8) that exceeds in severity or duration the sanction on which the board's action is based.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.404. RIGHT TO HEARING. A person is entitled to a hearing before the board may suspend or revoke the person's license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.405. REINSTATEMENT. (a) On application, the board may reinstate a license to engage in the public practice of geoscience to a person whose license has been revoked if a majority of the entire board votes in favor of the reinstatement.

(b) As a condition for reinstatement, the board may:

- (1) review the applicant's qualifications and experience;
- (2) require continuing professional education;
- (3) conduct a reexamination on a periodic or other basis;

or

(4) require other evidence of the competence of the applicant.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER J. ADMINISTRATIVE PENALTY**

Sec. 1002.451. IMPOSITION OF PENALTY. The board may impose an administrative penalty against a person licensed under this chapter or any other person who violates this chapter or a rule adopted or order issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.452. AMOUNT OF PENALTY. (a) The board may include in the amount of the administrative penalty the actual costs of investigating and prosecuting the violation.

(b) The amount of the penalty may not exceed \$100 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited acts; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts or resistance to efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.453. ADMINISTRATIVE PROCEDURE. (a) The board shall adopt rules of procedure for the imposition of an administrative penalty.

(b) Rules adopted under this section must conform to the requirements of Chapter 2001, Government Code.

(c) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.454. OPTIONS FOLLOWING FINAL ORDER: PAY OR APPEAL.

(a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review



contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty that is effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) On receipt of a copy of an affidavit under Subsection (b)(2), the executive director may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.455. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.456. JUDICIAL REVIEW. The order of the board is subject to judicial review.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.457. REMITTANCE OF PENALTY AND INTEREST. (a) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty. If the court does not sustain the occurrence of the violation, the court shall order that a penalty is not owed.

(b) If after judicial review the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond if the penalty is not imposed or order the release of the bond after the person pays the penalty if the person posted a supersedeas bond.

(c) Interest accrues under Subsection (b)(1) at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER K. OTHER ENFORCEMENT PROVISIONS**

Sec. 1002.501. INJUNCTION. The board may seek an injunction against a violation of this chapter or a rule adopted under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

**SUBTITLE B. REGULATION OF ARCHITECTURE AND RELATED PRACTICES**  
**CHAPTER 1051. TEXAS BOARD OF ARCHITECTURAL EXAMINERS; GENERAL**  
**PROVISIONS AFFECTING ARCHITECTS, LANDSCAPE ARCHITECTS, AND INTERIOR**  
**DESIGNERS; PROVISIONS AFFECTING ONLY ARCHITECTS**  
**ARTICLE 1. GENERAL PROVISIONS; BOARD OF ARCHITECTURAL EXAMINERS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1051.001. DEFINITIONS. In this subtitle:

- (1) "Architect" means a person registered under this chapter to engage in the practice of architecture.
- (2) "Board" means the Texas Board of Architectural Examiners.
- (3) "Interior design" means the:
  - (A) identification, research, or development of a creative solution to a problem relating to the function or quality of an interior environment;
  - (B) performance of a service relating to an interior space, including programming, design analysis, space planning of non-load-bearing interior construction, and application of aesthetic principles, by using specialized knowledge of interior construction, building codes, equipment, materials, or furnishings; or
  - (C) preparation of an interior design plan, specification, or related document about the design of a non-load-bearing interior space.
- (4) "Interior designer" means a person registered under this subtitle to practice interior design.
- (5) "Landscape architect" means a person registered under this subtitle to practice landscape architecture.
- (6) "Landscape architecture":
  - (A) means the art and science of landscape analysis, landscape planning, and landscape design;
  - (B) includes the performance of professional services such as consultation, investigation, research, the preparation of general development and detailed site design plans, the preparation of studies, the preparation of specifications, and responsible supervision related to the development of landscape areas for:
    - (i) the planning, preservation, enhancement, and arrangement of land forms, natural systems, features, and plantings, including ground and water forms;

(ii) the planning and design of vegetation, circulation, walks, and other landscape features to fulfill aesthetic and functional requirements;

(iii) the formulation of graphic and written criteria to govern the planning and design of landscape construction development programs, including:

(a) the preparation, review, and analysis of master and site plans for landscape use and development;

(b) the analysis of environmental and physical considerations related to land use;

(c) the preparation of drawings, construction documents, and specifications; and

(d) construction observation;

(iv) design coordination and review of technical submissions, plans, and construction documents prepared by persons working under the direction of the landscape architect;

(v) the preparation of feasibility studies, statements of probable construction costs, and reports and site selection for landscape development and preservation;

(vi) the integration, site analysis, and determination of the location of buildings, structures, and circulation and environmental systems;

(vii) the analysis and design of:

(a) site landscape grading and drainage;

(b) systems for landscape erosion and sediment control; and

(c) pedestrian walkway systems;

(viii) the planning and placement of uninhabitable landscape structures, plants, landscape lighting, and hard surface areas;

(ix) the collaboration of landscape architects with other professionals in the design of roads, bridges, and structures regarding the functional, environmental, and aesthetic requirements of the areas in which they are to be placed; and

(x) field observation of landscape site construction, revegetation, and maintenance; and

(C) does not include:

(i) traffic, roadway, or pavement engineering;

(ii) the design of utilities;

(iii) the engineering or study of hydrologic

management of stormwater systems or floodplains;

(iv) the making of final plats; or

(v) a service or function within the practice of architecture, engineering, or public surveying as defined by this chapter or Chapter 1001 or 1071.

(7) "Practice of architecture" means a service or creative work applying the art and science of developing design concepts, planning for functional relationships and intended uses, and establishing the form, appearance, aesthetics, and construction details for the construction, enlargement, or alteration of a building or environs intended for human use or occupancy, the proper application of which requires education, training, and experience in those matters. The term includes:

(A) establishing and documenting the form, aesthetics, materials, and construction technology for a building, group of buildings, or environs intended to be constructed or altered;

(B) preparing, or supervising and controlling the preparation of, the architectural plans and specifications that include all integrated building systems and construction details, unless otherwise permitted under Section 1051.606(a)(4);

(C) observing the construction, modification, or alteration of work to evaluate conformance with architectural plans and specifications described in Paragraph (B) for any building, group of buildings, or environs requiring an architect;

(D) programming for construction projects, including identification of economic, legal, and natural constraints and determination of the scope and spatial relationship of functional elements;

(E) recommending and overseeing appropriate construction project delivery systems;

(F) consulting, investigating, and analyzing the design, form, aesthetics, materials, and construction technology used for the construction, enlargement, or alteration of a building or environs and providing expert opinion and testimony as necessary;

(G) research to expand the knowledge base of the profession of architecture, including publishing or presenting findings in professional forums; and

(H) teaching, administering, and developing pedagogical theory in academic settings offering architectural education.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.04, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 208 (H.B. 1573), Sec. 1, eff. September 1, 2005.

Sec. 1051.0015. PURPOSE OF REGISTRATION REQUIREMENT. The purpose of Section 1051.701(a) is to:

- (1) safeguard life, health, property, and the public welfare; and
- (2) protect the public against the irresponsible practice of architecture.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.051, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 1, eff. September 1, 2007.

Sec. 1051.0016. PRACTICES OF ARCHITECTURE AND ENGINEERING. (a) In this chapter, "architectural plans and specifications" include:

- (1) floor plans and details:
  - (A) depicting the design of:
    - (i) internal and external walls and floors, including simple foundations;
    - (ii) internal spaces of a building; and
    - (iii) vertical circulation systems, including accessibility ramps, stair systems, elevators, and escalators; and
  - (B) implementing programming, regulatory, and accessibility requirements for a building;
- (2) general cross-sections and detailed wall sections depicting building components from a hypothetical cut line through a building to include the building's mechanical, electrical, plumbing, or structural systems;
- (3) reflected ceiling plans and details depicting:
  - (A) the design of the location, materials, and connections of the ceiling to the structure; and

(B) the integration of the ceiling with electrical, mechanical, lighting, sprinkler, and other building systems;

(4) finish plans or schedules depicting surface materials on the interior and exterior of the building;

(5) interior and exterior elevations depicting the design of materials, locations, and relationships of components and surfaces;

(6) partition, door, window, lighting, hardware, and fixture schedules;

(7) manufacturer or fabricator drawings that are integrated into the construction documents; and

(8) specifications describing the nature, quality, and execution of materials for construction of the elements of the building depicted in the plans prepared by the architect.

(b) The preparation of architectural plans and specifications for the following tasks is within the scope of practice of both engineering and architecture:

(1) site plans depicting the location and orientation of a building on the site based on:

(A) a determination of the relationship of the intended use with the environment, topography, vegetation, climate, and geographic aspects; and

(B) the legal aspects of site development, including setback requirements, zoning and other legal restrictions, and surface drainage;

(2) the depiction of the building systems, including structural, mechanical, electrical, and plumbing systems, in:

(A) plan views;

(B) cross-sections depicting building components from a hypothetical cut line through a building; and

(C) the design of details of components and assemblies, including any part of a building exposed to water infiltration or fire-spread considerations;

(3) life safety plans and sheets, including accessibility ramps and related code analyses; and

(4) roof plans and details depicting the design of roof system materials, components, drainage, slopes, and directions and location of roof accessories and equipment not involving structural engineering calculations.

(c) The following activities may be performed by either an

engineer or an architect:

- (1) programming for construction projects, including:
  - (A) identification of economic, legal, and natural constraints; and
  - (B) determination of the scope of functional elements;
- (2) recommending and overseeing appropriate construction project delivery systems;
- (3) consulting with regard to, investigating, and analyzing the design, form, materials, and construction technology used for the construction, enlargement, or alteration of a building or its environment; and
- (4) providing expert opinion and testimony with respect to issues within the responsibility of the engineer or architect.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1157 (H.B. [2284](#)), Sec. 2, eff. September 1, 2011.

Sec. 1051.002. EFFECT ON MUNICIPALITY. This subtitle does not:

- (1) preempt a municipal ordinance; or
- (2) restrict or expand the authority of a municipality.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.04, eff. Sept. 1, 2003.

Sec. 1051.003. APPLICATION OF SUNSET ACT. The Texas Board of Architectural Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subtitle expires September 1, 2025.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003;  
Renumbered from Occupations Code Sec. 1051.004 and amended by Acts 2003, 78th, ch. 331, Sec. 1.04, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. [652](#)), Sec. 1.06, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 316 (H.B. [1717](#)), Sec. 1, eff. September 1, 2013.



**SUBCHAPTER B. TEXAS BOARD OF ARCHITECTURAL EXAMINERS**

Sec. 1051.101. BOARD MEMBERSHIP. (a) The Texas Board of Architectural Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

- (1) four architect members registered under this chapter;
- (2) one interior designer member registered under Chapter 1053;
- (3) one landscape architect member registered under Chapter 1052; and
- (4) three members who represent the public, at least one of whom is a person with a physical disability.

(b) Not more than one board member may be:

- (1) a stockholder or owner of an interest in a school or college that teaches architecture, interior design, or landscape architecture; or
- (2) a full-time member of the faculty or administration of the architecture, interior design, or landscape architecture department of a school or college whose position is the primary employment of the board member.

(c) Except as provided by Subsection (a)(4), appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.06, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 2, eff. September 1, 2007.

Sec. 1051.102. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

- (1) is registered, certified, or licensed by an occupational regulatory agency in the field of architecture, interior design, or landscape architecture;
- (2) is employed by or participates in the management of a

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

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

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.103. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of architecture, interior design, or landscape architecture; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of architecture, interior design, or landscape architecture.

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.07, eff. Sept. 1, 2003.

Sec. 1051.104. TERMS; VACANCY. (a) Board members serve staggered six-year terms. The terms of three members expire on January 31 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.105. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 1051.101;

(2) does not maintain during service on the board the qualifications required by Section 1051.101;

(3) is ineligible for membership under Section 1051.102 or 1051.103;

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

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.08, eff. Sept. 1, 2003.

Sec. 1051.106. PER DIEM; REIMBURSEMENT. (a) A board member is entitled to receive a per diem for each day that the member engages in board business.

(b) A board member is entitled to receive reimbursement for travel expenses, including food, lodging, and transportation expenses.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.107. OFFICERS. (a) The governor shall designate one board member as presiding officer to serve in that capacity at the pleasure of the governor.

(b) The board annually shall elect from its members an assistant presiding officer.

(c) The board shall appoint a secretary-treasurer of the board to serve at the pleasure of the board.

(d) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(41).

(e) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(41).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 285, Sec. 31(41), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 3, eff. September 1, 2007.

Sec. 1051.108. MEETINGS. (a) The board shall hold at least two regular meetings each year at a time and place determined by the board to:

(1) transact its business; and

(2) examine each applicant for registration under this chapter.

(b) Special meetings of the board must be called by the presiding officer or, if the presiding officer is absent from the state or is unable to act, by the assistant presiding officer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.109. OFFICE LOCATION. The board shall maintain an office in Austin.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.110. BOARD MEMBER ACTIVITIES. Membership on the board does not prohibit a member from performing any work or providing any service on a state, county, municipal, or other public building or work for a fee or other direct compensation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.111. FILING OF OATH. Before assuming the duties of office, each board member shall file with the secretary of state a copy of the constitutional oath of office taken by the member.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.112. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

- (1) this subtitle;
- (2) the programs operated by the board;
- (3) the role and functions of the board;
- (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the board;
- (6) the results of the most recent formal audit of the board;
- (7) the requirements of:
  - (A) the open meetings law, Chapter 551, Government Code;
  - (B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

Acts 2003, 78th Leg., ch. 331, Sec. 1.09, eff. Sept. 1, 2003.

#### **SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL**

Sec. 1051.151. EXECUTIVE DIRECTOR; DUTIES REGARDING MONEY.

(a) The board may employ an executive director to conduct the affairs of the board under the board's direction. The executive director shall receive a salary in an amount determined by the board.

(b) The executive director shall receive and account for any money derived, including any fee collected, under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.152. PERSONNEL. The board shall employ clerical and other assistants as necessary to properly perform the board's work.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.153. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.11, eff. Sept. 1, 2003.

Sec. 1051.154. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide to members of the board and to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.11, eff. Sept. 1, 2003.

Sec. 1051.155. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.156. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

(a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with federal and state law and a description of reasonable methods to achieve compliance with

federal and state law.

(c) The policy statement must:

- (1) be updated annually;
- (2) be reviewed by the Commission on Human Rights for compliance with Subsection (b)(1); and
- (3) be filed with the governor's office.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.11, eff. Sept. 1, 2003.

#### **SUBCHAPTER D. BOARD POWERS AND DUTIES**

Sec. 1051.201. SCOPE OF ADMINISTRATIVE AUTHORITY. The powers granted and duties delegated to the board under this chapter are in addition to the powers granted and duties delegated to the board under Chapters 1052 and 1053.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.202. GENERAL RULEMAKING AUTHORITY. The board shall adopt reasonable rules and bylaws and prescribe forms as necessary to administer or enforce this subtitle, including rules regulating the practices of architecture, landscape architecture, and interior design.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.14, eff. Sept. 1, 2003.

Sec. 1051.203. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a certificate holder except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the board may not include a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts the use of a certificate holder's personal appearance or voice in an advertisement;



(3) relates to the size or duration of an advertisement by the certificate holder; or

(4) restricts the certificate holder's advertisement under a trade name.

(c) The board shall adopt rules to prevent a person regulated by the board from submitting a competitive bid to, or soliciting a competitive bid on behalf of, a governmental entity that is prohibited by Subchapter A, Chapter 2254, Government Code, from making a selection or awarding a contract on the basis of competitive bids.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.15, eff. Sept. 1, 2003.

Sec. 1051.204. SUBPOENA. (a) The board may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production for inspection or copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this subtitle.

(b) The board, acting through the attorney general, may bring an action to enforce a subpoena issued under Subsection (a) against a person who fails to comply with the subpoena.

(c) Venue for an action brought under Subsection (b) is in a district court in:

(1) Travis County; or

(2) any county in which the board may conduct a hearing.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003;  
Renumbered from Occupations Code Sec. 1051.207 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.16, 1.17, eff. Sept. 1, 2003.

Sec. 1051.205. PUBLIC RECORDS. (a) The secretary-treasurer of the board shall keep records of all board proceedings and all money received or spent by the board.

(b) The records must include a record of:

(1) each issuance or renewal of a certificate of registration; and

(2) each refusal to issue or renew a certificate of registration.

(c) The records shall be open to public inspection at all reasonable times.

(d) The board shall maintain records or an official roster showing:

(1) the name and, if known, the address of each person registered under this subtitle; and

(2) the date and registration number of each certificate of registration issued under this subtitle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code, Sec. 1051.208 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.18, 1.19, eff. Sept. 1, 2003.

Sec. 1051.206. BOARD SEAL. (a) The board shall adopt a seal and shall use the seal on official documents.

(b) The design of the seal must include a five-pointed star with a circular border and the words "Texas Board of Architectural Examiners" within the border.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.209 by Acts 2003, 78th Leg., ch. 331, Sec. 1.20, eff. Sept. 1, 2003.

Sec. 1051.207. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The board shall adopt rules as necessary to comply with Chapter 53.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 1.21, eff. Sept. 1, 2003.

Sec. 1051.208. STANDARDS OF CONDUCT. The board by rule shall establish standards of conduct for persons regulated under this subtitle.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 1.21, eff. Sept. 1, 2003.

Sec. 1051.209. ATTORNEY GENERAL AS LEGAL ADVISOR. The attorney general shall act as legal advisor to the board and shall provide legal assistance to enforce this subtitle. This section does not relieve a local prosecuting attorney of any duty under the law.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 1.21, eff. Sept. 1, 2003.

Sec. 1051.210. TECHNOLOGY POLICY. The board shall develop and implement a policy that requires the executive director and board employees to research and propose appropriate technological solutions to improve the board's ability to perform its functions. The technological solutions must:

- (1) ensure that the public is able to easily find information about the board through the Internet;
- (2) ensure that persons who want to use the board's services are able to:
  - (A) interact with the board through the Internet; and
  - (B) access any service that can be provided effectively through the Internet; and
- (3) be cost-effective and be developed through the board's planning process.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 1.21, eff. Sept. 1, 2003.

Sec. 1051.211. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

- (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and
  - (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.
- (b) The board's procedures relating to alternative dispute

resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 1.21, eff. Sept. 1, 2003.

**ARTICLE 2. GENERAL PROVISIONS APPLYING TO ARCHITECTS, LANDSCAPE ARCHITECTS, AND INTERIOR DESIGNERS**

**SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 1051.251. PUBLIC INTEREST INFORMATION; DISPLAY OF CERTIFICATE. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board. The information must include information for prospective applicants regarding the qualifications and requirements for registration under this subtitle.

(b) The board shall make the information available to the public and appropriate state agencies.

(c) In each written contract in which a person registered under this subtitle agrees to practice the person's profession in this state, the person shall include the name, mailing address, and telephone number of the board and a statement that the board has jurisdiction over a person registered under this subtitle.

(d) A person registered under this subtitle shall prominently display the person's certificate of registration in the person's place of business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.04, 2.05, eff. Sept. 1, 2003.

Sec. 1051.252. COMPLAINTS. (a) The board by rule shall establish a comprehensive procedure for receiving and adjudicating complaints from consumers and service recipients. The rules must address each phase of the complaint process, including complaint intake, preliminary evaluation, investigation, adjudication, sanctions, and public disclosure.

(b) The board shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

- (1) on each registration form, application, or written contract for services of a person regulated under this subtitle;
- (2) on a sign prominently displayed in the place of business of each person regulated under this subtitle; or
- (3) in a bill for service provided by a person regulated under this subtitle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.06, eff. Sept. 1, 2003.

Sec. 1051.253. COMPLAINT INFORMATION. (a) The board shall maintain a file on each complaint filed with the board that the board has authority to resolve. The file must include:

- (1) the name of the person who filed the complaint unless the complaint is filed anonymously;
- (2) the date the complaint is received by the board;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint.

(b) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(c) The board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an investigation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.06, eff. Sept. 1, 2003.

Sec. 1051.254. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided access to the board's programs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.07, eff. Sept. 1, 2003.

#### **SUBCHAPTER F. GENERAL REGISTRATION REQUIREMENTS**

Sec. 1051.301. ADMINISTRATION OF EXAMINATION TO DISABLED APPLICANTS. The board by rule shall ensure that an examination under this subtitle is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) and its subsequent amendments.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.08, eff. Sept. 1, 2003.

Sec. 1051.302. EXAMINATION FEE. Notwithstanding Section 2113.203, Government Code, the board may delegate the collection of any examination fee prescribed by the board to the person who conducts the examination.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.08, eff. Sept. 1,

2003.

Sec. 1051.303. REFUND POLICY. The board by rule shall adopt a comprehensive refund policy for applicants who are not able to take an examination under this subtitle after paying the examination fee. The comprehensive refund policy must include:

- (1) a list of the circumstances under which the board will refund the examination fee to an applicant who does not take the examination;
- (2) the required documentation to support a refund request;
- (3) the deadline for applying for a refund; and
- (4) the amount of the examination fee the board may retain to cover administrative costs.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.08, eff. Sept. 1, 2003.

Sec. 1051.304. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes an examination under this subtitle, the board shall notify the person of the results of the examination.

(b) If an examination is graded or reviewed by a testing service:

- (1) the board shall notify the person of the results of the examination not later than the 14th day after the date the board receives the results from the testing service; and
- (2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall notify the person of the reason for the delay before the 90th day.

(c) The board may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails an examination administered under this subtitle, the board shall provide the person with an analysis of the person's performance on the examination.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.08, eff. Sept. 1, 2003.

Sec. 1051.3041. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR REGISTRATION. (a) The board shall require that an applicant for a certificate of registration submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The board may not issue a certificate of registration to a person who does not comply with the requirement of Subsection (a).

(c) The board shall conduct a criminal history check of each applicant for a certificate of registration using information:

(1) provided by the individual under this section; and

(2) made available to the board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history check.

Added by Acts 2013, 83rd Leg., R.S., Ch. 316 (H.B. 1717), Sec. 2, eff. September 1, 2013.

Sec. 1051.305. RECIPROCITY. (a) The board may waive any prerequisite to obtaining a certificate of registration under this subtitle for an applicant who holds a license or certificate of registration issued by another jurisdiction:

(1) that has licensing or registration requirements substantially equivalent to those of this state; or

(2) with which this state has a reciprocity agreement.

(b) The board may make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

(c) An applicant under this section must:

(1) apply in the same manner and form as any other applicant under this subtitle, except that the application must be



accompanied by a fee in an amount set by the board as reasonable and necessary to cover the cost of processing and investigating the application and issuing the certificate of registration; and

(2) provide the board with documents and other evidence that substantiates the applicant's qualifications.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.08, eff. Sept. 1, 2003.

Sec. 1051.306. FIRM REGISTRATION. The board by rule may require a firm, partnership, corporation, or association that engages in the practice of architecture, landscape architecture, or interior design to register with the board under this subtitle.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.08, eff. Sept. 1, 2003.

Sec. 1051.307. ROSTER OF APPLICANTS. The board shall maintain a roster of all persons who apply for a certificate of registration under this subtitle. The roster must include the following information about each applicant:

- (1) the applicant's name, address, and age;
- (2) the date the applicant filed the application;
- (3) the applicant's place of business;
- (4) the applicant's educational and other qualifications;
- (5) whether the applicant took the examination;
- (6) whether the board issued a certificate of registration to the applicant or rejected the application;
- (7) the date of the board's action on the application; and
- (8) any other information the board considers necessary.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.08, eff. Sept. 1, 2003.

Sec. 1051.308. INTERN DEVELOPMENT PROGRAM. The board shall allow a graduate student engineer enrolled in an accredited architectural professional degree program in this state to enroll concurrently in the intern development program required by board

rules before an applicant may take the examination under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1157 (H.B. 2284), Sec. 3, eff. September 1, 2011.

#### **SUBCHAPTER G. RENEWAL OF CERTIFICATE OF REGISTRATION**

Sec. 1051.351. ANNUAL RENEWAL REQUIRED. (a) A person who is otherwise eligible to renew a certificate of registration under this subtitle may renew an unexpired certificate by paying the required renewal fee to the board before the expiration date of the certificate. A person whose certificate of registration has expired may not engage in activities that require registration until the certificate of registration has been renewed.

(b) The board by rule may adopt a system under which certificates of registration expire on various dates during the year.

(c) For the year in which the certificate of registration expiration date is changed, the board shall prorate renewal fees on a monthly basis so that each certificate holder pays only that portion of the registration fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate of registration on the new expiration date, the total registration renewal fee is payable.

(c-1) Notwithstanding Subsection (a), a person who holds a certificate of registration issued under Chapter 1053 without examination may not renew the certificate on or after September 1, 2017, unless, before September 1, 2017, the person has passed the registration examination adopted by the board under Section 1053.154 and in effect on January 1, 2014. This subsection expires January 1, 2019.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.10, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 316 (H.B. 1717), Sec. 3, eff. September 1, 2013.

Sec. 1051.352. NOTICE OF EXPIRATION. Not later than the 30th

day before the date a person's certificate of registration is scheduled to expire, the board shall send written notice of the impending expiration to the person at the person's last known address according to the records of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.10, eff. Sept. 1, 2003.

Sec. 1051.353. PROCEDURE FOR RENEWAL. (a) A person may renew an unexpired certificate of registration by submitting proof satisfactory to the board of compliance with the board's continuing education requirement.

(b) A person whose certificate of registration has been expired for 90 days or less may renew the certificate by paying to the board a renewal fee that is equal to 1-1/2 times the required renewal fee set by the board under Section 1051.651(b).

(c) A person whose certificate of registration has been expired for more than 90 days but less than two years may renew the certificate by paying to the board a renewal fee equal to two times the required renewal fee set by the board under Section 1051.651(b).

(d) A person whose certificate of registration has been expired for two years or more may not renew the certificate. The person may obtain a new certificate of registration by complying with the requirements and procedures, including the examination requirements, for obtaining an original certificate.

(e) A person who was registered in this state, moved to another state, and is currently licensed or registered and has been in practice in the other state for the two years preceding the date of the application may obtain a new certificate of registration without reexamination. The person must pay to the board a fee that is equal to two times the required renewal fee set by the board under Section 1051.651(b) for the certificate of registration.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.10, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 4, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 316 (H.B. 1717), Sec. 4, eff. September 1, 2013.

Sec. 1051.3531. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR RENEWAL. (a) An applicant renewing a certificate of registration shall submit a complete and legible set of fingerprints for purposes of performing a criminal history check of the applicant as provided by Section 1051.3041.

(b) The board may not renew the certificate of registration of a person who does not comply with the requirement of Subsection (a).

(c) A holder of a certificate of registration is not required to submit fingerprints under this section for the renewal of the certificate of registration if the holder has previously submitted fingerprints under:

(1) Section 1051.3041 for the initial issuance of the certificate of registration; or

(2) this section as part of a prior renewal of a certificate of registration.

Added by Acts 2013, 83rd Leg., R.S., Ch. 316 (H.B. 1717), Sec. 5, eff. September 1, 2013.

Sec. 1051.354. FEE EXEMPTION FOR MILITARY PERSONNEL. (a) A person required to register under this subtitle who is on active duty as a member of the United States military is exempt from the payment of any fee during the person's term of service if the person:

(1) is in good standing as an architect, landscape architect, or interior designer in this state; or

(2) was in good standing as an architect, landscape architect, or interior designer in this state at the time the person entered into military service.

(b) A person who is exempt from payment of a fee under Subsection (a):

(1) is exempt for the remainder of the fiscal year during which the person's active duty status expires; and

(2) is entitled to have the person's name continued on the list of architects, landscape architects, or interior designers.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.10, eff. Sept. 1, 2003.

Sec. 1051.355. INACTIVE STATUS. (a) The board by rule shall establish a procedure by which a person who is registered under this subtitle may place the person's certificate of registration on inactive status. The person must apply for inactive status, on a form prescribed by the board, before the person's certificate of registration expires.

(b) A person whose certificate of registration is on inactive status must pay an annual renewal fee on a date and in a manner prescribed by board rule. The board shall prescribe the renewal fee under this subsection in an amount equal to the sum of:

(1) the amount determined by the board as reasonable and necessary to cover the costs of administering this section; and

(2) except as provided by Subsection (e), the additional amount required under Section 1051.651(b)(1)(B) for the examination fee scholarship program.

(c) A person whose certificate of registration is on inactive status may not perform any activity regulated under this subtitle.

(d) The board shall remove the person's certificate of registration from inactive status if the person:

(1) requests in writing that the board remove the person's certificate of registration from inactive status;

(2) pays an administrative fee; and

(3) complies with education or other requirements established by board rule.

(e) The additional amount of the renewal fee described by Subsection (b)(2) does not apply to a person registered under Chapter 1052 or 1053.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.11, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.054(a), eff. Sept. 1, 2003.

Sec. 1051.356. CONTINUING EDUCATION. (a) The board shall recognize, prepare, or administer continuing education programs for

its certificate holders. A certificate holder must participate in the programs to the extent required by the board to keep the person's certificate of registration.

(b) The continuing education programs:

(1) must include courses relating to sustainable or energy-efficient design standards; and

(2) may include courses relating to:

(A) health, safety, or welfare; or

(B) barrier-free design.

(b-1) As part of a certificate holder's continuing education requirements for each annual registration period, the board by rule shall require the certificate holder to complete at least one hour of continuing education relating to sustainable or energy-efficient design standards.

(c) The board may recognize the continuing education programs of:

(1) a nationally acknowledged organization involved in providing, recording, or approving postgraduate education; and

(2) any other sponsoring organization or individual whose presentation is approved by the board as qualifying in design or construction health, safety, or welfare.

(d) A person is exempt from the continuing education requirements of this section if the person is, as of September 1, 1999, engaged in teaching the subject matter for which the person is registered under this subtitle as a full-time faculty member or other permanent employee of an institution of higher education, as defined by Section 61.003, Education Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.12, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 376 (S.B. 541), Sec. 1, eff. September 1, 2007.

Sec. 1051.357. EMERITUS STATUS. (a) The board by rule shall establish a procedure by which an architect may place the architect's certificate of registration on emeritus status. The architect must apply for emeritus status, on a form prescribed by the board, before

the architect's certificate of registration expires.

(b) An architect is eligible for emeritus status if the architect:

- (1) has been an architect for 20 years or more; and
- (2) is 65 years of age or older.

(c) An architect whose certificate of registration is on emeritus status:

(1) may engage in the practice of architecture as defined by Sections 1051.001(7)(D), (E), (F), (G), and (H);

(2) may prepare plans and specifications described by Sections 1051.606(a)(3) and (4);

(3) may use the title "Emeritus Architect" or "Architect Emeritus";

(4) must pay a renewal fee on a date and in a manner prescribed by board rule; and

(5) is exempt from continuing education requirements under this chapter.

(d) The board shall change an architect's certificate of registration from emeritus status to active status if the architect:

(1) requests in writing that the board remove the architect's certificate of registration from emeritus status;

(2) pays an administrative fee; and

(3) complies with education or other requirements established by board rule.

(e) The renewal fee charged under Subsection (c) may not exceed an amount reasonable and necessary to recover the costs to administer this section.

Added by Acts 2003, 78th Leg., ch. 1064, Sec. 1, eff. June 20, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 5, eff. September 1, 2007.

#### **SUBCHAPTER H. GENERAL DISCIPLINARY PROCEDURES**

Sec. 1051.401. RIGHT TO HEARING; APPEAL. (a) If the board proposes to suspend, revoke, or refuse to renew a person's certificate of registration, the person is entitled to a hearing. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings.

(b) The board shall prescribe procedures by which a decision to suspend or revoke or a refusal to renew a certificate of registration is made by or is appealable to the board.

(c) A hearing under this section is a contested case subject to Chapter 2001, Government Code, and must be conducted under rules enacted by the State Office of Administrative Hearings under Chapter 2003, Government Code.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.13, eff. Sept. 1, 2003.

Sec. 1051.402. PUBLICATION OF DISCIPLINARY ORDERS AND SANCTIONS. The board by rule shall provide for the publication of all disciplinary orders and sanctions imposed by the board under this subtitle. A certificate holder may not negotiate with the board to keep the board from publishing the settlement of a disciplinary action.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.13, eff. Sept. 1, 2003.

Sec. 1051.403. REINSTATEMENT. The board may issue or reinstate a certificate of registration under this section to an applicant who:

(1) pays all fees and costs incurred by the board as a result of any proceeding that led to the denial, revocation, or suspension; and

(2) presents evidence to support the issuance or reinstatement of the certificate.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.13, eff. Sept. 1, 2003.

#### **SUBCHAPTER I. ADMINISTRATIVE PENALTY**

Sec. 1051.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under this subtitle, regardless of whether the person holds a certificate of registration issued under this subtitle.



Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.15, eff. Sept. 1, 2003.

Sec. 1051.452. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) In determining the amount of a penalty, the board shall consider:

(1) the seriousness of the conduct that is the ground for imposing the penalty, including:

(A) the nature, circumstances, extent, and gravity of any relevant act or omission; and

(B) the hazard or potential hazard created to the health or safety of the public;

(2) the economic damage to property caused by the conduct;

(3) the history of previous grounds for imposing a penalty on the person who engaged in the conduct;

(4) the amount necessary to deter future conduct that is a ground for imposing a penalty;

(5) efforts to correct the conduct that is a ground for imposing a penalty; and

(6) any other matter that justice may require.

(c) The board by rule shall adopt an administrative penalty schedule for violations of this subtitle or board rules to ensure that the amounts of penalties imposed are appropriate to the violation. The board must provide the administrative penalty schedule to the public on request.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.16, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 316 (H.B. [1717](#)), Sec. 6, eff. September 1, 2013.

Sec. 1051.453. REPORT AND NOTICE OF VIOLATION AND

ADMINISTRATIVE PENALTY. (a) If, after investigating the facts surrounding an alleged ground for imposing an administrative penalty, the executive director determines that a ground exists for imposing an administrative penalty, the executive director may issue a report stating:

- (1) the facts on which the determination is based; and
- (2) the executive director's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) The executive director shall base the recommended amount of the penalty on the seriousness of the ground for imposing the penalty after considering the factors listed in Section 1051.452.

(c) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the report to the person on whom the penalty may be imposed. The notice must:

- (1) include a brief summary of the charges;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of a ground for imposing the penalty, the amount of the penalty, or both.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.454. ADMINISTRATIVE PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives notice under Section 1051.453(c), the person may:

- (1) accept the executive director's determination, including the recommended administrative penalty; or
- (2) request a hearing on the determination.

(b) If the person accepts the executive director's determination, the board by order shall approve the determination and impose the recommended penalty.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.455. HEARING. (a) If the person requests a hearing or fails to respond timely to notice under Section 1051.453(c), the board shall set a hearing and give notice of the hearing to the

person.

(b) A proceeding under this section relating to an architect, a landscape architect, or an interior designer is subject to Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 6, eff. September 1, 2007.

Sec. 1051.456. NOTICE OF BOARD ORDER. The executive director shall give notice of the board's order to the person on whom the penalty is imposed. The notice must include:

- (1) the findings of fact and conclusions of law, separately stated;
- (2) the amount of the administrative penalty ordered, if any;
- (3) a statement of the right of the person on whom the penalty is imposed to judicial review of the board's order; and
- (4) other information required by law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.457. OPTIONS FOLLOWING BOARD ORDER: PAY OR APPEAL.

(a) If the person on whom an administrative penalty is imposed holds a certificate of registration issued by the board, the board's order becomes final as provided by Section 2001.144, Government Code. If the person does not hold a certificate of registration issued by the board, the board's order becomes final on the 20th day after the date the order is issued.

(b) Not later than the 30th day after the date the board's order becomes final, the person shall:

- (1) pay the administrative penalty in full; or
- (2) file a petition for judicial review contesting the occurrence of the ground for imposing a penalty, the amount of the penalty, or both.

(c) Within the period prescribed by Subsection (b), a person who acts under Subsection (b)(2) shall:

- (1) pay the penalty to the board for placement in an escrow

account;

(2) post with the board a supersedeas bond that is in a form approved by the board for the amount of the penalty and that is effective until judicial review of the board's order is final; or

(3) file with the board an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to post the bond.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 7, eff. September 1, 2007.

Sec. 1051.458. COLLECTION OF ADMINISTRATIVE PENALTY. If the person on whom an administrative penalty is imposed does not meet the requirements of Section 1051.457, the board may refer the matter to the attorney general for enforcement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.459. JUDICIAL REVIEW. Judicial review of the order of the board imposing an administrative penalty is under the substantial evidence rule and is instituted by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.460. REMITTANCE OF ADMINISTRATIVE PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not imposed by the court, the board shall:

(1) remit the appropriate amount plus accrued interest to the person on whom the penalty is imposed, if the person paid the penalty; or

(2) execute a release of the bond, if the person posted a supersedeas bond.

(b) The interest remitted under Subsection (a)(1) is at the rate charged on loans to depository institutions by the New York

Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

#### **SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 1051.501. GENERAL ENFORCEMENT AUTHORITY. (a) A violation of this subtitle shall be reported to the board.

(b) The board shall ensure that enforcement action is taken against a person who violates this subtitle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.18, eff. Sept. 1, 2003.

Sec. 1051.502. INJUNCTIVE RELIEF. (a) The board may bring an action in its name to enjoin or restrain a person from violating this subtitle, a rule adopted under this subtitle, or another state statute or rule relating to the professions regulated under this subtitle.

(b) An action under this section must be brought in:

- (1) the county in which the defendant resides; or
- (2) the county in which the violation occurred or is threatened to occur.

(c) In an action brought under this section, the board may be represented by the attorney general, the district attorney or the county attorney, and by other counsel as necessary.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.19, eff. Sept. 1, 2003.

Sec. 1051.503. CUMULATIVE EFFECT OF PROVISIONS. An action or penalty authorized by this subtitle is in addition to any other action or penalty provided by law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003;

Renumbered from Occupations Code Sec. 1051.504 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.20, eff. Sept. 1, 2003.

Sec. 1051.504. CEASE AND DESIST ORDER. (a) If it appears to the board that a person who is not registered under this subtitle is violating or has violated this subtitle, a rule adopted under this subtitle, or another state statute or rule relating to the practice of architecture, landscape architecture, or interior design, the board after providing to the person notice and the opportunity for a hearing may issue a cease and desist order prohibiting the conduct described in the notice.

(b) If the person does not request a hearing before the 22nd day after the date of receiving notice under Subsection (a), the board may:

(1) issue a cease and desist order; and  
(2) refer the violation to the attorney general for further action.

(c) If the person requests a hearing before the 22nd day after the date of receiving notice under Subsection (a), the board shall hold the hearing not later than the 30th day after the date the board receives the request for the hearing.

(d) A hearing under this section is subject to Chapter 2001, Government Code.

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

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.21, eff. Sept. 1, 2003.

Sec. 1051.505. RESTITUTION. (a) The board may order a person registered under this subtitle to pay restitution to a consumer instead of or in addition to assessing an administrative penalty under this chapter.

(b) The amount of restitution ordered by the board may not exceed the amount the consumer paid the person for a service regulated under this subtitle. The board may not include an estimation of other damages or harm in a restitution order.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.21, eff. Sept. 1,

2003.

**ARTICLE 3. PROVISIONS APPLYING ONLY TO ARCHITECTS**

**SUBCHAPTER K. GENERAL PROVISIONS: ARCHITECTS**

Sec. 1051.551. ENFORCEMENT BY CERTAIN PUBLIC OFFICIALS. (a) A public official of this state or of a political subdivision of this state who is responsible for enforcing laws that affect the practice of architecture may accept an architectural plan, specification, or other related document only if the plan, specification, or document is prepared by an architect or by a person acting under the supervision of an architect, as evidenced by the architect's seal.

(b) Subsection (a) does not apply to a plan, specification, or document that is subject to an exemption from this chapter.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 3.03, eff. Sept. 1, 2003.

**SUBCHAPTER L. EXEMPTIONS**

Sec. 1051.601. ACTIVITIES OF LICENSED ENGINEER. (a) This chapter and any rule adopted under this chapter do not limit the right of an engineer licensed under Chapter 1001 to perform an act, service, or work within the scope of the practice of engineering as defined by that chapter.

(b) This chapter does not prohibit an engineer licensed under Chapter 1001 from:

(1) planning and supervising work on:

(A) a construction project primarily intended for engineering use, including a railroad, hydroelectric work, or industrial plant; or

(B) a structure incidental to a construction project described by Paragraph (A); or

(2) planning, designing, or supervising the mechanical, electrical, or structural features of a building.

(c) This chapter does not prohibit an engineer who has an architectural engineering degree from a public or private college or university from using the title "architectural engineer." (V.A.C.S. Art. 249a, Secs. 10(b) (part), (g), (j); 16(c).)

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003;

Renumbered from Occupations Code Sec. 1051.051 by Acts 2003, 78th Leg., ch. 331, Sec. 3.05, eff. Sept. 1, 2003.

Sec. 1051.602. ACTIVITIES OF ARCHITECT OR ENGINEER EMPLOYEE. This chapter does not limit a drafter, clerk of the works, superintendent, or other employee of an architect or engineer from acting under the architect's or engineer's instructions, control, or supervision.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.052, by Acts 2003, 78th Leg., ch. 331, Sec. 3.06, eff. Sept. 1, 2003.

Sec. 1051.603. LANDSCAPE ARCHITECTURE. This article does not:

- (1) limit the practice of landscape architecture; or
- (2) prohibit the use of the title "Landscape Architect" by a qualified person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.053 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.07, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 15.007(d), eff. September 1, 2005.

Sec. 1051.604. INTERIOR DESIGN. This article does not:

- (1) limit the practice of interior design; or
- (2) prohibit the use of the title "Interior Designer" by a qualified person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.054 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.08, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 15.007(e), eff. September 1, 2005.



## Sec. 1051.605. EMPLOYEE OF CERTAIN UTILITIES OR AFFILIATES.

(a) This chapter does not limit the activities of a regular full-time employee of a privately owned public utility or cooperative utility or of the utility's affiliate who performs services exclusively for the utility or the affiliate.

(b) This chapter does not limit the use of a job title or personnel classification by an employee described by Subsection (a) if the employee does not use:

(1) the title or classification in connection with an offer to the public to perform architectural services; and

(2) a name, title, or other word that tends to convey the impression that a person not registered as an architect under this chapter is offering to the public to perform architectural services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.055 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.09, 3.10, eff. Sept. 1, 2003.

Sec. 1051.606. ACTIVITIES OF CERTAIN PERSONS NOT REPRESENTED TO BE ARCHITECTS. (a) This chapter does not apply to a person who does not represent that the person is an architect or architectural designer, or use another business or professional title that uses a form of the word "architect," and who:

(1) engages in or is employed in the practice of architecture solely as an officer or employee of the United States;

(2) is a legally qualified architect residing in another state or country who:

(A) does not open or maintain an office in this state; and

(B) complies with the requirements of Subsection (b);

(3) prepares architectural plans and specifications for or observes or supervises the alteration of a building, unless the alteration involves a substantial structural or exitway change to the building; or

(4) prepares the architectural plans and specifications for or observes or supervises the construction, enlargement, or alteration of a privately owned building that is:

(A) a building used primarily for:

(i) farm, ranch, or agricultural purposes; or

- (ii) storage of raw agricultural commodities;
- (B) a single-family or dual-family dwelling or a building or appurtenance associated with the dwelling;
- (C) a multifamily dwelling not exceeding a height of two stories and not exceeding 16 units per building;
- (D) a commercial building that does not exceed a height of two stories or a square footage of 20,000 square feet; or
- (E) a warehouse that has limited public access.

(b) A person described by Subsection (a)(2) who agrees to perform or represents that the person is able to perform a professional service involved in the practice of architecture may perform an architectural service in this state only if, in performing the service, the person:

- (1) employs an architect who is a resident of this state as a consultant; or
- (2) acts as a consultant of an architect in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.056 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.11, 3.12, eff. Sept. 1, 2003.

Sec. 1051.607. LIST OF ENGINEERS PERMITTED TO ENGAGE IN PRACTICE OF ARCHITECTURE. (a) The board shall maintain a list of engineers licensed under Chapter 1001 who are authorized to engage in the practice of architecture based on an administrative finding of experience under this section. The board shall post the list on the board's Internet website.

(b) An engineer may not engage or offer to engage in the practice of architecture unless:

- (1) the engineer is listed under Subsection (a); and
- (2) the engineer is in good standing with the Texas Board of Professional Engineers.

(c) The board shall list each engineer who:

- (1) applies for placement on the list not later than January 1, 2012;
- (2) was licensed to practice engineering under Chapter 1001 before January 1, 2011; and
- (3) provides to the board documentation of at least three projects that:

(A) were prepared by the engineer;

(B) were adequately and safely built before January 1, 2011; and

(C) are described by Section 1051.703(a) or were not exempt under Section 1051.606(a)(4).

(d) Documentation that is sufficient to satisfy the requirement of Subsection (c)(3) includes plans, specifications, photographs, and other records establishing that the architectural design work was performed by the engineer. The documentation is subject to verification by the board. The board shall complete the verification not later than the 120th day after the date the board receives the documentation.

(e) The board shall issue written confirmation to each engineer listed under this section that, notwithstanding the requirements of Section 1051.701, the engineer may lawfully engage and offer to engage in the practice of architecture without a license under this chapter.

(f) If the board declines to list an engineer who applies under this section, the engineer may request a contested case hearing to be conducted under Chapter 2001, Government Code. The motion for rehearing required by Chapter 2001, Government Code, shall be filed with the State Office of Administrative Hearings. The decision of the administrative law judge in the contested case is final and may be appealed in a Travis County district court.

(g) The board and the Texas Board of Professional Engineers shall pay equally the costs of a contested case.

(h) The Texas Board of Professional Engineers has exclusive regulatory oversight over an engineer listed under Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1157 (H.B. [2284](#)), Sec. 4, eff. September 1, 2011.

#### **SUBCHAPTER M. BOARD POWERS AND DUTIES: ARCHITECTS**

Sec. 1051.651. FEES. (a) The board may set a fee for a board action involving an administrative expense in an amount that is reasonable and necessary to cover the cost of administering this chapter, unless the amount of the fee is set by this chapter or by the General Appropriations Act.

(b) The board shall set the required renewal fee for:

(1) a resident of this state in an amount that is equal to the sum of:

(A) the amount determined by the board as reasonable and necessary to cover administrative costs; and

(B) an amount determined annually by the board as reasonable and necessary for the administration of the examination fee scholarship program under Section 1051.653; and

(2) nonresidents in an amount determined by the board.

(c) The board may accept payment of a fee by electronic means. The board may charge a fee to process the payment made by electronic means. The board shall set the processing fee in an amount that is reasonably related to the expense incurred by the board in processing the payment made by electronic means, not to exceed five percent of the amount of the fee for which the payment is made.

(d) A fee set by the board under this section may not be used for the purpose of earning additional revenue for the board.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 3.13, eff. Sept. 1, 2003.

Sec. 1051.652. FEE INCREASE. (a) The fee for the issuance of a certificate of registration under this chapter and the fee for the renewal of a certificate of registration under this chapter are increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 3.13, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 316 (H.B. [1717](#)), Sec. 7, eff. September 1, 2013.

Sec. 1051.653. EXAMINATION FEE SCHOLARSHIPS. (a) The board shall administer scholarships to applicants for examination under this article in a manner the board determines best serves the public purpose of:

(1) promoting the professional needs of the state;

(2) increasing the number of highly trained and educated architects available to serve the residents of the state;

(3) improving the state's business environment and encouraging economic development; and

(4) identifying, recognizing, and supporting outstanding applicants who plan to pursue careers in architecture.

(b) In determining what best serves the public purpose of the scholarships as described by Subsection (a), the board shall consider at least the financial need of each person who applies for a scholarship under this section.

(c) The amount of the scholarship is the lesser of:

(1) \$500; or

(2) the amount of the required examination fee.

(d) Scholarships under this section are funded by the amount added to each renewal fee under Section 1051.651(b). The board may not use more than 15 percent of the amount appropriated to the board for scholarships under this section to pay the costs of administering the scholarships.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 3.13, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.007(f), eff. September 1, 2005.

Sec. 1051.654. DESIGN AND APPROVAL OF ARCHITECT'S SEAL. (a) The board shall prescribe and approve the seal to be used by an architect.

(b) The design of the seal must be the same as the design used by the board, except that the words "Registered Architect, State of Texas" must be used instead of "Texas Board of Architectural Examiners."

Added by Acts 2003, 78th Leg., ch. 331, Sec. 3.13, eff. Sept. 1, 2003.

#### **SUBCHAPTER N. REGISTRATION OF ARCHITECTS**

Sec. 1051.701. REGISTRATION REQUIRED. (a) A person may not engage in the practice of architecture, or offer or attempt to engage

in the practice of architecture, as defined in Section 1051.001(7)(A), (B), or (C) unless the person is registered as an architect under this chapter.

(b) A firm, partnership, corporation, or association, including a firm, partnership, corporation, or joint stock association engaged in the practice of engineering under Section 1001.405, may engage in the practice of architecture, represent to the public that the entity is engaged in the practice of architecture or is offering architectural services, or use the word "architect" or "architecture" in any manner in its name only if any practice of architecture or architectural service performed on behalf of the entity is performed by or through a person registered as an architect under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.301 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.15, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 208 (H.B. 1573), Sec. 3, eff. September 1, 2005.

Sec. 1051.702. USE OF ARCHITECT'S SEAL. (a) An architect shall maintain a seal as approved by the board and shall stamp or impress the seal on each drawing or specification issued from the architect's office for use in this state.

(b) A person may not use or attempt to use an architect's seal, a similar seal, or a replica of the seal, unless the use is by or through an architect.

(c) An architect may not permit a person who is not an architect to use the architect's seal without the architect's personal supervision.

(d) A person may not present or attempt to use as the person's own the seal of another person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.302 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.16, 3.17, eff. Sept. 1, 2003.

Sec. 1051.703. CERTAIN PLANS OR SPECIFICATIONS TO BE PREPARED ONLY BY ARCHITECT. (a) An architectural plan or specification for

any of the following may be prepared only by an architect:

(1) a new building or modification of an existing building intended for occupancy on a 24-hour basis by persons who are receiving custodial care from the proprietor or operator of the building, regardless of the number of stories or square footage of the building;

(2) a new building having construction costs exceeding \$100,000 that is to be:

(A) constructed and owned by a state agency, a political subdivision of this state, or any other public entity in this state; and

(B) used for education, assembly, or office occupancy; or

(3) an alteration or addition having construction costs exceeding \$50,000 that:

(A) is to be made to an existing building that:

(i) is owned by a state agency, a political subdivision of this state, or any other public entity in this state; and

(ii) is or will be used for education, assembly, or office occupancy; and

(B) requires the removal, relocation, or addition of a wall or partition or the alteration or addition of an exit.

(b) This section does not prohibit an owner of a building from contracting with an architect or engineer as the prime design professional for a building construction, alteration, or addition project. Designation as the prime design professional does not expand the scope of practice of an architect or engineer beyond the scope of practice that the architect or engineer is authorized to practice under Chapter 1001 or 1051.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.303 by Acts 2003, 78th Leg., ch. 331, Sec. 3.18, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1157 (H.B. [2284](#)), Sec. 5, eff. September 1, 2011.

Sec. 1051.704. EXAMINATION; ISSUANCE OF CERTIFICATE. The

board shall:

- (1) examine each applicant for registration on any architectural subject or procedure the board requires; and
- (2) issue a certificate of registration to each applicant who passes the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.304 by Acts 2003, 78th Leg., ch. 331, Sec. 3.19, eff. Sept. 1, 2003.

Sec. 1051.705. ELIGIBILITY AND APPLICATION FOR EXAMINATION.

(a) A person may apply for an examination under this chapter if the person:

- (1) is a graduate of a recognized university or college of architecture approved by the board; and
- (2) has satisfactory experience in architecture, in an office or offices of one or more legally practicing architects, as prescribed by board rule.

(b) The applicant must present to the board:

- (1) a diploma showing that the applicant meets the education requirement established by Subsection (a)(1); and
- (2) evidence acceptable to the board that the applicant meets the experience requirement established by Subsection (a)(2).

(c) The board shall set an examination fee in an amount reasonable and necessary to cover the cost of the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.305 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.20, 3.21, eff. Sept. 1, 2003.

**SUBCHAPTER O. DISCIPLINARY PROCEDURES FOR ARCHITECTS**

Sec. 1051.751. DISCIPLINARY POWERS OF BOARD. (a) On a determination that a ground for discipline exists under Section 1051.752, the board shall:

- (1) revoke, suspend, or refuse to renew a certificate of registration;
- (2) reprimand a certificate holder; or
- (3) impose an administrative penalty on a person under Subchapter I.



(b) The board may place on probation a person whose certificate of registration is suspended. If the suspension of a person's certificate is probated, the board may require the person to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board;  
or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003;  
Renumbered from Occupations Code Sec. 1051.401 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.23, eff. Sept. 1, 2003.

Sec. 1051.752. GROUND FOR DISCIPLINARY ACTION. A person is subject to disciplinary action under Section 1051.751 for:

(1) a violation of this subtitle or a board rule adopted under this subtitle that applies to architects;

(2) a failure to provide or to timely provide to the Texas Department of Licensing and Regulation any document designated by Chapter 469, Government Code, as a document the person is required to provide to the department;

(3) a cause for which the board may refuse to issue a certificate of registration;

(4) gross incompetency in the practice of architecture;

(5) recklessness in the practice of architecture, including recklessness in the construction or alteration of a building by an architect designing, planning, or observing the construction or alteration;

(6) dishonest practice in the practice of architecture by the holder of a certificate of registration;

(7) giving false or forged evidence to the board or a board member in obtaining or assisting another person to obtain a certificate of registration;

(8) aiding or abetting a person not registered under this subtitle in violating this subtitle; or

(9) using or attempting to use as the person's own the certificate of registration of another person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.402 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.23, eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.055(a), eff. Sept. 1, 2003.

**SUBCHAPTER P. OTHER PENALTIES AND ENFORCEMENT PROVISIONS: ARCHITECTS**

Sec. 1051.801. CRIMINAL PENALTY. (a) A person, whether acting independently or on behalf of the person's firm, commits an offense if, in violation of this chapter, the person:

(1) engages in the practice of architecture, or offers or attempts to engage in the practice of architecture;

(2) prepares architectural plans or specifications for and observes or supervises the construction, enlargement, or alteration of a building for another person; or

(3) advertises or puts out a sign, card, or drawing designating the person as an architect or architectural designer or uses another business or professional title that uses a form of the word "architect."

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$250 and not more than \$1,000. Each day of violation is a separate offense.

(c) In an action brought under this section, the board may be represented by a district or county attorney or by other counsel as necessary.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 3.24, eff. Sept. 1, 2003.

**CHAPTER 1052. LANDSCAPE ARCHITECTS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1052.003. PRACTICE OF LANDSCAPE ARCHITECTURE. (a) A person may not engage in the practice of landscape architecture unless the person holds a certificate of registration under this chapter or the person:

(1) holds a license or permit issued by the Department of Agriculture, if that license or permit authorizes the person to engage in the business of selling nursery stock in this state;

(2) is a building designer;

(3) is a landscape contractor;

(4) is a landscape designer;

(5) is a golf course designer or planner involved in services such as consultation, investigation, reconnaissance, research, design, preparation of drawings and specifications, and supervision, if the dominant purpose of the service is golf course design or planning;

(6) makes a plan, drawing, or specification for personal use, if the plan, drawing, or specification is for property that is owned by that person;

(7) makes a plan, drawing, or specification for a single-family residence;

(8) makes a plan, drawing, or specification for a multifamily residential project that is not an assisted living facility as defined by Section 247.002, Health and Safety Code;

(9) makes a plan, drawing, or specification for residential housing owned and operated by an institution of higher education as defined by Section 61.003, Education Code;

(10) is engaged in the location, arrangement, and design of any tangible objects and features that are incidental and necessary to landscape development, preservation, and aesthetic and functional enhancement, if that engagement is for:

(A) the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture; or

(B) the making of land surveys for official approval or recording;

(11) is licensed in this state to practice:

(A) architecture;

(B) engineering; or

(C) land surveying;

(12) is primarily engaged in the business of park and recreation planning and involved in services such as consultation, investigation, reconnaissance, research, design, preparation of drawings and specifications, and supervision, if the dominant purpose of those services is park and recreation design and planning;

(13) is primarily engaged in maintaining an existing landscape;

(14) makes a plan, drawing, or specification for property primarily used for farm, ranch, agriculture, wildlife management, or

habitat restoration purposes; or

(15) is a volunteer acting under the direction of a governmental entity for a public purpose.

(b) A person described by Subsection (a) may not use the term "landscape architect," "landscape architectural," or "landscape architecture," or any similar term, to describe the person or the services the person provides unless the person holds a certificate of registration under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.057(b), eff. Sept. 1, 2003.

Sec. 1052.004. ACTIVITIES OF LANDSCAPE ARCHITECT EMPLOYEE.  
This chapter does not limit the ability of an employee of a landscape architect to act under the landscape architect's instructions, control, or supervision.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 4.01, eff. Sept. 1, 2003.

Sec. 1052.005. ACTIVITIES OF CERTAIN PERSONS NOT REPRESENTED TO BE LANDSCAPE ARCHITECTS. (a) This chapter does not apply to a person:

(1) who does not represent that the person is a landscape architect or use a business or professional title that uses a form of the phrase "landscape architect"; and

(2) who is a landscape architect licensed or registered in another state or country who:

(A) does not open or maintain a business in this state; and

(B) complies with the requirements of Subsection (b).

(b) A person described by Subsection (a) who agrees to perform or represents that the person is able to perform a professional service involved in the practice of landscape architecture may perform a landscape architectural service in this state only if, in performing the service, the person:

(1) employs a landscape architect registered under this chapter as a consultant; or

(2) acts as a consultant of a landscape architect registered in this state.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 4.01, eff. Sept. 1, 2003.

#### **SUBCHAPTER B. BOARD POWERS AND DUTIES**

Sec. 1052.054. FEES. (a) The board may set a fee for a board action involving an administrative expense in an amount that is reasonable and necessary to cover the cost of administering this chapter, unless the amount of the fee is set by the General Appropriations Act.

(b) The board shall set the fee for renewal of a certificate of registration in an amount that is reasonable and necessary to defray administrative costs.

(c) The board may accept payment of a fee by electronic means. The board may charge a fee to process the payment made by electronic means. The board shall set the processing fee in an amount that is reasonably related to the expense incurred by the board in processing the payment made by electronic means, not to exceed five percent of the amount of the fee for which the payment is made.

(d) A fee set by the board under this section may not be used for the purpose of earning additional revenue for the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 4.02, eff. Sept. 1, 2003.

Sec. 1052.0541. FEE INCREASE. (a) The fee for the issuance of a certificate of registration under this chapter and the fee for the renewal of a certificate of registration under this chapter is increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 14(a), eff. Sept. 1, 2003.

Sec. 1052.056. DESIGN AND APPROVAL OF LANDSCAPE ARCHITECT'S SEAL. (a) The board shall prescribe and approve the seal to be used by a landscape architect.

(b) The design of the seal must be the same as the design used by the board, except that the words "Registered Landscape Architect, State of Texas" must be used instead of "Texas Board of Architectural Examiners." (V.A.C.S. Art. 249c, Sec. 8D(b).)

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 4.03, 4.04, eff. Sept. 1, 2003.

#### **SUBCHAPTER D. REGISTRATION REQUIREMENTS**

Sec. 1052.151. REGISTRATION REQUIRED; EXCEPTIONS. (a) A person may not engage in the practice of landscape architecture unless the person:

(1) holds a certificate of registration under this chapter;  
or

(2) is authorized under Section 1052.003 to engage in the practice of landscape architecture without holding a certificate of registration.

(b) Except as provided by Subsections (c) and (d), a person may not represent the person to be a landscape architect or use the term "landscape architect," "landscape architectural," or "landscape architecture" or any similar term to describe the person's services unless the person holds a certificate of registration under this chapter.

(c) A business entity may engage in the practice of landscape architecture without holding a certificate of registration under this chapter if:

(1) the entity is authorized under Section 1052.003 to engage in the practice of landscape architecture without holding a certificate of registration; or

(2) any landscape architecture performed on behalf of the entity is performed by or under the supervision and control of a person who:

(A) holds a certificate of registration under this chapter; and

(B) is a regular, full-time employee of the entity.

(d) A business entity may use the term "landscape architect," "landscape architectural," or "landscape architecture" or any similar term to describe the entity or the services provided by the entity without holding a certificate of registration under this chapter if any practice of landscape architecture performed on behalf of the entity is performed by or under the supervision and control of a person who:

- (1) holds a certificate of registration under this chapter; and
- (2) is a regular, full-time employee of the entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.057(c), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 8, eff. September 1, 2007.

Sec. 1052.1515. ACCEPTANCE OF ASSIGNMENTS. A landscape architect may not accept an assignment to engage in the practice of landscape architecture unless:

- (1) the landscape architect is qualified by education, examination, or experience to adequately and competently perform the assignment; or
- (2) if the landscape architect is not qualified to perform part of the assignment, that part of the assignment is to be performed by persons who are qualified.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.057(d), eff. Sept. 1, 2003.

Sec. 1052.152. USE OF LANDSCAPE ARCHITECT'S SEAL. (a) A landscape architect shall maintain a seal as described by Section 1052.056 and shall stamp or impress the seal on each drawing or specification issued from the landscape architect's office for use in this state.

(b) A person may not use or attempt to use a landscape architect's seal, a similar seal, or a replica of the seal unless the use is by or through a landscape architect.

(c) A landscape architect may not permit a person who is not a landscape architect to use the landscape architect's seal without the landscape architect's personal supervision.

(d) A person may not present or attempt to use as the person's own the seal of another person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1052.153. EXAMINATION. (a) A person must pass an examination prescribed by the board to receive a certificate of registration as a landscape architect.

(b) The board shall prescribe the scope of the examination and the methods of procedure with special reference to the applicant's ability that will ensure the safety of the public welfare and property rights. The board by rule may adopt the examination of the Council of Landscape Architectural Registration Boards or the examination of a nationally recognized testing organization whose examination is determined by the board to be at least as stringent as the council's examination.

(c) The board shall approve the examination.

(d) The board at least annually shall administer the examination or enter into a contract with a nationally recognized testing organization to administer the examination. The board, in the manner provided by board rule, shall provide reasonable public notice of the dates on and locations at which each portion of the examination will be administered.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 9, eff. September 1, 2007.

Sec. 1052.154. ELIGIBILITY FOR EXAMINATION; APPLICATION. (a) A person may apply for examination under this chapter if the person:

(1) is a graduate of a landscape architecture educational program recognized and approved by the board; and

(2) has satisfactory experience in landscape architecture as required by board rule.

(b) The application must be accompanied by a fee set by the



board in an amount that is reasonable and necessary to defray administrative costs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1052.155. EMERITUS STATUS; LANDSCAPE ARCHITECTS. (a) The board by rule shall establish a procedure by which a landscape architect may place the landscape architect's certificate of registration on emeritus status. The landscape architect must apply for emeritus status, on a form prescribed by the board, before the landscape architect's certificate of registration expires.

(b) A landscape architect is eligible for emeritus status if the landscape architect:

(1) has been a landscape architect for 20 years or more; and

(2) is 65 years of age or older.

(c) A landscape architect whose certificate of registration is on emeritus status:

(1) may engage in the practice of landscape architecture to the extent that a person who does not hold a certificate of registration as a landscape architect may under Section 1052.003(a);

(2) may use the title "Emeritus Landscape Architect" or "Landscape Architect Emeritus";

(3) must pay a renewal fee on a date and in a manner prescribed by board rule; and

(4) is exempt from continuing education requirements under this chapter.

(d) The board shall change a landscape architect's certificate of registration from emeritus status to active status if the landscape architect:

(1) requests in writing that the board change the landscape architect's certificate of registration from emeritus status to active status;

(2) pays an administrative fee; and

(3) complies with education or other requirements established by board rule.

(e) The renewal fee charged under Subsection (c) may not exceed an amount reasonable and necessary to recover the costs to administer this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 10, eff. September 1, 2007.

**SUBCHAPTER F. DISCIPLINARY PROCEDURES**

Sec. 1052.251. DISCIPLINARY POWERS OF BOARD. (a) On a determination that a ground for discipline exists under Section 1052.252, the board shall:

(1) revoke, suspend, or refuse to renew a certificate of registration;

(2) reprimand a certificate holder; or

(3) impose an administrative penalty on a person under Subchapter I, Chapter 1051.

(b) The board may place on probation a person whose certificate of registration is suspended. If the suspension is probated, the board may require the person to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board;

or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 4.05, eff. Sept. 1, 2003.

Sec. 1052.252. GROUNDS FOR DISCIPLINARY ACTION. A person is subject to disciplinary action under Section 1052.251 for:

(1) violating this subtitle or a board rule adopted under this subtitle that applies to landscape architects;

(2) using fraud or deceit in obtaining a certificate of registration;

(3) giving false or forged evidence to the board or a member of the board in obtaining or assisting another person to obtain a certificate of registration;

(4) using or attempting to use as the person's own the certificate of registration of another person;

(5) holding the person out to the public as an engineer or using the term "engineer," "engineered," "professional engineer," or "P.E." or any other term tending to create the impression that the person is authorized to practice engineering or another profession unless the person is licensed under Chapter 1001 or another licensing law of this state, as applicable;

(6) holding the person out to the public as a surveyor or using the term "surveyor," "surveyed," or "registered professional land surveyor" or any other term tending to create the impression that the person is authorized to practice surveying or another profession unless the person is licensed under Chapter 1071 or another licensing law of this state, as applicable;

(7) committing an act of recklessness, gross incompetency, or misconduct in the practice of landscape architecture;

(8) failing to provide or to timely provide to the Texas Department of Licensing and Regulation any document designated by Chapter 469, Government Code, as a document the person is required to provide to the department;

(9) acting dishonestly in the practice of landscape architecture; or

(10) aiding or abetting a person not registered under this subtitle in violating this subtitle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 4.05, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.060(a), eff. Sept. 1, 2003.

## **CHAPTER 1053. INTERIOR DESIGNERS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1053.002. APPLICATION. (a) This chapter does not apply to:

(1) a person who:

(A) does not use the title "interior designer" and does not use the term "interior design" to describe a service the person offers or performs; and

(B) is an interior designer licensed or registered in another state or country who:

(i) does not open or maintain a business in this

state; and

(ii) complies with the requirements of Subsection (b);

(2) a person who is registered to practice architecture in this state; or

(3) a person who does not use a business or professional title that uses the phrase "registered interior designer."

(b) A person described by Subsection (a)(1) who agrees to perform or represents that the person is able to perform an interior design service may perform an interior design service in this state if, in performing the service, the person:

(1) employs an interior designer registered under this chapter as a consultant; or

(2) acts as a consultant of an interior designer registered in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 5.01, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 13 (H.B. 1484), Sec. 1, eff. May 12, 2009.

Sec. 1053.003. LIMITATION ON INTERIOR DESIGNERS. Registration under this chapter does not authorize an interior designer to:

(1) plan or design architectural interior construction;

(2) engineer a building system, including a structural, electrical, plumbing, heating, ventilating, air-conditioning, or mechanical system;

(3) engage in the practice of engineering as described in Chapter 1001; or

(4) engage in the practice of architecture as described in Chapter 1051.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

#### **SUBCHAPTER B. BOARD POWERS AND DUTIES**

Sec. 1053.052. FEES. (a) The board shall set the following fees, unless otherwise set in the General Appropriations Act, in

amounts that are reasonable and necessary to cover the costs of administering this chapter:

- (1) a registration application fee;
- (2) an annual registration renewal fee;
- (3) a reciprocal registration fee; and
- (4) an examination fee.

(b) The board may set fees for the following services, unless otherwise set in the General Appropriations Act, in amounts that are reasonable and necessary to cover the costs of administering this chapter:

- (1) providing a duplicate certificate of registration;
- (2) providing a roster of interior designers;
- (3) reinstating a revoked or suspended certificate of registration; and
- (4) performing any other board action involving an administrative expense.

(c) The board may accept payment of a fee by electronic means. The board may charge a fee to process the payment made by electronic means. The board shall set the processing fee in an amount that is reasonably related to the expense incurred by the board in processing the payment made by electronic means, not to exceed five percent of the amount of the fee for which the payment is made.

(d) A fee set by the board under this section may not be used for the purpose of earning additional revenue for the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 5.02, eff. Sept. 1, 2003.

Sec. 1053.0521. FEE INCREASE. (a) The fee for the issuance of a certificate of registration under this chapter and the fee for the renewal of a certificate of registration under this chapter is increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 14(b), eff. Sept. 1, 2003.

Sec. 1053.053. GIFTS AND GRANTS. (a) The board may accept a gift or grant from any source to pay for any activity under this chapter.

(b) A gift or grant must be accepted in an open meeting by a majority of the board and reported in the minutes with the name of the donor and purpose of the gift or grant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1053.058. DESIGN AND APPROVAL OF INTERIOR DESIGNER'S SEAL. (a) The board shall prescribe and approve the seal to be used by an interior designer.

(b) The design of the seal must be the same as the design used by the board, except that the words "Registered Interior Designer, State of Texas" must be used instead of "Texas Board of Architectural Examiners."

Added by Acts 2003, 78th Leg., ch. 331, Sec. 5.03, eff. Sept. 1, 2003.

#### **SUBCHAPTER D. REGISTRATION REQUIREMENTS**

Sec. 1053.151. REGISTRATION REQUIRED. A person other than an interior designer may not represent that the person is a "registered interior designer" by using that title or by using words that imply that the person is a registered interior designer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 13 (H.B. [1484](#)), Sec. 2, eff. May 12, 2009.

Sec. 1053.152. ELIGIBILITY REQUIREMENTS. (a) The board shall establish the qualifications for the issuance or renewal of a certificate of registration under this chapter.

(b) To be eligible for a certificate of registration, an applicant must:

(1) meet the qualifications established by the board under Subsection (a);

- (2) pass the registration examination; and
- (3) pay the required fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1053.153. APPLICATION FOR CERTIFICATE OF REGISTRATION.

Each application for a certificate of registration must:

- (1) be on a form prescribed and furnished by the board;

and

- (2) include a:

- (A) verified statement of the applicant's education;

and

- (B) detailed summary of the applicant's interior design work experience.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1053.154. EXAMINATION REQUIRED. (a) An applicant for a certificate of registration must pass the examination adopted by the board.

(b) The examination must cover subjects established by and must be graded according to board rules. The board by rule may adopt the examination of the National Council for Interior Design Qualification or a comparable examination.

(c) The board shall determine the time and place for each examination. The examination shall be offered at least once a year. The board shall give reasonable public notice of the examination in the manner provided by board rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1053.155. APPLICATION FOR ADMISSION TO EXAMINATION. (a)

An applicant for a certificate of registration must apply to the board, on a form prescribed by the board, for admission to the registration examination.

(b) An application for admission to the registration examination must be accompanied by evidence satisfactory to the board that the applicant:

- (1) has graduated from an interior design educational program recognized and approved by the board; and
  - (2) has professional experience in the field of interior design.
- (c) The board shall adopt rules establishing standards for:
- (1) the recognition and approval of interior design educational programs; and
  - (2) the amounts and types of professional experience necessary for registration examination eligibility.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1053.156. EMERITUS STATUS; INTERIOR DESIGNERS. (a) The board by rule shall establish a procedure by which an interior designer may place the interior designer's certificate of registration on emeritus status. The interior designer must apply for emeritus status, on a form prescribed by the board, before the interior designer's certificate of registration expires.

(b) An interior designer is eligible for emeritus status if the interior designer:

- (1) has been an interior designer for 20 years or more; and
- (2) is 65 years of age or older.

(c) An interior designer whose certificate of registration is on emeritus status:

- (1) may use the title "Emeritus Interior Designer" or "Interior Designer Emeritus";
- (2) must pay a renewal fee on a date and in a manner prescribed by board rule; and
- (3) is exempt from continuing education requirements under this chapter.

(d) The board shall change an interior designer's certificate of registration from emeritus status to active status if the interior designer:

- (1) requests in writing that the board change the interior designer's certificate of registration from emeritus status to active status;
- (2) pays an administrative fee; and
- (3) complies with education or other requirements established by board rule.



(e) The renewal fee charged under Subsection (c) may not exceed an amount reasonable and necessary to recover the costs to administer this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 11, eff. September 1, 2007.

Sec. 1053.159. ISSUANCE OF CERTIFICATE. The board shall issue a certificate of registration to an applicant who presents satisfactory evidence that the applicant complies with all registration requirements under this chapter and under board rules.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1053.160. USE OF INTERIOR DESIGNER'S SEAL. (a) An interior designer shall maintain a seal described by Section 1053.058 and shall stamp or impress the seal on each drawing or specification issued from the interior designer's office for use in this state.

(b) A person may not use or attempt to use an interior designer's seal, a similar seal, or a replica of the seal unless the use is by or through an interior designer.

(c) An interior designer may not permit a person who is not an interior designer to use the interior designer's seal without the interior designer's personal supervision.

(d) A person may not present or attempt to use as the person's own the seal of another person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 5.04, eff. Sept. 1, 2003.

#### **SUBCHAPTER F. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES**

Sec. 1053.251. DISCIPLINARY POWERS OF BOARD. (a) On a determination that a ground for disciplinary action exists under Section 1053.252, the board shall:

(1) revoke, suspend, or refuse to renew a certification of registration;

(2) reprimand a certificate holder; or

(3) impose an administrative penalty on a person under Subchapter I, Chapter 1051.

(b) The board may place on probation a person whose certificate of registration is suspended. If the suspension is probated, the board may require the person to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board;  
or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(c) On a determination that a ground for disciplinary action exists under Section 1053.252, the board shall deny registration of an applicant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 5.05, eff. Sept. 1, 2003.

Sec. 1053.252. GROUNDS FOR DISCIPLINARY ACTION. A person is subject to disciplinary action under Section 1053.251 for:

(1) violating this subtitle or a board rule adopted under this subtitle that applies to interior designers;

(2) being convicted of a felony or of a misdemeanor involving moral turpitude;

(3) using fraud or deceit in obtaining or attempting to obtain a certificate of registration;

(4) committing an act of recklessness, gross incompetency, or misconduct in the practice of interior design;

(5) practicing in a manner detrimental to the public health, safety, or welfare;

(6) advertising in a manner that tends to deceive or defraud the public;

(7) aiding or abetting any person not registered under this subtitle in violating this subtitle;

(8) failing to provide or to timely provide to the Texas Department of Licensing and Regulation any document designated by Chapter 469, Government Code, as a document the person is required to

provide to the department;

(9) giving false or forged evidence to the board or a member of the board in obtaining or assisting another person to obtain a certificate of registration;

(10) using or attempting to use as the person's own the certificate of registration of another person; or

(11) acting dishonestly in the practice of interior design.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 331, Sec. 5.06, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.062(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER H. PENALTIES**

Sec. 1053.351. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates Section 1053.151 or a standard of conduct adopted under this chapter.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

### **SUBTITLE C. REGULATION OF LAND SURVEYING AND RELATED PRACTICES**

#### **CHAPTER 1071. LAND SURVEYORS**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1071.001. SHORT TITLE. This chapter may be cited as the Professional Land Surveying Practices Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Professional Land Surveying.

(2) "Commissioner" means the commissioner of the General Land Office.

(3) "Delegated responsible charge" means the direct control of professional surveying work performed under the supervision of a registered professional land surveyor.

(4) "Land surveyor" means a registered professional land

surveyor or licensed state land surveyor.

(5) "Licensed state land surveyor" means a surveyor licensed by the board to survey land in which the state or the permanent school fund has an interest or perform other original surveys for the purpose of filing field notes in the General Land Office.

(6) "Professional surveying" means the practice of land, boundary, or property surveying or other similar professional practices. The term includes:

(A) performing any service or work the adequate performance of which involves applying special knowledge of the principles of geodesy, mathematics, related applied and physical sciences, and relevant laws to the measurement or location of sites, points, lines, angles, elevations, natural features, and existing man-made works in the air, on the earth's surface, within underground workings, and on the beds of bodies of water to determine areas and volumes for:

(i) locating real property boundaries;

(ii) platting and laying out land and subdivisions of land; or

(iii) preparing and perpetuating maps, record plats, field note records, easements, and real property descriptions that represent those surveys; and

(B) consulting, investigating, evaluating, analyzing, planning, providing an expert surveying opinion or testimony, acquiring survey data, preparing technical reports, and mapping to the extent those acts are performed in connection with acts described by this subdivision.

(7) "Registered professional land surveyor" means a person registered by the board as a registered professional land surveyor.

(8) "State land surveying" means the science or practice of land measurement according to established and recognized methods engaged in as a profession or service for the public for compensation and consisting of the following activities conducted when the resulting field notes or maps are to be filed with the General Land Office:

(A) determining by survey the location or relocation of original land grant boundaries and corners;

(B) calculating area and preparing field note descriptions of surveyed and unsurveyed land or land in which the

state or the permanent school fund has an interest; and  
 (C) preparing maps showing the survey results.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 611 (H.B. 2179), Sec. 1, eff. June 17, 2005.

Sec. 1071.003. APPLICATION OF SUNSET ACT. The Texas Board of Professional Land Surveying is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2019.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 16, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 4.08, eff. June 17, 2011.

Sec. 1071.004. APPLICATION OF CHAPTER. This chapter does not require the use of a registered professional land surveyor to establish an easement or a construction estimate that does not involve the monumentation, delineation, or preparation of a metes and bounds description.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

#### **SUBCHAPTER B. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING**

Sec. 1071.051. BOARD MEMBERSHIP. (a) The Texas Board of Professional Land Surveying consists of nine members as follows:

- (1) the commissioner;
- (2) two licensed state land surveyor members actively engaged in the practice of state land surveying for not less than the five years preceding appointment;
- (3) three registered professional land surveyor members actively engaged in the practice of professional surveying in this state for not less than the five years preceding appointment; and

(4) three members who represent the public.

(b) The members of the board other than the commissioner are appointed by the governor with the advice and consent of the senate. The governor shall appoint the licensed state land surveyor board members on the recommendation of the commissioner.

(c) A board member must be a United States citizen.

(d) If the commissioner is absent, the commissioner's duties as a board member shall be performed by:

(1) the chief clerk of the General Land Office appointed by the commissioner to perform any of the commissioner's duties if the commissioner is sick, is absent, dies, or resigns; or

(2) a licensed state land surveyor employee of the General Land Office designated by the commissioner to serve as director of surveying for the office.

(e) A registered professional land surveyor board member may not be licensed as a licensed state land surveyor.

(f) For purposes of the experience required for appointment as a registered professional land surveyor board member, the teaching of surveying in a recognized school of engineering or surveying may be regarded as the practice of professional land surveying.

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 23.01, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 16, Sec. 2, eff. Sept. 1, 2003.

Sec. 1071.052. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of surveying;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the board;

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

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be an employee of the board employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of surveying; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of surveying.

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 16, Sec. 3, eff. Sept. 1, 2003.

Sec. 1071.054. TERMS; OATH; VACANCY. (a) Members of the board appointed by the governor serve staggered six-year terms, with the terms of approximately one-third of those members expiring on January 31 of each odd-numbered year.

(b) A board member appointed by the governor may not serve more than two consecutive terms.

(c) Before assuming the duties of office, each board member

shall file with the secretary of state a copy of the constitutional oath of office taken by the member.

(d) A vacancy on the board is filled by appointment by the governor in the manner provided by Section 1071.051 for the unexpired term.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 23.02, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 16, Sec. 4, eff. Sept. 1, 2003.

Sec. 1071.055. OFFICERS. (a) The governor shall designate one board member as the board's presiding officer to serve in that capacity at the pleasure of the governor.

(b) The board shall elect a member as assistant presiding officer at the first board meeting held after February 10 of each odd-numbered year.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Sections 1071.051 and 1071.052;

(2) does not maintain during service on the board the qualifications required by Sections 1071.051 and 1071.052;

(3) is ineligible for membership under Section 1071.051, 1071.052, or 1071.053;

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

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by majority vote of the board.

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

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The



presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 16, Sec. 5, eff. Sept. 1, 2003.

Sec. 1071.057. PER DIEM; REIMBURSEMENT. (a) Each board member other than the commissioner is entitled to receive a per diem allowance as set by the legislature for each day that the member engages in official board duties, including time spent in necessary travel.

(b) Each board member other than the commissioner is entitled to reimbursement for all legitimate expenses incurred in performing the member's duties.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.058. MEETINGS. (a) The board shall hold meetings at least twice each year at times and places determined by the board to transact business and examine approved applicants for:

- (1) certification as a surveyor-in-training;
- (2) registration as a registered professional land surveyor; or
- (3) licensing as a licensed state land surveyor.

(b) The board shall hold regular and special meetings at the times determined by the board. A special meeting may be called by the presiding officer or by the assistant presiding officer if the presiding officer is out of the state or unable to act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of

the board until the person completes a training program that complies with this section.

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

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

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

Added by Acts 2003, 78th Leg., ch. 16, Sec. 6, eff. Sept. 1, 2003.

#### **SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL**

Sec. 1071.101. EXECUTIVE DIRECTOR. (a) The board shall employ an executive director to conduct the administrative affairs of the board under the board's direction. The executive director serves at the pleasure of the board.

(b) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(42).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 285, Sec. 26, eff. Sept. 1,

2003; Acts 2003, 78th Leg., ch. 285, Sec. 31(42), eff. Sept. 1, 2003.

Sec. 1071.102. PERSONNEL. (a) The board shall employ or retain persons as necessary to properly perform the board's work under this chapter, including investigative services.

(b) The board may accept services necessary to perform the board's work under this chapter that are provided by private sources at no cost to the board.

(c) Compensation paid by the board under this chapter may not exceed compensation paid for similar work in other state agencies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.103. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.104. REQUIREMENTS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide to members of the board and to board employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 16, Sec. 7, eff. Sept. 1, 2003.

Sec. 1071.105. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

(a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(b) A policy statement prepared under Subsection (a) must:

(1) be updated annually;

(2) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(3) be filed with the governor's office.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 16, Sec. 8, eff. Sept. 1, 2003.

**SUBCHAPTER D. POWERS AND DUTIES OF BOARD**

Sec. 1071.151. RULEMAKING AUTHORITY. (a) The board may adopt and enforce reasonable and necessary rules and bylaws to perform its duties under this chapter and to establish standards of conduct and ethics for land surveyors.

(b) The board by rule shall prescribe the minimum standards for professional surveying.

(c) The board by rule shall establish the enforcement process for a violation of this chapter or a board rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 16, Sec. 10, eff. Sept. 1, 2003.

Sec. 1071.1515. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The board shall adopt rules necessary to comply with Chapter 53.

Added by Acts 2003, 78th Leg., ch. 16, Sec. 11, eff. Sept. 1, 2003.

Sec. 1071.152. RECEIPT OF FEES; PAYMENT OF ADMINISTRATIVE COSTS. (a) The executive director shall receive and account for fees received under this chapter.

(b) General revenue of the state may not be used to pay the costs of administering this chapter in an amount that exceeds the amount of fees received under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.1521. FEE INCREASE. (a) The fee for the issuance of a certificate of registration to a registered professional land surveyor under this chapter and the fee for the renewal of a certificate of registration for a registered professional land surveyor under this chapter is increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

(c) This section does not apply to state agency employees who are employed by the state as land surveyors.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 14(c), eff. Sept. 1, 2003.

Sec. 1071.1525. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings regarding the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training necessary for implementation of the negotiated rulemaking or alternative dispute resolution procedures; and

(3) collect data on the effectiveness of the procedures as implemented by the board.

Added by Acts 2003, 78th Leg., ch. 16, Sec. 12, eff. Sept. 1, 2003.

Sec. 1071.1526. FEES. The board shall set fees in amounts reasonable and necessary to cover the costs of administering this chapter.

Added by Acts 2003, 78th Leg., ch. 16, Sec. 12, eff. Sept. 1, 2003.

Sec. 1071.1527. REDUCED FEES FOR ELDERLY LAND SURVEYORS. The board by rule may adopt reduced certificate of registration and license fees and annual renewal fees for land surveyors who are at least 65 years of age.

Added by Acts 2005, 79th Leg., Ch. 170 (H.B. 207), Sec. 1, eff. September 1, 2005.

Sec. 1071.153. OFFICE SPACE. The board shall arrange for suitable office space and equipment as the board determines to be necessary. The rental of office space and cost of equipment are

considered administrative expenses of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.154. SURVEYOR ROSTER; INFORMATION PROVIDED TO SURVEYORS. (a) The board shall publish annually, at a time determined by the board:

(1) a roster containing the name and place of business of each land surveyor;

(2) the rules adopted by the board; and

(3) a copy of this chapter.

(b) The board shall charge a fee in an amount reasonable and necessary to cover the costs of reproducing and mailing a copy of the roster to a person who requests a copy.

(c) The board shall send annually to each land surveyor a copy of this chapter and of the board's rules.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.155. BOARD RECORDS. (a) The board shall maintain a record of its proceedings, including a record of money received and spent by the board and a register of each applicant for registration or licensing. The record shall be open for public inspection at all reasonable times.

(b) The register must include:

(1) the name, age, and place of residence of the applicant;

(2) the application date;

(3) the applicant's place of business;

(4) the applicant's qualifications;

(5) if the application is rejected, the reasons for the rejection;

(6) the date and result of each examination;

(7) the date and number of any certificate of registration or license issued; and

(8) any other information the board determines necessary.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.156. REPRESENTATION OF BOARD AT CERTAIN MEETINGS. The board's general counsel and board members may appear and represent the board at committee meetings and other formal meetings within the legislative or executive branch.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.157. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board by rule shall prescribe standards for compliance with Subchapter A, Chapter 2254, Government Code.

(b) Except as provided by Subsection (a), the board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by that person.

(c) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.158. TECHNOLOGY POLICY. The board shall develop and implement a policy requiring the executive director and board employees to research and propose appropriate technological solutions to improve the board's ability to perform its functions. The technological solutions must:

- (1) ensure that the public is able to easily find information about the board on the Internet;
- (2) ensure that persons who want to use the board's services are able to:
  - (A) interact with the board through the Internet; and
  - (B) access any service that can be provided effectively through the Internet; and



(3) be cost-effective and developed through the board's planning process.

Added by Acts 2003, 78th Leg., ch. 16, Sec. 12, eff. Sept. 1, 2003.

#### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 1071.201. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.202. PUBLIC PARTICIPATION. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.203. COMPLAINTS. (a) Any person may file a complaint with the board regarding a violation of this chapter or a board rule.

(b) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

- (1) on each registration form, application, or written contract for services of a person regulated under this chapter;
- (2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or
- (3) in a bill for services provided by a person regulated under this chapter.

(c) The board shall accept a complaint regardless of whether the complaint is notarized.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 16, Sec. 13, eff. Sept. 1, 2003.

Sec. 1071.204. RECORDS OF COMPLAINTS. (a) The board shall maintain a file on each written complaint filed with the board that the board has authority to resolve. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the board;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint.

(b) If a written complaint that the board has authority to resolve is filed with the board, the board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(c) The board, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

(d) Except as provided by Subsection (e), a complaint filed with the board is public information.

(e) For any complaint determined to be frivolous or without merit, the complaint and other enforcement case information related to that complaint are confidential. The information may be used only by the board or by its employees or agents directly involved in the enforcement process for that complaint. The information is not subject to discovery, subpoena, or other disclosure.

(f) In this section, "frivolous complaint" means a complaint that the executive director and investigator, with board approval, determine:

- (1) was made for the purpose of harassment; and
- (2) does not demonstrate harm to any person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 16, Sec. 14, eff. Sept. 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 173 (H.B. 1411), Sec. 1, eff. May 27, 2009.

#### **SUBCHAPTER F. REGISTRATION, LICENSING, AND CERTIFICATION REQUIREMENTS**

Sec. 1071.251. REGISTRATION, LICENSE, OR CERTIFICATE REQUIRED.

(a) In this section, "offer to practice" means to represent by verbal claim, sign, letterhead, card, or other method that a person is registered or licensed to perform professional surveying in this state.

(b) A person may not engage in the practice of professional surveying unless the person is registered, licensed, or certified as provided by this chapter.

(c) A person may not offer to practice professional surveying in this state unless the person is registered or licensed as provided by this chapter.

(d) A person may not use in connection with the person's name or use or advertise a title or description that tends to convey the impression that the person is a professional land surveyor unless the person is registered or licensed under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.252. APPLICATION REQUIREMENTS. (a) An applicant for certification as a surveyor-in-training, registration as a registered professional land surveyor, or licensing as a licensed state land surveyor must file a written application with the board accompanied by an application fee in an amount determined by the board.

(b) An application must be made on a form prescribed and furnished by the board and contain statements that show the applicant's education and experience. The application must contain a detailed summary of the applicant's education and experience and references from at least three registered professional land surveyors having personal knowledge of the applicant's surveying experience. The board shall accept an application that meets board requirements regardless of whether the application is notarized.

(c) After the board determines that the applicant is qualified to take the appropriate section of the examination under Section 1071.256, the board shall set the examination section the applicant is approved to take and notify the applicant of the examination section and of the time and place of the examination. The applicant may take the examination section on payment of an examination fee in an amount determined by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 16, Sec. 15, eff. Sept. 1, 2003.

Sec. 1071.253. SURVEYOR-IN-TRAINING CERTIFICATE. (a) An applicant for a surveyor-in-training certificate must:

(1) have earned a bachelor of science degree in surveying from an accredited institution of higher education;

(2) have:

(A) earned a bachelor's degree from an accredited institution of higher education that included at least 32 semester hours in a combination of courses acceptable to the board in:

(i) civil engineering;

(ii) land surveying;

(iii) mathematics;

(iv) photogrammetry;

(v) forestry;

(vi) land law; or

(vii) the physical sciences; and

(B) completed at least one year of experience acceptable to the board in delegated responsible charge as a subordinate to a registered professional land surveyor actively engaged in professional surveying;

(3) have:

(A) earned an associate degree in surveying from an accredited institution of higher education; and

(B) completed at least two years of experience acceptable to the board in delegated responsible charge as a subordinate to a registered professional land surveyor actively engaged in professional surveying;

(4) have:

(A) successfully completed a course of instruction

consisting of 32 semester hours in land surveying or the equivalent number of semester hours in board-approved courses related to surveying; and

(B) completed at least two years of experience acceptable to the board in delegated responsible charge as a subordinate to a registered professional land surveyor actively engaged in professional surveying; or

(5) have:

(A) graduated from an accredited high school;

(B) completed at least four years of experience acceptable to the board in delegated responsible charge as a subordinate to a registered professional land surveyor actively engaged in professional surveying; and

(C) provided evidence satisfactory to the board that the applicant is self-educated in professional surveying.

(b) On proof that an applicant has the qualifications required by Subsection (a), the board shall allow the applicant to take an examination consisting of parts of the examination under Section 1071.256, the contents of which are as determined or approved by the board.

(c) The board shall issue a surveyor-in-training certificate to an applicant who passes the applicable parts of the examination taken under Subsection (b). The certificate is valid for eight years.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 53 (S.B. 1340), Sec. 1, eff. May 10, 2007.

Sec. 1071.254. QUALIFICATIONS FOR REGISTRATION AS REGISTERED PROFESSIONAL LAND SURVEYOR. (a) An applicant for registration as a registered professional land surveyor must:

(1) hold a certificate as a surveyor-in-training;

(2) have at least two years of experience satisfactory to the board as a surveyor-in-training in performing surveying in delegated responsible charge as a subordinate to a surveyor registered or licensed to engage in the practice of surveying in this state or in another state having registration or licensing requirements equivalent to the requirements of this state; and

(3) if the application is filed after January 1, 2003, have earned a bachelor's degree from an accredited institution of higher education that included at least 32 semester hours in a combination of courses acceptable to the board in:

- (A) civil engineering;
- (B) land surveying;
- (C) mathematics;
- (D) photogrammetry;
- (E) forestry;
- (F) land law; or
- (G) the physical sciences.

(b) An applicant is entitled to registration as a registered professional land surveyor if the applicant meets the qualifications prescribed by Subsection (a) and is approved to take and passes the required sections of the examination prescribed under Section 1071.256.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.255. QUALIFICATIONS FOR LICENSING AS LICENSED STATE LAND SURVEYOR; OATH. (a) A registered professional land surveyor is entitled to be licensed as a licensed state land surveyor if the person is approved to take and passes the appropriate sections of the examination prescribed under Section 1071.256.

(b) The board may not issue a license to a licensed state land surveyor until the applicant takes the official oath stating that the person will faithfully, impartially, and honestly perform all the duties of a licensed state land surveyor to the best of the person's skill and ability in all matters in which the person may be employed.

(c) The board may not issue a license as a licensed state land surveyor to a person residing outside of this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.256. EXAMINATION. (a) The board shall prescribe the scope of the written examination and examination procedures with special reference to the applicant's ability in order to protect the public safety, welfare, and property rights.

(b) The examination for an applicant for registration as a

registered professional land surveyor must be developed and given as provided by this chapter under board rules designed to determine the knowledge and ability of the applicant.

(c) The examination for an applicant for licensing as a licensed state land surveyor must be developed under board rules and include examination on:

- (1) the theory of surveying;
- (2) the law of land boundaries;
- (3) the history and functions of the General Land Office;

and

(4) other matters pertaining to surveying as determined by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.257. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes a licensing examination, the board shall notify the person of the results of the examination.

(b) If the examination is graded or reviewed by a testing service:

(1) the board shall notify the person of the results of the examination not later than the 14th day after the date the board receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall notify the person of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination administered under this chapter, the board shall furnish the person with an analysis of the person's performance on the examination. The analysis shall be provided in a summary form that does not compromise the integrity of the examination.

(d) The board may require a testing service to notify a person of the results of the person's examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 16, Sec. 16, eff. Sept. 1, 2003.

Sec. 1071.258. REEXAMINATION; FEE. An applicant who fails an examination may apply to take a subsequent examination by filing an

updated application and paying an additional examination fee set by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 16, Sec. 17, eff. Sept. 1, 2003.

Sec. 1071.259. REGISTRATION OF OUT-OF-STATE SURVEYORS. (a) The board may waive any registration requirement for an applicant who holds a license from another state having registration or licensing requirements substantially equivalent to the registration requirements of this state.

(b) The board may issue a certificate of registration as a registered professional land surveyor to an applicant under this section who meets all waived and unwaived registration requirements and who:

- (1) applies to the board for a certificate of registration;
- (2) pays a fee set by the board; and
- (3) passes an examination on Texas surveying.

(c) The board shall determine the contents of the examination under Subsection (b)(3). The examination may not exceed four hours in duration.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 16, Sec. 18, eff. Sept. 1, 2003.

Sec. 1071.260. REGISTRATION NUMBER; FORM OF CERTIFICATE OR LICENSE. (a) The board shall issue to each registered professional land surveyor a registration number that may not be assigned to or used by any other surveyor. The number must be on the certificate of registration and recorded in the board's permanent records and is the surveyor's registration number for use on all official documents.

(b) Each certificate of registration and license issued by the board must show the full name of the registration holder or license holder and shall be signed by the presiding officer and the executive director of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.



Sec. 1071.261. DISPLAY OF CERTIFICATE AND LICENSE. (a) An original or renewal certificate of registration or license is evidence that the person whose name and registration number appear on the document is qualified to practice as a registered professional land surveyor or licensed state land surveyor.

(b) A person holding a certificate of registration or license shall display the certificate or license at the person's place of business or practice. The person shall be prepared to substantiate that the certificate or license has been renewed for the current year.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.262. REPLACEMENT OF REVOKED, LOST, OR DESTROYED CERTIFICATE OR LICENSE. The board may issue, on payment of a fee set by the board and subject to board rules, a new certificate of registration or license to replace a certificate or license that has been revoked, lost, destroyed, or mutilated.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 16, Sec. 19, eff. Sept. 1, 2003.

Sec. 1071.263. INACTIVE STATUS. (a) A registered professional land surveyor may request inactive status at any time before the expiration date of the person's certificate of registration. A registration holder on inactive status may not practice surveying.

(b) A registration holder on inactive status must pay an annual fee set by the board.

(c) A registration holder on inactive status is not required to:

(1) comply with the professional development requirements adopted by the board; or

(2) take an examination for reinstatement to active status.

(d) To return to active status, a registration holder on inactive status must file with the board a written notice requesting reinstatement to active status.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 16, Sec. 20, eff. Sept. 1, 2003.

**SUBCHAPTER G. RENEWAL OF REGISTRATION AND LICENSE**

Sec. 1071.301. ANNUAL RENEWAL REQUIRED. (a) The board by rule may adopt a system under which certificates of registration and licenses expire on various dates during the year. For the year in which the certificate or license expiration date is changed, the board shall prorate certificate and license fees on a monthly basis so that each certificate or license holder pays only that portion of the certificate or license fee that is allocable to the number of months during which the certificate or license is valid. On renewal of the certificate or license on the new expiration date, the total certificate or license renewal fee is payable.

(b) A renewal certificate must have the same registration number as the original certificate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 16, Sec. 21, eff. Sept. 1, 2003.

Sec. 1071.302. NOTICE OF EXPIRATION. Not later than the 30th day before the date a person's certificate of registration or license is scheduled to expire, the board shall send written notice of the impending expiration to the person at the person's last known address according to the board's records.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 16, Sec. 22, eff. Sept. 1, 2003.

Sec. 1071.303. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a certificate of registration or license may renew an unexpired certificate or license by paying the required renewal fee to the board before the expiration date of the certificate or license. A person whose certificate or license has expired may not engage in activities that require a certificate or license until the certificate or license has been renewed.

(b) A person whose certificate or license has been expired for 90 days or less may renew the certificate or license by paying to the board a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose certificate or license has been expired for more than 90 days but less than one year may renew the certificate or license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose certificate or license has been expired for one year or more may not renew the certificate or license. The person may obtain a new certificate or license by complying with the requirements and procedures, including the examination requirements, for obtaining an original certificate or license.

(e) A person who was registered or licensed in this state, moved to another state, and is currently registered or licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new certificate or license without reexamination. The person must pay to the board a fee that is equal to two times the normally required renewal fee for the certificate or license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 16, Sec. 23, eff. Sept. 1, 2003.

Sec. 1071.304. NOTICE OF FAILURE TO RENEW STATE LAND SURVEYOR LICENSE. The executive director shall immediately notify the commissioner when the license of a licensed state land surveyor expires due to the person's failure to timely renew the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.305. CONTINUING PROFESSIONAL EDUCATION. (a) As a condition for renewal of a certificate of registration, the board shall require a registered professional land surveyor to successfully complete continuing professional education courses as prescribed by board rule. The board's rules must provide that the continuing professional education requirement may be met by completing annually not more than 16 hours of professional development courses or programs.

(b) The board may also grant professional education credit for:

(1) satisfactory completion of academic work at an accredited institution;

(2) teaching or consulting in a program approved by the

board; or

(3) authorship of a technical paper approved by the board.

(c) A registered professional land surveyor shall maintain records relating to the person's professional education activities. The records are subject to audit by the board on application by the person for renewal of registration.

(d) As a condition for retaining a surveyor-in-training certificate, the board shall require the certificate holder to successfully complete continuing professional education courses as prescribed by board rule. The certificate holder shall maintain records relating to the person's professional education activities. The records are subject to audit by the board as a condition for retaining the certificate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 53 (S.B. 1340), Sec. 2, eff. May 10, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1161 (H.B. 3114), Sec. 1, eff. September 1, 2009.

#### **SUBCHAPTER H. PRACTICE OF LAND SURVEYING**

Sec. 1071.351. PERFORMANCE OF LAND SURVEYING; OFFICIAL SEAL.

(a) In this section, "employee" means a person who receives compensation for work performed under the direct supervision of a land surveyor.

(b) On receipt of a certificate of registration, a registered professional land surveyor shall obtain an authorized seal bearing the person's name and registration number and the title "Registered Professional Land Surveyor."

(c) Each licensed state land surveyor shall obtain a seal of office. The seal must contain the license holder's official title, "Licensed State Land Surveyor," around the margin and the word "Texas" between the points of the star in the seal. A licensed state land surveyor shall attest with the seal all official acts authorized under law. An act, paper, or map of a licensed state land surveyor may not be filed in the county records of the General Land Office unless it is certified to under the surveyor's seal.

(d) A registration holder or license holder may not affix the

person's name, seal, or certification to any plat, design, specification, or other professional surveying work that is prepared by a person who is not registered or licensed under this chapter unless the work is performed by an employee under the direct supervision of the registration holder or license holder.

(e) A registration holder or license holder may not allow a person who is not registered or licensed under this chapter to exert control over the end product of professional surveying work.

(f) If professional surveying is performed as a joint venture of an association of two or more firms, each firm shall use the seal of the surveyor having primary responsibility for the venture.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.352. SURVEYING BY BUSINESS ENTITY. (a) An association, partnership, or corporation may not offer professional surveying services unless the entity is registered with the board and a registered professional land surveyor is employed full-time where the services are offered.

(a-1) The board shall adopt rules prescribing the requirements for the registration of an entity described by Subsection (a).

(a-2) The board may refuse to issue or renew and may suspend or revoke the registration of a business entity and may impose an administrative penalty against the owner of a business entity for a violation of this chapter by an employee, agent, or other representative of the entity, including a registered professional land surveyor employed by the entity.

(b) A registered professional land surveyor or licensed state land surveyor may organize or engage in any form of individual or group practice of surveying allowed by state statute. The individual or group practice must properly identify the registered professional land surveyor or licensed state land surveyor who is responsible for the practice.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1077 (H.B. [2820](#)), Sec. 1, eff. June 15, 2007.

Sec. 1071.353. PRACTICE UNDER ASSUMED NAME. A person engaging in the practice of surveying in this state under any business title other than the real name of one or more persons authorized to engage in public or state land surveying, whether individually or as an association, partnership, or corporation, shall file with the board, in the manner prescribed by the board, a certificate stating the full name and place of residence of each person engaging in the practice and the place, including the street address, city, and zip code, where the practice or business is principally conducted.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.354. JURISDICTION OF LICENSED STATE LAND SURVEYORS. A licensed state land surveyor may perform surveys under Section 21.011, Natural Resources Code, and is subject to the commissioner's direction in matters of land surveying in cases that come under the supervision of the commissioner. The jurisdiction of the license holder is coextensive with the limits of the state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.355. LICENSED STATE LAND SURVEYOR AS AGENT OF STATE. A licensed state land surveyor is an agent of this state when acting in that official capacity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.356. RESIGNATION OF LICENSED STATE LAND SURVEYOR.

(a) A licensed state land surveyor may resign at any time by filing a written resignation with the board. On receipt of the resignation, the board shall inform the General Land Office.

(b) A licensed state land surveyor who resigns under this section is not entitled to reinstatement of the person's license. To obtain a new license, the person must meet the requirements for an original license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.357. COUNTY SURVEYORS. (a) A licensed state land surveyor may hold office as a county surveyor. If elected, the person must qualify as provided by law for county surveyors.

(b) The election of a licensed state land surveyor as county surveyor does not limit the jurisdiction of the license holder to that county, and the election of a county surveyor for any particular county does not prevent any licensed state land surveyor from performing the duties of a surveyor in that county.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.358. COURT ORDER FOR LICENSED STATE LAND SURVEYOR TO CROSS LAND. (a) A licensed state land surveyor engaged in surveying in the person's official capacity who is denied permission to cross land owned by a private party is entitled to a court order to enforce the license holder's authority to cross the land.

(b) The attorney general shall promptly apply for an order under this section from the district court. Venue for the action is in the county in which the land is located.

(c) The court shall grant the order on proof that the person is licensed under this chapter and acting in the person's official capacity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 158 (S.B. 1634), Sec. 1, eff. May 21, 2007.

Sec. 1071.3585. COURT ORDER FOR REGISTERED PROFESSIONAL LAND SURVEYOR TO CROSS LAND. (a) A registered professional land surveyor engaged in surveying who is denied permission to cross land owned by a person or entity may seek a court order authorizing the surveyor to cross the land.

(b) A registered professional land surveyor may apply for an order under this section from the district court. Venue for the action is in the county in which the land is located.

(c) If the registered professional land surveyor holds office as a county surveyor and is engaged in surveying in the person's official capacity, the county attorney may apply for an order under

this section.

(d) The court shall grant the order on proof that:

(1) the person is a registered professional land surveyor acting in the person's official capacity as a county surveyor; or

(2) the person is a registered professional land surveyor and the issuance of a court order authorizing the person to cross the land is in the public's best interest.

Added by Acts 2007, 80th Leg., R.S., Ch. 158 (S.B. 1634), Sec. 2, eff. May 21, 2007.

Sec. 1071.359. LICENSED STATE LAND SURVEYOR FIELD NOTES. (a) Official field notes made by a licensed state land surveyor must be signed by the surveyor, followed by the designation "Licensed State Land Surveyor."

(b) Field notes and plats prepared by a licensed state land surveyor must conform to Sections 21.041 and 21.042, Natural Resources Code.

(c) Field notes made by a licensed state land surveyor in any county in this state are admissible in evidence.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.360. DISCOVERY OF UNDISCLOSED LAND. A licensed state land surveyor who discovers an undisclosed tract of public land shall:

(1) make that fact known to any person who has the tract enclosed; and

(2) forward a report of the existence of the tract and the tract's acreage to the commissioner.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.361. ACCESS TO COUNTY SURVEYOR RECORDS. (a) A licensed state land surveyor is entitled to access to a county surveyor's records for information and examination.

(b) An examination fee may not be charged if the investigation of the records is for the purpose of:



(1) making a survey of public land under the law regulating the sale or lease of public land; or

(2) identifying and establishing the boundaries of public land.

(c) A licensed state land surveyor who examines records under this section shall comply with any regulations prescribed by the county surveyor or the commissioners court for protecting and preserving the records.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

#### **SUBCHAPTER I. DISCIPLINARY PROCEDURES**

Sec. 1071.401. DISCIPLINARY POWERS OF BOARD. (a) The board shall revoke, suspend, or refuse to renew a certificate of registration or license, place on probation a person whose certificate or license has been suspended, or reprimand a registration holder or license holder for:

(1) fraud or deceit in obtaining a certificate or license under this chapter;

(2) gross negligence, incompetence, or misconduct in the practice of surveying as a land surveyor; or

(3) a violation of this chapter or a board rule.

(b) The license of a licensed state land surveyor is subject to revocation if the license holder is found to be directly or indirectly interested in the purchase or acquisition of title to public land.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 16, Sec. 24, eff. Sept. 1, 2003.

Sec. 1071.402. DISCIPLINARY PROCEEDINGS. (a) The board may institute proceedings against a registration holder or license holder on the board's behalf without a formal written third-party complaint.

(b) The board shall assign an employee or contract with an investigator to investigate each alleged violation of this chapter or a board rule that is reported to the board. The board may employ investigators and inspectors as necessary to properly enforce this chapter.

(c) A board employee investigating an alleged violation may:

(1) dismiss a complaint that is without merit; or  
(2) determine whether a person has committed the violation and recommend sanctions to the board.

(d) A board employee investigating an alleged violation shall report the dismissal of a complaint under Subsection (c)(1) to the board in the manner required by the board.

(e) The person making a complaint that is dismissed under Subsection (c)(1) may request reconsideration of the dismissal by the board.

(f) The board may appoint a subcommittee of the board that includes at least one board member who represents the public to assist in an investigation. A member of a subcommittee or a member of the board who consults with board personnel or an investigator on a complaint may not vote at a board disciplinary hearing related to the complaint.

(g) The board may not take into consideration a previously dismissed complaint while resolving a complaint before the board. The board may take into consideration any previous violation of this chapter or a board rule when assessing a sanction or penalty for a complaint before the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 16, Sec. 25, eff. Sept. 1, 2003.

Sec. 1071.403. RIGHT TO HEARING; ADMINISTRATIVE PROCEDURE.

(a) If the board proposes to suspend or revoke a person's certificate of registration or license, the person is entitled to a hearing before the board or a hearings officer appointed by the board.

(b) The board shall prescribe procedures by which a decision to suspend or revoke a certificate of registration or license is made by or appealable to the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.4035. INFORMAL SETTLEMENT CONFERENCE; RESTITUTION.

(a) The board by rule shall establish guidelines for an informal settlement conference related to a complaint filed with the board.

(b) Subject to Subsection (c), the board may order a person

licensed or registered under this chapter to pay restitution to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to assessing an administrative penalty under this chapter.

(c) The amount of restitution ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the person for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a restitution order.

Added by Acts 2003, 78th Leg., ch. 16, Sec. 26, eff. Sept. 1, 2003.

Sec. 1071.404. PROBATION. (a) The board may require a person whose certificate of registration or license suspension is probated to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board;  
or

(3) continue or renew professional education until the practitioner attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(b) The board by rule shall adopt written guidelines to ensure that probation is administered consistently.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 16, Sec. 27, eff. Sept. 1, 2003.

Sec. 1071.405. REISSUANCE OF CERTIFICATE OR LICENSE. The board for reasons the board determines sufficient may reissue a certificate of registration or license to a surveyor whose certificate or license has been revoked. At least six board members must vote in favor of reissuing the certificate or license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

#### **SUBCHAPTER J. ADMINISTRATIVE PENALTY**

Sec. 1071.451. IMPOSITION OF PENALTY. The board may impose an

administrative penalty on a person who violates this chapter or a rule adopted or order issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.452. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$1,500 for each violation.

(b) In determining the amount of the penalty, the board shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts;
- (2) the economic damage to property caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

(c) The board by rule shall adopt an administrative penalty schedule for violations of this chapter or board rules to ensure that the amounts of penalties imposed are appropriate to the violation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 16, Sec. 28, eff. Sept. 1, 2003.

Sec. 1071.453. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the executive director determines after an investigation of a possible violation and the facts surrounding the possible violation that a violation has occurred, the executive director may issue a violation report to the board stating:

- (1) the facts on which the determination is based; and
- (2) the recommendation of the executive director that an administrative penalty be imposed, including a recommendation on the amount of the penalty.

(b) The executive director shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by considering the factors listed in Section 1071.452(b).

(c) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the report to the person charged. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.454. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice under Section 1071.453, the person may:

- (1) accept the executive director's determination, including the recommended administrative penalty; or
- (2) request in writing a hearing on the determination.

(b) If the person accepts the executive director's determination, the board by order shall approve the determination and order payment of the recommended penalty.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.455. HEARING ON RECOMMENDATIONS. (a) If the person requests a hearing or fails to respond in a timely manner to the notice under Section 1071.453, the board shall set a hearing and give notice of the hearing to the person.

(b) A proceeding under this section is subject to Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.456. NOTICE OF DECISION BY BOARD. The board shall give notice of the board's order to the person charged. The notice must include:

- (1) the findings of fact and conclusions of law separately stated;
- (2) the amount of any administrative penalty imposed;
- (3) a statement of the person's right to judicial review of the board's order; and
- (4) other information required by law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.457. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(2) may stay enforcement of the penalty by:

(1) forwarding the penalty to the board for placement in an escrow account;

(2) giving to the board a supersedeas bond in a form approved by the board that:

(A) is for the amount of the penalty; and

(B) is effective until judicial review of the board's order is final; or

(3) filing with the board an affidavit of the person stating that the person is financially unable to forward the penalty for placement into an escrow account and is financially unable to give the supersedeas bond.

(c) Failure to take action under Subsection (b) within the time provided results in waiver of the right to judicial review.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.458. ENFORCEMENT OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the board may refer the matter to the attorney general for enforcement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.459. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review the administrative penalty is reduced or not imposed by the court, the board shall:

(1) remit the appropriate amount, plus accrued interest, to

the person if the person paid the penalty; or

(2) release the bond if the person gave a supersedeas bond.

(b) Interest accrues under Subsection (a)(1) at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

#### **SUBCHAPTER K. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 1071.501. INJUNCTION. (a) In addition to any other action authorized by law, the board may institute an action in the board's name against any person to enjoin a violation of this chapter or a board rule.

(b) An action under this section must be brought in a district court in Travis County. The attorney general shall act as legal advisor to the board and provide necessary legal assistance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.502. ENFORCEMENT BY ATTORNEY GENERAL. The attorney general shall act as legal advisor to the board and provide legal assistance as necessary in enforcing this chapter and board rules.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.503. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty not to exceed \$1,500 for each violation.

(b) At the request of the board, the attorney general shall bring an action to recover the civil penalty in the name of the state.

(c) A civil penalty recovered under this section shall be deposited in the state treasury.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.504. CRIMINAL PENALTY. (a) In this section, "offer to practice" has the meaning assigned by Section 1071.251.

(b) A person commits an offense if the person:

(1) engages in the practice of or offers to practice professional surveying or state land surveying in this state without being registered or licensed in accordance with this chapter;

(2) presents or attempts to use another person's certificate of registration, license, or seal issued under this chapter;

(3) gives false or forged evidence to obtain or assist another person in obtaining a certificate of registration or license; or

(4) violates this chapter or a rule adopted by the board.

(c) An offense under this section is a Class B misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

#### **SUBCHAPTER L. EXAMINATION ADVISORY COMMITTEES**

Sec. 1071.551. EXAMINATION ADVISORY COMMITTEES. The board may establish examination advisory committees to assist the board in developing each examination required by this chapter.

Added by Acts 2003, 78th Leg., ch. 16, Sec. 29, eff. Sept. 1, 2003.

Sec. 1071.552. BOARD RULES. (a) The board by rule shall:

(1) establish the purpose, role, responsibility, and goals of an examination advisory committee;

(2) determine the size of and quorum requirements for an examination advisory committee;

(3) determine the qualifications of an examination advisory committee member, which may include experience and geographic location requirements;

(4) provide a process for the appointment of examination advisory committee members;

(5) establish the term of office for examination advisory committee members; and

(6) determine the training requirements for an examination advisory committee member.

(b) The board by rule shall define the examination development



process under this chapter, including the board's interaction with the examination advisory committees during the process.

Added by Acts 2003, 78th Leg., ch. 16, Sec. 29, eff. Sept. 1, 2003.

Sec. 1071.553. ELIGIBILITY OF BOARD MEMBER. (a) A board member is not eligible to serve as a voting member of an examination advisory committee.

(b) A board member may attend an examination advisory committee meeting to act as a liaison with the board.

Added by Acts 2003, 78th Leg., ch. 16, Sec. 29, eff. Sept. 1, 2003.

Sec. 1071.554. MEETINGS. (a) Except as provided by Subsection (b), the meetings of an examination advisory committee are open meetings under Chapter 551, Government Code.

(b) An examination advisory committee may hold a closed meeting to consider a test item or information related to a test item as provided by Section 551.088, Government Code.

Added by Acts 2003, 78th Leg., ch. 16, Sec. 29, eff. Sept. 1, 2003.

Sec. 1071.555. APPLICABILITY OF OTHER LAW. (a) Except as provided by Subsection (b), an examination advisory committee is subject to Chapter 2110, Government Code.

(b) Section 2110.002(b), Government Code, does not apply to the appointment of examination advisory committee members.

Added by Acts 2003, 78th Leg., ch. 16, Sec. 29, eff. Sept. 1, 2003.

Sec. 1071.556. EXAMINATION ADVISORY COMMITTEE DUTIES. An examination advisory committee shall:

(1) develop the examinations required by this chapter in accordance with board rules; and

(2) perform other tasks assigned by the board.

Added by Acts 2003, 78th Leg., ch. 16, Sec. 29, eff. Sept. 1, 2003.

**TITLE 7. PRACTICES AND PROFESSIONS RELATED TO REAL PROPERTY AND  
HOUSING**

**SUBTITLE A. PROFESSIONS RELATED TO REAL ESTATE**

**CHAPTER 1101. REAL ESTATE BROKERS AND SALESPERSONS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1101.001. SHORT TITLE. This chapter may be cited as The Real Estate License Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.002. DEFINITIONS. In this chapter:

(1) "Broker":

(A) means a person who, in exchange for a commission or other valuable consideration or with the expectation of receiving a commission or other valuable consideration, performs for another person one of the following acts:

(i) sells, exchanges, purchases, or leases real estate;

(ii) offers to sell, exchange, purchase, or lease real estate;

(iii) negotiates or attempts to negotiate the listing, sale, exchange, purchase, or lease of real estate;

(iv) lists or offers, attempts, or agrees to list real estate for sale, lease, or exchange;

(v) auctions or offers, attempts, or agrees to auction real estate;

(vi) deals in options on real estate, including buying, selling, or offering to buy or sell options on real estate;

(vii) aids or offers or attempts to aid in locating or obtaining real estate for purchase or lease;

(viii) procures or assists in procuring a prospect to effect the sale, exchange, or lease of real estate;

(ix) procures or assists in procuring property to effect the sale, exchange, or lease of real estate;

(x) controls the acceptance or deposit of rent from a resident of a single-family residential real property unit; or

(xi) provides a written analysis, opinion, or

conclusion relating to the estimated price of real property if the analysis, opinion, or conclusion:

- (a) is not referred to as an appraisal;
  - (b) is provided in the ordinary course of the person's business; and
  - (c) is related to the actual or potential management, acquisition, disposition, or encumbrance of an interest in real property; and
- (B) includes a person who:
- (i) is employed by or for an owner of real estate to sell any portion of the real estate; or
  - (ii) engages in the business of charging an advance fee or contracting to collect a fee under a contract that requires the person primarily to promote the sale of real estate by:
    - (a) listing the real estate in a publication primarily used for listing real estate; or
    - (b) referring information about the real estate to brokers.

(1-a) "Business entity" means a "domestic entity" or "foreign entity" as those terms are defined by Section 1.002, Business Organizations Code.

(2) "Certificate holder" means a person registered under Subchapter K.

(3) "Commission" means the Texas Real Estate Commission.

(4) "License holder" means a broker or salesperson licensed under this chapter.

(5) "Real estate" means any interest in real property, including a leasehold, located in or outside this state. The term does not include an interest given as security for the performance of an obligation.

(6) "Residential rental locator" means a person who offers for consideration to locate a unit in an apartment complex for lease to a prospective tenant. The term does not include an owner who offers to locate a unit in the owner's complex.

(7) "Salesperson" means a person who is associated with a licensed broker for the purpose of performing an act described by Subdivision (1).

(8) "Subagent" means a license holder who:

(A) represents a principal through cooperation with and the consent of a broker representing the principal; and

(B) is not sponsored by or associated with the principal's broker.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.151, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 1, eff. September 1, 2011.

Sec. 1101.003. CORE REAL ESTATE COURSES. (a) For purposes of this chapter, "core real estate courses" include:

- (1) agency law, which includes the following topics:
  - (A) the relationship between a principal and an agent;
  - (B) an agent's authority;
  - (C) the termination of an agent's authority;
  - (D) an agent's duties, including fiduciary duties;
  - (E) employment law;
  - (F) deceptive trade practices;
  - (G) listing or buying representation procedures; and
  - (H) the disclosure of agency;

- (2) contract law, which includes the following topics:
  - (A) elements of a contract;
  - (B) offer and acceptance;
  - (C) statute of frauds;
  - (D) remedies for breach, including specific

performance;

- (E) unauthorized practice of law;
- (F) commission rules relating to use of adopted forms;

and

- (G) owner disclosure requirements;

- (3) principles of real estate, which includes:

- (A) an overview of:
  - (i) licensing as a broker or salesperson;
  - (ii) ethics of practice as a license holder;
  - (iii) titles to and conveyance of real estate;
  - (iv) legal descriptions;
  - (v) deeds, encumbrances, and liens;
  - (vi) distinctions between personal and real

property;

- (vii) appraisal;
- (viii) finance and regulations;
- (ix) closing procedures; and
- (x) real estate mathematics; and

(B) at least three hours of classroom instruction on federal, state, and local laws relating to housing discrimination, housing credit discrimination, and community reinvestment;

(4) property management, which includes the following topics:

- (A) the role of a property manager;
- (B) landlord policies;
- (C) operational guidelines;
- (D) leases;
- (E) lease negotiations;
- (F) tenant relations;
- (G) maintenance;
- (H) reports;
- (I) habitability laws; and
- (J) the Fair Housing Act (42 U.S.C. Section 3601 et

seq.);

(5) real estate appraisal, which includes the following topics:

- (A) the central purposes and functions of an appraisal;
- (B) social and economic determinants of the value of real estate;
- (C) appraisal case studies;
- (D) cost, market data, and income approaches to value estimates of real estate;
- (E) final correlations; and
- (F) reporting;

(6) real estate brokerage, which includes the following topics:

- (A) agency law;
- (B) planning and organization;
- (C) operational policies and procedures;
- (D) recruitment, selection, and training of personnel;
- (E) records and control; and
- (F) real estate firm analysis and expansion criteria;

(7) real estate finance, which includes the following

topics:

- (A) monetary systems;
- (B) primary and secondary money markets;
- (C) sources of mortgage loans;
- (D) federal government programs;
- (E) loan applications, processes, and procedures;
- (F) closing costs;
- (G) alternative financial instruments;
- (H) equal credit opportunity laws;
- (I) community reinvestment laws, including the

Community Reinvestment Act of 1977 (12 U.S.C. Section 2901 et seq.);  
and

(J) state housing agencies, including the Texas  
Department of Housing and Community Affairs;

(8) real estate investment, which includes the following  
topics:

- (A) real estate investment characteristics;
  - (B) techniques of investment analysis;
  - (C) the time value of money;
  - (D) discounted and nondiscounted investment criteria;
  - (E) leverage;
  - (F) tax shelters depreciation; and
  - (G) applications to property tax;
- (9) real estate law, which includes the following topics:
- (A) legal concepts of real estate;
  - (B) land description;
  - (C) real property rights and estates in land;
  - (D) contracts;
  - (E) conveyances;
  - (F) encumbrances;
  - (G) foreclosures;
  - (H) recording procedures; and
  - (I) evidence of titles;

(10) real estate marketing, which includes the following  
topics:

- (A) real estate professionalism and ethics;
- (B) characteristics of successful salespersons;
- (C) time management;
- (D) psychology of marketing;
- (E) listing procedures;

- (F) advertising;
- (G) negotiating and closing;
- (H) financing; and
- (I) Subchapter E, Chapter 17, Business & Commerce Code;

and

(11) real estate mathematics, which includes the following topics:

(A) basic arithmetic skills and review of mathematical logic;

(B) percentages;

(C) interest;

(D) the time value of money;

(E) depreciation;

(F) amortization;

(G) proration; and

(H) estimation of closing statements.

(b) The commission may designate a course as an equivalent of a course listed in Subsection (a).

(c) The commission by rule may prescribe:

(1) the content of the core real estate courses listed in Subsection (a); and

(2) the title and content of additional core real estate courses.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.152(a), eff. Sept. 1, 2003.

Sec. 1101.004. ACTING AS BROKER OR SALESPERSON. A person acts as a broker or salesperson under this chapter if the person, with the expectation of receiving valuable consideration, directly or indirectly performs or offers, attempts, or agrees to perform for another person any act described by Section 1101.002(1), as a part of a transaction or as an entire transaction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.153, eff. Sept. 1, 2003.

Sec. 1101.005. APPLICABILITY OF CHAPTER. This chapter does not apply to:

- (1) an attorney licensed in this state;
- (2) an attorney-in-fact authorized under a power of attorney to conduct a real estate transaction;
- (3) a public official while engaged in official duties;
- (4) an auctioneer licensed under Chapter 1802 while conducting the sale of real estate by auction if the auctioneer does not perform another act of a broker or salesperson;
- (5) a person conducting a real estate transaction under a court order or the authority of a will or written trust instrument;
- (6) a person employed by an owner in the sale of structures and land on which structures are located if the structures are erected by the owner in the course of the owner's business;
- (7) an on-site manager of an apartment complex;
- (8) an owner or the owner's employee who leases the owner's improved or unimproved real estate; or
- (9) a transaction involving:
  - (A) the sale, lease, or transfer of a mineral or mining interest in real property;
  - (B) the sale, lease, or transfer of a cemetery lot;
  - (C) the lease or management of a hotel or motel; or
  - (D) the sale of real property under a power of sale conferred by a deed of trust or other contract lien.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 62 (H.B. 1236), Sec. 1, eff. May 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 2, eff. September 1, 2011.

Sec. 1101.0055. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. A service contract that a license holder enters into for services governed by this chapter is not a good or service governed by Chapter 601, Business & Commerce Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.154(a), eff. Sept.



1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.27, eff. April 1, 2009.

Sec. 1101.006. APPLICATION OF SUNSET ACT. The Texas Real Estate Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter, Chapter 1102, and Chapter 1303 of this code and Chapter 221, Property Code, expire September 1, 2019.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.155(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 1, eff. September 1, 2007.

#### **SUBCHAPTER B. TEXAS REAL ESTATE COMMISSION**

Sec. 1101.051. COMMISSION MEMBERSHIP. (a) The Texas Real Estate Commission consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) six members who have been engaged in the brokerage business as licensed brokers as their major occupation for the five years preceding appointment; and

(2) three members who represent the public.

(b) Each member of the commission must be a qualified voter.

(c) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.052. PUBLIC MEMBER ELIGIBILITY. A person is not eligible for appointment as a public member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by an

occupational regulatory agency in the real estate industry;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;

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

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the real estate industry; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the real estate industry.

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. [914](#)), Sec. 3, eff.

September 1, 2007.

Sec. 1101.054. OFFICIAL OATH. Not later than the 15th day after the date of appointment, each appointee must take the constitutional oath of office.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 285, Sec. 27, eff. Sept. 1, 2003.

Sec. 1101.055. TERMS; VACANCY. (a) Commission members serve staggered six-year terms, with the terms of three members expiring January 31 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a person to fill the unexpired term.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.056. OFFICERS. (a) The governor shall designate a commission member who is a licensed broker as presiding officer. The presiding officer serves in that capacity at the pleasure of the governor.

(b) At a regular meeting in February of each year, the commission shall elect an assistant presiding officer and secretary from its membership.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.057. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the commission that a member:

- (1) does not have at the time of appointment the qualifications required by Section 1101.051(a) or (b) or 1101.052;
- (2) does not maintain during service on the commission the qualifications required by Section 1101.051(a) or (b) or 1101.052;
- (3) is ineligible for membership under Section 1101.053;
- (4) cannot discharge the member's duties for a substantial part of the member's term; or

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

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

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 4, eff. September 1, 2007.

Sec. 1101.058. PER DIEM; REIMBURSEMENT. A commission member is entitled to receive:

(1) \$75 for each day the member performs the member's official duties; and

(2) reimbursement for actual and necessary expenses incurred in performing the member's official duties.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with

information regarding:

- (1) this chapter and other laws regulated by the commission;
- (2) the programs, functions, rules, and budget of the commission;
- (3) the results of the most recent formal audit of the commission;
- (4) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and
- (5) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 5, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 2, eff. September 1, 2011.

#### **SUBCHAPTER C. ADMINISTRATOR AND OTHER COMMISSION PERSONNEL**

Sec. 1101.101. ADMINISTRATOR AND OTHER PERSONNEL. (a) The commission shall appoint an administrator.

(b) The commission may designate a subordinate officer as assistant administrator to act for the administrator in the administrator's absence.

(c) The commission may employ other subordinate officers and employees necessary to administer and enforce this chapter and Chapter 1102, including a general counsel, attorneys, investigators, and support staff.

(d) The commission shall determine the salaries of the administrator, officers, and employees of the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 6, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 3, eff. September 1, 2011.

Sec. 1101.102. DIVISION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the administrator and the staff of the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 7, eff. September 1, 2007.

Sec. 1101.103. CODE OF ETHICS; STANDARDS OF CONDUCT. Each member, officer, employee, and agent of the commission is subject to the code of ethics and standards of conduct imposed by Chapter 572, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.104. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The commission shall provide, as often as necessary, to its members and employees information regarding their:

(1) qualifications for office or employment under this chapter and Chapter 1102; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.105. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.  
(a) The administrator or the administrator's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The administrator or the administrator's designee shall

develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

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

- (1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;
- (2) a comprehensive analysis of the commission workforce that meets federal and state guidelines;
- (3) procedures by which a determination can be made of significant underuse in the commission workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and
- (4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

- (1) cover an annual period;
- (2) be updated at least annually; and
- (3) be filed with the governor.

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

**SUBCHAPTER D. COMMISSION POWERS AND DUTIES**

Sec. 1101.151. GENERAL POWERS AND DUTIES OF COMMISSION. (a)  
The commission shall:

- (1) administer this chapter and Chapter 1102;

(2) adopt rules and establish standards relating to permissible forms of advertising by a license holder acting as a residential rental locator;

(3) maintain a registry of certificate holders; and

(4) design and adopt a seal.

(b) The commission may:

(1) adopt and enforce rules necessary to administer this chapter and Chapter 1102; and

(2) establish standards of conduct and ethics for persons licensed under this chapter and Chapter 1102 to:

(A) fulfill the purposes of this chapter and Chapter 1102; and

(B) ensure compliance with this chapter and Chapter 1102.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 8, eff. September 1, 2007.

Sec. 1101.152. FEES. (a) The commission shall adopt rules to charge and collect fees in amounts reasonable and necessary to cover the costs of administering this chapter, including a fee for:

(1) filing an original application for a broker license;

(2) annual renewal of a broker license;

(3) filing an original application for a salesperson license;

(4) annual renewal of a salesperson license;

(5) annual registration;

(6) filing an application for a license examination;

(7) filing a request for a branch office license;

(8) filing a request for a change of place of business, change of name, return to active status, or change of sponsoring broker;

(9) filing a request to replace a lost or destroyed license or certificate of registration;

(10) filing an application for approval of an education program under Subchapter G;

(11) annual operation of an education program under



## Subchapter G;

- (12) filing an application for approval of an instructor of core real estate courses;
- (13) transcript evaluation;
- (14) preparing a license or registration history;
- (15) filing an application for a moral character determination; and
- (16) conducting a criminal history check for issuing or renewing a license.

(b) The commission shall adopt rules to set and collect fees in amounts reasonable and necessary to cover the costs of implementing the continuing education requirements for license holders, including a fee for:

- (1) an application for approval of a continuing education provider;
- (2) an application for approval of a continuing education course of study;
- (3) an application for approval of an instructor of continuing education courses; and
- (4) attendance at a program to train instructors of a continuing education course prescribed under Section 1101.455.

(c) Notwithstanding Subsection (a), if the commission issues an original inactive salesperson license under Section 1101.363(b) to a salesperson who is not sponsored by a licensed broker and the salesperson is subsequently sponsored by a licensed broker, the commission may not charge:

- (1) the salesperson a fee for filing a request to place the salesperson license on active status; or
- (2) the broker a fee for filing a request to sponsor the salesperson.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 15, Sec. 1, 2, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 9, eff.

September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 23 (S.B. 862), Sec. 1, eff. May 12, 2009.

Acts 2009, 81st Leg., R.S., Ch. 23 (S.B. 862), Sec. 2, eff. May 12, 2009.

Sec. 1101.153. FEE INCREASE. (a) The fee for filing an original application for an individual broker license and the fee for annual renewal of an individual broker license is the amount of the fee set by the commission under Section 1101.152 and a fee increase of \$200.

(b) Of each fee increase collected under Subsection (a):

(1) \$50 shall be transmitted to Texas A&M University for deposit in a separate banking account that may be appropriated only to support, maintain, and carry out the purposes, objectives, and duties of the Texas Real Estate Research Center;

(2) \$50 shall be deposited to the credit of the foundation school fund; and

(3) \$100 shall be deposited to the credit of the general revenue fund.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 23 (S.B. 862), Sec. 3, eff. September 1, 2011.

Sec. 1101.154. ADDITIONAL FEE: TEXAS REAL ESTATE RESEARCH CENTER. (a) The fee for the issuance or renewal of a:

(1) broker license is the amount of the fee set under Sections 1101.152 and 1101.153 and an additional \$20 fee;

(2) salesperson license is the amount of the fee set under Section 1101.152 and an additional \$20 fee; and

(3) certificate of registration is the amount of the fee set under Section 1101.152 and an additional \$20 fee.

(b) The commission shall transmit quarterly the additional fees collected under Subsection (a) to Texas A&M University for deposit in a separate banking account that may be appropriated only to support, maintain, and carry out the purposes, objectives, and duties of the

Texas Real Estate Research Center.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 23 (S.B. 862), Sec. 4, eff. May 12, 2009.

Sec. 1101.155. RULES RELATING TO CONTRACT FORMS. (a) The commission may adopt rules in the public's best interest that require license holders to use contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and adopted by the commission.

(b) The commission may not prohibit a license holder from using for the sale, exchange, option, or lease of an interest in real property a contract form that is:

- (1) prepared by the property owner; or
- (2) prepared by an attorney and required by the property

owner.

(c) A listing contract form adopted by the commission that relates to the contractual obligations between a seller of real estate and a license holder acting as an agent for the seller must include:

- (1) a provision informing the parties to the contract that real estate commissions are negotiable; and
- (2) a provision explaining the availability of Texas coastal natural hazards information important to coastal residents, if that information is appropriate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.156. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commission may not adopt a rule restricting advertising or competitive bidding by a person regulated by the commission except to prohibit a false, misleading, or deceptive practice by the person.

(b) The commission may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the commission a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts the person's personal appearance or use of

the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement used by the person; or

(4) restricts the person's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.157. SUBPOENA AUTHORITY. (a) The commission may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) A subpoena may be issued throughout the state and may be served by any person designated by the commission.

(c) If a person fails to comply with a subpoena issued under this section, the commission, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the commission may be held.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.158. ADVISORY COMMITTEES. (a) The commission may appoint advisory committees to perform the advisory functions assigned to the committees by the commission. An advisory committee under this section is subject to Section 2110, Government Code.

(b) A member of an advisory committee who is not a member of the commission may not receive compensation for service on the committee. The member may receive reimbursement for actual and necessary expenses incurred in performing committee functions as provided by Section 2110.004, Government Code.

(c) A member of an advisory committee serves at the will of the commission.

(d) An advisory committee may hold a meeting by telephone

conference call or other video or broadcast technology.

(e) Advisory committee meetings are subject to Chapter 551, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 10, eff. September 1, 2007.

Sec. 1101.159. USE OF TECHNOLOGY. The commission shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 10, eff. September 1, 2007.

Sec. 1101.160. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 10, eff. September 1, 2007.

Sec. 1101.161. GIFTS, GRANTS, AND DONATIONS. The commission may solicit and accept a gift, grant, donation, or other item of value from any source to pay for any activity under this chapter or Chapter 1102 or 1103.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 3, eff. September 1, 2011.

#### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 1101.201. PUBLIC INTEREST INFORMATION. (a) The commission shall prepare information of public interest describing the functions of the commission.

(b) The commission shall make the information available to the public and appropriate state agencies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 11, eff. September 1, 2007.

Sec. 1101.202. COMPLAINTS. (a) The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing a complaint to the commission. The commission may provide for that notice:

(1) on each application for a license or certificate of registration or written contract for services of a person regulated under this chapter or Chapter 1102;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter or Chapter 1102;

(3) in a bill for services provided by a person regulated under this chapter or Chapter 1102;

(4) in conjunction with the notice required by Section 1101.615; or

(5) to be prominently displayed on the Internet website of a person regulated under this chapter or Chapter 1102.

(b) The commission shall provide to a person who files a

complaint with the commission relating to a license holder and to the license holder against whom the complaint is filed:

- (1) an explanation of the remedies that are available to the person under this chapter; and
- (2) information about appropriate state or local agencies or officials with whom the person may file a complaint.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003;  
Amended by Acts 2003, 78th Leg., ch. 15, Sec. 3, eff. Sept. 1, 2003.

Sec. 1101.203. COMPLAINT INFORMATION. (a) The commission shall maintain a system to promptly and efficiently act on complaints filed with the commission. The commission shall maintain a file on each complaint. The file must include:

- (1) information relating to the parties to the complaint;
- (2) the subject matter of the complaint;
- (3) a summary of the results of the review or investigation of the complaint; and
- (4) the disposition of the complaint.

(b) The commission shall make information available describing its procedures for complaint investigation and resolution.

(c) The commission shall periodically notify the parties to the complaint of the status of the complaint until final disposition, unless the notice would jeopardize an undercover investigation authorized under Section 1101.204.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 12, eff. September 1, 2007.

Sec. 1101.204. COMPLAINT INVESTIGATION AND DISPOSITION. (a) The commission or commission staff may file a complaint and conduct an investigation as necessary to enforce this chapter, Chapter 1102, or a rule adopted under those chapters.

(b) The commission shall investigate the actions and records of a license holder if:

- (1) a person submits a signed, written complaint; and
- (2) the complaint and any evidence presented with the

complaint provide reasonable cause for an investigation.

(c) The commission may not conduct an investigation of a person licensed under this chapter or Chapter 1102 in connection with a complaint submitted later than the fourth anniversary of the date of the incident that is the subject of the complaint.

(d) The commission shall promptly provide a written notice to a person licensed under this chapter or Chapter 1102 who is the subject of an investigation unless after deliberation the commission decides against notification.

(e) Notwithstanding any other provision of this chapter, an undercover or covert investigation may not be conducted unless the commission expressly authorizes the investigation after considering the circumstances and determining that the investigation is necessary to implement this chapter.

(f) An investigation or other action against a person licensed under this chapter or Chapter 1102 may not be initiated on the basis of an anonymous complaint.

(g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(1), eff. September 1, 2007.

(h) The commission shall ensure that the commission gives priority to the investigation of a complaint filed by a consumer and an enforcement case resulting from the consumer complaint. The commission shall assign priorities and investigate complaints using a risk-based approach based on the:

- (1) degree of potential harm to a consumer;
- (2) potential for immediate harm to a consumer;
- (3) overall severity of the allegations in the complaint;
- (4) number of license holders potentially involved in the complaint;
- (5) previous complaint history of the license holder; and
- (6) number of potential violations in the complaint.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.154(b), 14A.157(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 13, eff. September 1, 2007.



Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 59(1), eff. September 1, 2007.

Sec. 1101.205. COMPLAINT INVESTIGATION OF CERTIFICATE HOLDER. The commission shall investigate a signed complaint received by the commission that relates to an act of a certificate holder or a person required to hold a certificate under Subchapter K.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.206. PUBLIC PARTICIPATION. (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the commission's jurisdiction.

(b) The commission shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the commission's programs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### **SUBCHAPTER F. TEXAS REAL ESTATE BROKER-LAWYER COMMITTEE**

Sec. 1101.251. DEFINITION OF COMMITTEE. In this subchapter, "committee" means the Texas Real Estate Broker-Lawyer Committee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.252. COMMITTEE MEMBERSHIP. (a) The Texas Real Estate Broker-Lawyer Committee consists of 13 members appointed as follows:

- (1) six members appointed by the commission;
- (2) six members of the State Bar of Texas appointed by the president of the state bar; and
- (3) one public member appointed by the governor.

(b) Appointments to the committee shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 38.01, eff. Sept. 1, 2003.

Sec. 1101.253. TERMS; VACANCIES. (a) Committee members serve staggered six-year terms, with the terms of two commission appointees and two State Bar of Texas appointees expiring every two years and the term of the public member expiring every six years.

(b) A committee member shall hold office until the member's successor is appointed.

(c) If a vacancy occurs during a member's term, the entity making the original appointment shall appoint a person to fill the unexpired term.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 38.02, eff. Sept. 1, 2003.

Sec. 1101.254. POWERS AND DUTIES. (a) In addition to other delegated powers and duties, the committee shall draft and revise contract forms that are capable of being standardized to expedite real estate transactions and minimize controversy.

(b) The contract forms must contain safeguards adequate to protect the principals in the transaction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

**SUBCHAPTER G. ACCREDITATION AND APPROVAL OF REAL ESTATE EDUCATIONAL PROGRAMS AND COURSES OF STUDY**

Sec. 1101.301. ACCREDITATION OF PROGRAMS AND COURSES OF STUDY.

(a) The commission, as necessary for the administration of this chapter and Chapter 1102, may:

(1) establish standards for the accreditation of educational programs or courses of study in real estate and real estate inspection conducted in this state, excluding programs and courses offered by accredited colleges and universities;

(2) establish by rule reasonable criteria for the approval of real estate and real estate inspection courses; and

(3) inspect and accredit real estate and real estate inspection educational programs or courses of study.

(b) The commission shall determine whether a real estate or real estate inspection course satisfies the requirements of this chapter and Chapter 1102.

(c) In establishing accreditation standards for an educational program under Subsection (a), the commission shall adopt rules setting an examination passage rate benchmark for each category of license issued by the commission under this chapter or Chapter 1102. The benchmark must be based on the average percentage of examinees that pass the licensing exam on the first attempt. A program must meet or exceed the benchmark for each license category before the commission may renew the program's accreditation for the license category.

(d) The commission may deny an application for accreditation if the applicant owns or controls, or has previously owned or controlled, an educational program or course of study for which accreditation was revoked.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 14, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 4, eff. September 1, 2011.

Sec. 1101.302. BOND REQUIRED. (a) In this section, "educational institution" means a school, excluding an accredited college or university, authorized by the commission under this chapter to offer a real estate or real estate inspection educational program or course of study.

(b) An educational institution shall maintain a corporate surety bond or other security acceptable to the commission that is:

(1) in the amount of \$20,000;

(2) payable to the commission; and

(3) for the benefit of a party who suffers damages caused by the failure of the institution to fulfill obligations related to the commission's approval.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 4, eff. September 1, 2007.

Sec. 1101.303. APPROVAL OF CONTINUING EDUCATION PROVIDER OR COURSE OF STUDY. (a) If the commission determines that an applicant for approval as a continuing education provider satisfies the requirements of this subchapter or Section 1102.205 and any rule adopted under this subchapter or Section 1102.205, the commission may authorize the applicant to offer continuing education for a two-year period.

(b) If the commission determines that an applicant for approval of a continuing education course of study satisfies the requirements of this subchapter or Section 1102.205 and any rule adopted under this subchapter or Section 1102.205, the commission may authorize the applicant to offer the course of study for a two-year period.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 15, eff. September 1, 2007.

Sec. 1101.304. EXAMINATION PASSAGE RATE DATA. (a) The commission shall adopt rules regarding the collection and publication of data relating to examination passage rates for graduates of accredited educational programs.

(b) Rules adopted under this section must provide for a method to:

- (1) calculate the examination passage rate;
- (2) collect the relevant data from the examination administrator or the accredited program; and
- (3) post the examination passage rate data on the commission's Internet website, in a manner aggregated by educational program and by license group.

(c) In determining the educational program a graduate is affiliated with for purposes of this section, the educational program is the program the graduate last attended.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 16,

eff. September 1, 2007.

Sec. 1101.305. REVIEW COMMITTEE. (a) The commission may appoint a committee to review the performance of an educational program performing below the standards set by the commission under Section 1101.301. The committee shall consist of:

- (1) at least one commission member;
- (2) at least one member of the commission staff;
- (3) individuals licensed under this chapter or Chapter 1102; and
- (4) a representative from the Texas Real Estate Research Center.

(b) A committee formed under this section shall review and evaluate any factor causing an educational program's poor performance and report findings and recommendations to improve performance to the program and to the commission.

(c) A committee formed under this section may not revoke the accreditation of an educational program. The commission may temporarily suspend a program in the same manner as a license under Subchapter N.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 16, eff. September 1, 2007.

#### **SUBCHAPTER H. LICENSE REQUIREMENTS**

Sec. 1101.351. LICENSE REQUIRED. (a) Unless a person holds a license issued under this chapter, the person may not:

- (1) act as or represent that the person is a broker or salesperson; or
- (2) act as a residential rental locator.

(a-1) Unless a business entity holds a license issued under this chapter, the business entity may not act as a broker.

(b) An applicant for a broker or salesperson license may not act as a broker or salesperson until the person receives the license evidencing that authority.

(c) A licensed salesperson may not act or attempt to act as a broker or salesperson unless the salesperson is associated with a licensed broker and is acting for that broker.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 5, eff.  
September 1, 2011.

Sec. 1101.352. LICENSE APPLICATION. (a) Each applicant for a broker or salesperson license must submit an application on a form prescribed by the commission.

(b) Each applicant for a broker or salesperson license must disclose in the license application whether the applicant has:

(1) entered a plea of guilty or nolo contendere to a felony; or

(2) been convicted of a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal.

(c) The disclosure under Subsection (b) must be provided even if an order has granted community supervision suspending the imposition of the sentence.

(d) At the time an application is submitted under Subsection (a), each applicant shall provide the commission with the applicant's current mailing address and telephone number, and e-mail address if available. The applicant shall notify the commission of any change in the applicant's mailing or e-mail address or telephone number during the time the application is pending.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003;  
Amended by Acts 2003, 78th Leg., ch. 15, Sec. 4, eff. Sept. 1, 2003;  
Acts 2003, 78th Leg., ch. 1276, Sec. 14A.158(a), eff. Sept. 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 6, eff.  
September 1, 2011.

Sec. 1101.3521. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE. (a) The commission shall require that an applicant for a license or renewal of an unexpired license submit a complete and legible set of fingerprints, on a form prescribed by the commission, to the commission or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The commission shall refuse to issue a license to or renew the license of a person who does not comply with the requirement of Subsection (a).

(c) The commission shall conduct a criminal history check of each applicant for a license or renewal of a license using information:

(1) provided by the individual under this section; and

(2) made available to the commission by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The commission may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the department in conducting the criminal history check.

Added by Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 5, eff. September 1, 2007.

Sec. 1101.353. MORAL CHARACTER DETERMINATION. (a) If before applying for a license under this chapter a person requests that the commission determine whether the person's moral character complies with the commission's moral character requirements for licensing under this chapter and pays the fee prescribed by Section 1101.152, the commission shall make its determination of the person's moral character.

(b) Not later than the 30th day after the date the commission makes its determination, the commission shall notify the person of the determination.

(c) If a person applies for a license after receiving notice of a determination, the commission may conduct a supplemental moral character determination of the person. The supplemental determination may cover only the period after the date the person requests a moral character determination under this section.

(d) The commission may issue a provisional moral character determination. The commission by rule shall adopt reasonable terms for issuing a provisional moral character determination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 3, eff. September 1, 2005.

Sec. 1101.354. GENERAL ELIGIBILITY REQUIREMENTS. To be eligible to receive a license under this chapter, a person must:

- (1) at the time of application:
  - (A) be at least 18 years of age;
  - (B) be a citizen of the United States or a lawfully admitted alien; and
  - (C) be a resident of this state;
- (2) satisfy the commission as to the applicant's honesty, trustworthiness, and integrity;
- (3) demonstrate competence based on an examination under Subchapter I;
- (4) complete the required courses of study, including any required core real estate courses prescribed under this chapter; and
- (5) complete at least:
  - (A) three classroom hours of course work on federal, state, and local laws governing housing discrimination, housing credit discrimination, and community reinvestment; or
  - (B) three semester hours of course work on constitutional law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.355. ADDITIONAL GENERAL ELIGIBILITY REQUIREMENTS FOR BUSINESS ENTITIES. (a) To be eligible for a license under this chapter, a business entity must:

- (1) designate one of its managing officers as its agent for purposes of this chapter; and
  - (2) provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of \$1 million for each occurrence if the designated agent owns less than 10 percent of the business entity.
- (b) A business entity may not act as a broker unless the entity's designated agent is a licensed broker in active status and



good standing according to the commission's records.

(c) A business entity that receives compensation on behalf of a license holder must be licensed as a broker under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 7, eff. September 1, 2011.

Sec. 1101.356. BROKER LICENSE: EXPERIENCE AND EDUCATION REQUIREMENTS. (a) An applicant for a broker license must provide to the commission satisfactory evidence that the applicant:

(1) has had at least four years of active experience in this state as a license holder during the 60 months preceding the date the application is filed; and

(2) has successfully completed at least 60 semester hours, or equivalent classroom hours, of postsecondary education, including:

(A) at least 18 semester hours or equivalent classroom hours of core real estate courses, two semester hours of which must be real estate brokerage; and

(B) at least 42 hours of core real estate courses or related courses accepted by the commission.

(b) Subsection (a) does not apply to an applicant who, at the time of application, is licensed as a real estate broker by another state that has license requirements comparable to the requirements of this state.

(b-1) The commission by rule shall establish what constitutes active experience for purposes of this section and Section 1101.357.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1064, Sec. 24, eff. September 1, 2011.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.152(b), eff.

Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 6, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 8, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 24, eff.

September 1, 2011.

Sec. 1101.357. BROKER LICENSE: ALTERNATE EXPERIENCE REQUIREMENTS FOR CERTAIN APPLICANTS. An applicant for a broker license who does not satisfy the experience requirements of Section 1101.356 must provide to the commission satisfactory evidence that:

(1) the applicant:

(A) is a licensed real estate broker in another state;

(B) has had at least four years of active experience in that state as a licensed real estate broker or salesperson during the 60 months preceding the date the application is filed; and

(C) has satisfied the educational requirements prescribed by Section 1101.356; or

(2) the applicant was licensed in this state as a broker in the year preceding the date the application is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 9, eff. September 1, 2011.

Sec. 1101.358. SALESPERSON LICENSE: EDUCATION REQUIREMENTS.

(a) An applicant for a salesperson license must provide to the commission satisfactory evidence that the applicant has completed at least 12 semester hours, or equivalent classroom hours, of postsecondary education consisting of:

(1) at least four semester hours of core real estate courses on principles of real estate; and

(2) at least two semester hours of each of the following core real estate courses:

(A) agency law;

(B) contract law;

(C) contract forms and addendums; and

(D) real estate finance.

(b) The commission shall waive the education requirements of Subsection (a) if the applicant has been licensed in this state as a broker or salesperson within the six months preceding the date the application is filed.

(c) If an applicant for a salesperson license was licensed as a salesperson within the six months preceding the date the application is filed and the license was issued under the conditions prescribed by Section 1101.454, the commission shall require the applicant to provide the evidence of successful completion of education requirements that would have been required if the license had been maintained without interruption during the preceding six months.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.152(c), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 4, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 10, eff. September 1, 2011.

Sec. 1101.359. ALTERNATE EDUCATION REQUIREMENTS FOR CERTAIN LICENSE HOLDERS. An applicant for a broker license who is not subject to the education requirements of Section 1101.356(a)(2) and an applicant for a salesperson license who is not subject to the education requirements of Section 1101.358 or 1101.454 must provide to the commission satisfactory evidence that the applicant has completed the number of classroom hours of continuing education that would have been required for a timely renewal under Section 1101.455 during the two years preceding the date the application is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.360. ELIGIBILITY REQUIREMENTS FOR CERTAIN NONRESIDENT APPLICANTS. (a) A resident of another state who is not a licensed real estate broker and who was formerly licensed in this state as a broker or salesperson may apply for a license under this chapter not later than the first anniversary of the date of the expiration of the former license.

(b) A nonresident applicant is subject to the same license requirements as a resident. The commission may refuse to issue a license to a nonresident applicant for the same reasons that it may refuse to issue a license to a resident applicant.

(c) A nonresident applicant must submit with the application an irrevocable consent to a legal action against the applicant in the court of any county in this state in which a cause of action may arise or in which the plaintiff may reside. The action may be commenced by service of process or pleading authorized by the laws of this state or by delivery of process on the administrator or assistant administrator of the commission. The consent must:

- (1) stipulate that the service of process or pleading is valid and binding in all courts as if personal service had been made on the nonresident in this state;
- (2) be acknowledged; and
- (3) if made by a corporation, be authenticated by its seal.

(d) A service of process or pleading served on the commission under this section shall be by duplicate copies. One copy shall be filed in the commission's office, and the other copy shall be forwarded by registered mail to the last known principal address recorded in the commission's records for the nonresident against whom the process or pleading is directed.

(e) A default judgment in an action commenced as provided by this section may not be granted:

- (1) unless the commission certifies that a copy of the process or pleading was mailed to the defendant as provided by Subsection (d); and
- (2) until the 21st day after the date the process or pleading is mailed to the defendant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.361. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR CERTAIN NONRESIDENT APPLICANTS. (a) Notwithstanding Section 1101.360, a nonresident applicant for a license who resides in a municipality whose boundary is contiguous at any point with the boundary of a municipality in this state is eligible to be licensed under this chapter in the same manner as a resident of this state if the nonresident has been a resident of that municipality for at least the 60 days preceding the date the application is filed.

(b) A person licensed under this section shall maintain at all times a place of business in the municipality in which the person resides or in the municipality in this state that is contiguous to

the municipality in which the person resides. The place of business must meet all the requirements of Section 1101.552. A place of business located in the municipality in which the person resides is considered to be in this state.

(c) A person licensed under this section may not maintain a place of business at another location in this state unless the person complies with Section 1101.356 or 1101.357.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.362. WAIVER OF LICENSE REQUIREMENTS: PREVIOUS LICENSE HOLDERS. The commission by rule may waive some or all of the requirements for a license under this chapter for an applicant who was licensed under this chapter within the six years preceding the date the application is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.363. ISSUANCE OF LICENSE. (a) The commission shall issue an appropriate license to an applicant who meets the requirements for a license.

(b) The commission may issue an inactive salesperson license to a person who applies for a salesperson license and satisfies all requirements for the license. The person may not act as a salesperson unless the person is sponsored by a licensed broker who has notified the commission as required by Section 1101.367(b). Notwithstanding Section 1101.367(b), the licensed broker is not required to pay the fee required by that subsection.

(c) A license remains in effect for the period prescribed by the commission if the license holder complies with this chapter and pays the appropriate renewal fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 15, Sec. 5, eff. Sept. 1, 2003;  
Acts 2003, 78th Leg., ch. 1276, Sec. 14A.158(b), eff. Sept. 1, 2003.

Sec. 1101.364. DENIAL OF LICENSE. (a) The commission shall immediately give written notice to the applicant of the commission's

denial of a license.

(b) A person whose license application is denied under this section is entitled to a hearing under Section 1101.657.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(2), eff. September 1, 2007.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(2), eff. September 1, 2007.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(2), eff. September 1, 2007.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 17, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 59(2), eff. September 1, 2007.

Sec. 1101.365. PROBATIONARY LICENSE. (a) The commission may issue a probationary license.

(b) The commission by rule shall adopt reasonable terms for issuing a probationary license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.366. INACTIVE LICENSE: BROKER. (a) The commission may place on inactive status the license of a broker if the broker:

- (1) is not acting as a broker;
- (2) is not sponsoring a salesperson; and
- (3) submits a written application to the commission before the expiration date of the broker's license.

(b) The commission may place on inactive status the license of a broker whose license has expired if the broker applies for inactive status on a form prescribed by the commission not later than the first anniversary of the expiration date of the broker's license.

(c) A broker applying for inactive status shall terminate the broker's association with each salesperson sponsored by the broker by giving written notice to each salesperson before the 30th day preceding the date the broker applies for inactive status.

(d) A broker on inactive status:

(1) may not perform any activity regulated under this chapter; and

(2) must pay annual renewal fees.

(e) The commission shall maintain a list of each broker whose license is on inactive status.

(f) The commission shall remove a broker's license from inactive status if the broker:

(1) submits an application to the commission;

(2) pays the required fee; and

(3) submits proof of attending at least 15 classroom hours of continuing education as specified by Section 1101.455 during the two years preceding the date the application under Subdivision (1) is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.367. INACTIVE LICENSE: SALESPERSON. (a) When the association of a salesperson with the salesperson's sponsoring broker terminates, the broker shall immediately return the salesperson license to the commission. A salesperson license returned under this subsection is inactive.

(b) The commission may remove a salesperson license from inactive status under Subsection (a) if, before the expiration date of the salesperson license, a licensed broker files a request with the commission advising the commission that the broker assumes sponsorship of the salesperson, accompanied by the appropriate fee.

(c) As a condition of returning to active status, an inactive salesperson whose license is not subject to the education requirements of Section 1101.454 must provide to the commission proof of attending at least 15 hours of continuing education as specified by Section 1101.455 during the two years preceding the date the application to return to active status is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 15, Sec. 6, eff. Sept. 1, 2003;

Acts 2003, 78th Leg., ch. 1276, Sec. 14A.158(c), eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 11, eff. September 1, 2011.

**SUBCHAPTER I. EXAMINATIONS**

Sec. 1101.401. EXAMINATION REQUIRED. (a) The competency requirement prescribed under Section 1101.354(3) shall be established by an examination prepared or contracted for by the commission.

(b) The commission shall determine the time and place in the state for offering the examination.

(c) The examination must be of sufficient scope in the judgment of the commission to determine whether a person is competent to act as a broker or salesperson in a manner that will protect the public.

(d) The examination for a salesperson license must be less exacting and less stringent than the broker examination.

(e) The commission shall provide each applicant with study material and references on which the examination is based.

(f) An applicant must satisfy the examination requirement not later than one year after the date the license application is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 12, eff. September 1, 2011.

Sec. 1101.402. WAIVER OF EXAMINATION. The commission shall waive the examination requirement for an applicant for:

(1) a broker license if:

(A) the applicant was previously licensed in this state as a broker; and

(B) the application is filed before the first anniversary of the expiration date of that license; and

(2) a salesperson license if:

(A) the applicant was previously licensed in this state as a broker or salesperson; and

(B) the application is filed before the first anniversary of the expiration date of that license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.403. ADMINISTRATION OF EXAMINATION; TESTING SERVICE.

(a) The commission shall administer any examination required by this chapter or Chapter 1102 unless the commission enters into an



agreement with a testing service to administer the examination.

(b) The commission may accept an examination administered by a testing service if the commission retains the authority to establish the scope and type of the examination.

(c) The commission may negotiate an agreement with a testing service relating to examination development, scheduling, site arrangements, administration, grading, reporting, and analysis.

(d) The commission may require a testing service to:

(1) correspond directly with license applicants regarding the administration of the examination;

(2) collect fees directly from applicants for administering the examination; or

(3) administer the examination at specific locations and specified frequencies.

(e) The commission shall adopt rules and standards as necessary to implement this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.404. EXAMINATION RESULTS. (a) Not later than the 30th day after the date an examination is administered, the commission shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the commission shall notify each examinee of the results of the examination not later than the 14th day after the date the commission receives the results from the testing service.

(b) If the notice of the results of an examination graded or reviewed by a national testing service will be delayed for more than 90 days after the examination date, the commission shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the commission shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.405. REEXAMINATION. An applicant who fails an examination may apply for reexamination by filing a request accompanied by the proper fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### **SUBCHAPTER J. LICENSE RENEWAL**

Sec. 1101.451. LICENSE EXPIRATION AND RENEWAL. (a) The commission may issue or renew a license for a period not to exceed 24 months.

(b) The commission by rule may adopt a system under which licenses expire on various dates during the year. The commission shall adjust the date for payment of the renewal fees accordingly.

(c) For a year in which the license expiration date is changed, renewal fees payable shall be prorated on a monthly basis so that each license holder pays only that portion of the fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total renewal fee is payable.

(d) Except as provided by Subsection (e), a renewal fee for a license under this chapter may not exceed, calculated on an annual basis, the amount of the sum of the fees established under Sections 1101.152, 1101.154, and 1101.603.

(e) A person whose license has been expired for 90 days or less may renew the license by paying to the commission a fee equal to 1-1/2 times the required renewal fee. If a license has been expired for more than 90 days but less than six months, the person may renew the license by paying to the commission a fee equal to two times the required renewal fee.

(f) If a person's license has been expired for six months or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 18, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 19, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 13, eff. September 1, 2011.

Sec. 1101.452. INFORMATION REQUIRED FOR LICENSE RENEWAL. (a) To renew an active license that is not subject to the education requirements of Section 1101.454, the license holder must provide to the commission proof of compliance with the continuing education requirements of Section 1101.455.

(b) Each applicant for the renewal of a license must disclose in the license application whether the applicant has:

(1) entered a plea of guilty or nolo contendere to a felony; or

(2) been convicted of a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal.

(c) The disclosure under Subsection (b) must be provided even if an order has granted community supervision suspending the imposition of the sentence.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 14, eff. September 1, 2011.

Sec. 1101.4521. CRIMINAL HISTORY RECORD INFORMATION FOR RENEWAL. An applicant for the renewal of an unexpired license must comply with the criminal history record check requirements of Section 1101.3521.

Added by Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 7, eff. September 1, 2007.

Sec. 1101.453. ADDITIONAL RENEWAL REQUIREMENTS FOR BUSINESS ENTITIES. (a) To renew a license under this chapter, a business entity must:

(1) designate one of its managing officers as its agent for purposes of this chapter; and

(2) provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of \$1 million for each occurrence if the designated agent owns less than 10 percent of the business entity.

(b) A business entity may not act as a broker unless the entity's designated agent is a licensed broker in active status and

good standing according to the commission's records.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 15, eff. September 1, 2011.

Sec. 1101.454. SALESPERSON LICENSE RENEWAL. (a) An applicant applying for the first renewal of a salesperson license must provide to the commission satisfactory evidence of completion of at least 18 semester hours, or equivalent classroom hours, of core real estate courses.

(b) Repealed by Acts 2005, 79th Leg., Ch. 825, Sec. 15, eff. September 1, 2005.

(c) Repealed by Acts 2005, 79th Leg., Ch. 825, Sec. 15, eff. September 1, 2005.

(d) The commission may not waive the requirements for renewal under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.152(d), eff.

Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 5, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 15, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 16, eff. September 1, 2011.

Sec. 1101.455. CONTINUING EDUCATION REQUIREMENTS. (a) In this section, "property tax consulting laws and legal issues" includes the Tax Code, preparation of property tax reports, the unauthorized practice of law, agency law, tax law, law relating to property tax or property assessment, deceptive trade practices, contract forms and addendums, and other legal topics approved by the commission.

(b) A license holder who is not subject to the education requirements of Section 1101.454 must attend during the term of the current license at least 15 classroom hours of continuing education

courses approved by the commission.

(c) The commission by rule may:

(1) prescribe the title, content, and duration of continuing education courses that a license holder must attend to renew a license; and

(2) approve as a substitute for the classroom attendance required by Subsection (b):

(A) relevant educational experience; and

(B) correspondence courses.

(d) In addition, the commission may approve supervised video instruction as a course that may be applied toward satisfaction of the classroom hours of continuing education courses required by Subsection (b).

(e) At least six of the continuing education hours required by Subsection (b) must cover the following legal topics:

(1) commission rules;

(2) fair housing laws;

(3) Property Code issues, including landlord-tenant law;

(4) agency law;

(5) antitrust laws;

(6) Subchapter E, Chapter 17, Business & Commerce Code;

(7) disclosures to buyers, landlords, tenants, and sellers;

(8) current contract and addendum forms;

(9) unauthorized practice of law;

(10) case studies involving violations of laws and regulations;

(11) current Federal Housing Administration and Department of Veterans Affairs regulations;

(12) tax laws;

(13) property tax consulting laws and legal issues; or

(14) other legal topics approved by the commission.

(f) The remaining nine hours may be devoted to other real estate-related topics approved by the commission.

(g) The commission may consider courses equivalent to those described by Subsections (e) and (f) for continuing education credit.

(h) The commission shall automatically approve the following courses as courses that satisfy the mandatory continuing education requirements of Subsection (f):

(1) core real estate courses; and

(2) real estate-related courses approved by the State Bar

of Texas for minimum continuing legal education participatory credit.

(i) The commission may not require an examination for a course under this section unless the course is a correspondence course or a course offered by an alternative delivery system, including delivery by computer.

(j) Daily classroom course segments must be at least one hour and not more than 10 hours.

(k) Notwithstanding the number of hours required by Subsection (e), a member of the legislature licensed under this chapter is only required to complete three hours of continuing education on the legal topics under Subsection (e).

(l) An online course offered under this section may not be completed in less than 24 hours.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.159(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 6, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 8, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 20, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(72), eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 17, eff. September 1, 2011.

Sec. 1101.456. EXEMPTION FROM CONTINUING EDUCATION REQUIREMENTS FOR CERTAIN BROKERS. Notwithstanding any other provision of this chapter, a broker who, before October 31, 1991, qualified under former Section 7A(f), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), as added by Section 1.041, Chapter 553, Acts of the 72nd Legislature, Regular Session, 1991, for an exemption from continuing education requirements is not required to comply with the mandatory continuing education requirements of this subchapter to renew the broker's license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.457. DEFERRAL OF CONTINUING EDUCATION REQUIREMENTS.

(a) The commission by rule may establish procedures under which an applicant may have the applicant's license issued, renewed, or returned to active status before the applicant completes continuing education requirements.

(b) The commission may require an applicant under this section to:

(1) pay a fee, not to exceed \$200, in addition to any fee for late renewal of a license under this chapter; and

(2) complete the required continuing education not later than the 60th day after the date the license is issued, renewed, or returned to active status.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 21, eff. September 1, 2007.

Sec. 1101.458. ADDITIONAL EDUCATION REQUIREMENTS FOR CERTAIN LICENSE HOLDERS. (a) A broker who sponsors a salesperson, or a license holder who supervises another license holder, must attend during the term of the current license at least six classroom hours of broker responsibility education courses approved by the commission.

(b) The commission by rule shall prescribe the title, content, and duration of broker responsibility education courses required under this section.

(c) Broker responsibility education course hours may be used to satisfy the hours described by Section 1101.455(f).

(d) This section does not apply to a broker who is exempt from continuing education requirements under Section 1101.456.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 18, eff. September 1, 2011.

**SUBCHAPTER K. CERTIFICATE REQUIREMENTS**

Sec. 1101.501. CERTIFICATE REQUIRED. A person may not sell,

buy, lease, or transfer an easement or right-of-way for another, for compensation or with the expectation of receiving compensation, for use in connection with telecommunication, utility, railroad, or pipeline service unless the person:

- (1) holds a license issued under this chapter; or
- (2) holds a certificate of registration issued under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.502. ELIGIBILITY REQUIREMENTS FOR CERTIFICATE. (a) To be eligible to receive a certificate of registration or a renewal certificate under this subchapter, a person must be:

- (1) at least 18 years of age; and
- (2) a citizen of the United States or a lawfully admitted alien.

(b) To be eligible to receive a certificate of registration or a renewal certificate under this subchapter, a business entity must designate as its agent one of its managing officers who is registered under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 19, eff. September 1, 2011.

Sec. 1101.503. ISSUANCE OF CERTIFICATE. (a) The commission shall issue a certificate of registration to an applicant who meets the requirements for a certificate of registration.

(b) The certificate remains in effect for the period prescribed by the commission if the certificate holder complies with this chapter and pays the appropriate renewal fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.504. CERTIFICATE EXPIRATION. The duration, expiration, and renewal of a certificate of registration are subject to the same provisions as are applicable under Section 1101.451 to



the duration, expiration, and renewal of a license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.5041. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR CERTIFICATE. An applicant for an original certificate of registration or renewal of a certificate of registration must comply with the criminal history record check requirements of Section 1101.3521.

Added by Acts 2011, 82nd Leg., R.S., Ch. 676 (S.B. 1812), Sec. 1, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 20, eff. September 1, 2011.

Sec. 1101.505. DENIAL OF CERTIFICATE. The denial of a certificate of registration is subject to the same provisions as are applicable under Section 1101.364 to the denial of a license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.506. CHANGE OF ADDRESS. Not later than the 10th day after the date a certificate holder moves its place of business from a previously designated address, the holder shall:

- (1) notify the commission of the move; and
- (2) obtain a new certificate of registration that reflects the address of the new place of business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.507. DISPLAY OF CERTIFICATE. A certificate holder shall prominently display at all times the holder's certificate of registration in the holder's place of business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

**SUBCHAPTER L. PRACTICE BY LICENSE HOLDER**

Sec. 1101.551. DEFINITIONS. In this subchapter:

(1) "Intermediary" means a broker who is employed to negotiate a transaction between the parties to a transaction and for that purpose may act as an agent of the parties.

(2) "Party" means a prospective buyer, seller, landlord, or tenant or an authorized representative of a buyer, seller, landlord, or tenant, including a trustee, guardian, executor, administrator, receiver, or attorney-in-fact. The term does not include a license holder who represents a party.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.552. FIXED OFFICE REQUIRED; CHANGE OF ADDRESS; BRANCH OFFICES. (a) A resident broker shall maintain a fixed office in this state. The address of the office shall be designated on the broker's license.

(b) Not later than the 10th day after the date a broker moves from the address designated on the broker's license, the broker shall submit an application, accompanied by the appropriate fee, for a license that designates the new location of the broker's office. The commission shall issue a license that designates the new location if the new location complies with the requirements of this section.

(c) A broker who maintains more than one place of business in this state shall obtain a branch office license for each additional office maintained by the broker by submitting an application, accompanied by the appropriate fee.

(d) A nonresident licensed broker is not required to maintain a place of business in this state.

(e) A license holder shall provide the commission with the license holder's current mailing address and telephone number, and e-mail address if available. A license holder shall notify the commission of a change in the license holder's mailing or e-mail address or telephone number.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 21, eff. September 1, 2011.

Sec. 1101.553. DISPLAY OF LICENSE. (a) Repealed by Acts 2003, 78th Leg., ch. 15, Sec. 14, eff. Sept. 1, 2003.

(b) Repealed by Acts 2003, 78th Leg., ch. 15, Sec. 14, eff. Sept. 1, 2003.

(c) A residential rental locator shall prominently display in a place accessible to clients and prospective clients:

(1) the locator's license;

(2) a statement that the locator is licensed by the commission; and

(3) the name, mailing address, and telephone number of the commission as provided by Section 1101.202(a).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 15, Sec. 14, eff. Sept. 1, 2003.

Sec. 1101.554. COPY OF SALESPERSON LICENSE. The commission shall deliver or mail a copy of each salesperson license to the broker with whom the salesperson is associated.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 22, eff. September 1, 2011.

Sec. 1101.555. NOTICE TO BUYER REGARDING ABSTRACT OR TITLE POLICY. When an offer to purchase real estate in this state is signed, a license holder shall advise each buyer, in writing, that the buyer should:

(1) have the abstract covering the real estate that is the subject of the contract examined by an attorney chosen by the buyer; or

(2) be provided with or obtain a title insurance policy.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.556. DISCLOSURE OF CERTAIN INFORMATION RELATING TO OCCUPANTS. Notwithstanding other law, a license holder is not required to inquire about, disclose, or release information relating

to whether:

(1) a previous or current occupant of real property had, may have had, has, or may have AIDS, an HIV-related illness, or an HIV infection as defined by the Centers for Disease Control and Prevention of the United States Public Health Service; or

(2) a death occurred on a property by natural causes, suicide, or accident unrelated to the condition of the property.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.557. ACTING AS AGENT; REGULATION OF CERTAIN TRANSACTIONS. (a) A broker who represents a party in a real estate transaction or who lists real estate for sale under an exclusive agreement for a party is that party's agent.

(b) A broker described by Subsection (a):

(1) may not instruct another broker to directly or indirectly violate Section 1101.652(b)(22);

(2) must inform the party if the broker receives material information related to a transaction to list, buy, sell, or lease the party's real estate, including the receipt of an offer by the broker; and

(3) shall, at a minimum, answer the party's questions and present any offer to or from the party.

(c) For the purposes of this section:

(1) a license holder who has the authority to bind a party to a lease or sale under a power of attorney or a property management agreement is also a party to the lease or sale;

(2) an inquiry to a person described by Section 1101.005(6) about contract terms or forms required by the person's employer does not violate Section 1101.652(b)(22) if the person does not have the authority to bind the employer to the contract; and

(3) the sole delivery of an offer to a party does not violate Section 1101.652(b)(22) if:

(A) the party's broker consents to the delivery;

(B) a copy of the offer is sent to the party's broker, unless a governmental agency using a sealed bid process does not allow a copy to be sent; and

(C) the person delivering the offer does not engage in another activity that directly or indirectly violates Section

1101.652(b)(22).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 7, eff. September 1, 2005.

Sec. 1101.558. REPRESENTATION DISCLOSURE. (a) In this section, "substantive dialogue" means a meeting or written communication that involves a substantive discussion relating to specific real property. The term does not include:

(1) a meeting that occurs at a property that is held open for any prospective buyer or tenant; or

(2) a meeting or written communication that occurs after the parties to a real estate transaction have signed a contract to sell, buy, or lease the real property concerned.

(b) A license holder who represents a party in a proposed real estate transaction shall disclose, orally or in writing, that representation at the time of the license holder's first contact with:

(1) another party to the transaction; or

(2) another license holder who represents another party to the transaction.

(c) A license holder shall provide to a party to a real estate transaction at the time of the first substantive dialogue with the party the written statement prescribed by Subsection (d) unless:

(1) the proposed transaction is for a residential lease for not more than one year and a sale is not being considered; or

(2) the license holder meets with a party who is represented by another license holder.

(d) The written statement required by Subsection (c) must be printed in a format that uses at least 10-point type and read as follows:

"Before working with a real estate broker, you should know that the duties of a broker depend on whom the broker represents. If you are a prospective seller or landlord (owner) or a prospective buyer or tenant (buyer), you should know that the broker who lists the property for sale or lease is the owner's agent. A broker who acts as a subagent represents the owner in cooperation with the listing

broker. A broker who acts as a buyer's agent represents the buyer. A broker may act as an intermediary between the parties if the parties consent in writing. A broker can assist you in locating a property, preparing a contract or lease, or obtaining financing without representing you. A broker is obligated by law to treat you honestly.

"IF THE BROKER REPRESENTS THE OWNER: The broker becomes the owner's agent by entering into an agreement with the owner, usually through a written listing agreement, or by agreeing to act as a subagent by accepting an offer of subagency from the listing broker. A subagent may work in a different real estate office. A listing broker or subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first. The buyer should not tell the owner's agent anything the buyer would not want the owner to know because an owner's agent must disclose to the owner any material information known to the agent.

"IF THE BROKER REPRESENTS THE BUYER: The broker becomes the buyer's agent by entering into an agreement to represent the buyer, usually through a written buyer representation agreement. A buyer's agent can assist the owner but does not represent the owner and must place the interests of the buyer first. The owner should not tell a buyer's agent anything the owner would not want the buyer to know because a buyer's agent must disclose to the buyer any material information known to the agent.

"IF THE BROKER ACTS AS AN INTERMEDIARY: A broker may act as an intermediary between the parties if the broker complies with The Texas Real Estate License Act. The broker must obtain the written consent of each party to the transaction to act as an intermediary. The written consent must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. The broker is required to treat each party honestly and fairly and to comply with The Texas Real Estate License Act. A broker who acts as an intermediary in a transaction: (1) shall treat all parties honestly; (2) may not disclose that the owner will accept a price less than the asking price unless authorized in writing to do so by the owner; (3) may not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer; and (4) may not disclose any confidential information or any information that a party specifically instructs the broker in writing

not to disclose unless authorized in writing to disclose the information or required to do so by The Texas Real Estate License Act or a court order or if the information materially relates to the condition of the property. With the parties' consent, a broker acting as an intermediary between the parties may appoint a person who is licensed under The Texas Real Estate License Act and associated with the broker to communicate with and carry out instructions of one party and another person who is licensed under that Act and associated with the broker to communicate with and carry out instructions of the other party.

"If you choose to have a broker represent you, you should enter into a written agreement with the broker that clearly establishes the broker's obligations and your obligations. The agreement should state how and by whom the broker will be paid. You have the right to choose the type of representation, if any, you wish to receive. Your payment of a fee to a broker does not necessarily establish that the broker represents you. If you have any questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding."

(e) The license holder may substitute "buyer" for "tenant" and "seller" for "landlord" as appropriate in the written statement prescribed by Subsection (d).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 15, Sec. 7, eff. Sept. 1, 2003.

Sec. 1101.559. BROKER ACTING AS INTERMEDIARY. (a) A broker may act as an intermediary between parties to a real estate transaction if:

- (1) the broker obtains written consent from each party for the broker to act as an intermediary in the transaction; and
- (2) the written consent of the parties states the source of any expected compensation to the broker.

(b) A written listing agreement to represent a seller or landlord or a written agreement to represent a buyer or tenant that authorizes a broker to act as an intermediary in a real estate transaction is sufficient to establish written consent of the party to the transaction if the written agreement specifies in conspicuous bold or underlined print the conduct that is prohibited under Section

1101.651(d).

(c) An intermediary shall act fairly and impartially. Appointment by a broker acting as an intermediary of an associated license holder under Section 1101.560 to communicate with, carry out the instructions of, and provide opinions and advice to the parties to whom that associated license holder is appointed is a fair and impartial act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.560. ASSOCIATED LICENSE HOLDER ACTING AS INTERMEDIARY. (a) A broker who complies with the written consent requirements of Section 1101.559 may appoint:

(1) a license holder associated with the broker to communicate with and carry out instructions of one party to a real estate transaction; and

(2) another license holder associated with the broker to communicate with and carry out instructions of any other party to the transaction.

(b) A license holder may be appointed under this section only if:

(1) the written consent of the parties under Section 1101.559 authorizes the broker to make the appointment; and

(2) the broker provides written notice of the appointment to all parties involved in the real estate transaction.

(c) A license holder appointed under this section may provide opinions and advice during negotiations to the party to whom the license holder is appointed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.561. DUTIES OF INTERMEDIARY PREVAIL. (a) The duties of a license holder acting as an intermediary under this subchapter supersede the duties of a license holder established under any other law, including common law.

(b) A broker must agree to act as an intermediary under this subchapter if the broker agrees to represent in a transaction:

(1) a buyer or tenant; and

(2) a seller or landlord.



Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 8, eff. September 1, 2005.

**SUBCHAPTER M. REAL ESTATE RECOVERY TRUST ACCOUNT**

Sec. 1101.601. REAL ESTATE RECOVERY TRUST ACCOUNT. (a) The commission shall maintain a real estate recovery trust account to reimburse aggrieved persons who suffer actual damages caused by an act described by Section 1101.602 committed by:

- (1) a license holder;
- (2) a certificate holder; or
- (3) a person who does not hold a license or certificate and who is an employee or agent of a license or certificate holder.

(b) The license or certificate holder must have held the license or certificate at the time the act was committed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.602. ENTITLEMENT TO REIMBURSEMENT. An aggrieved person is entitled to reimbursement from the trust account if a person described by Section 1101.601 engages in conduct described by Section 1101.652(a)(3) or (b) or 1101.653(1), (2), (3), or (4).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.603. PAYMENTS INTO TRUST ACCOUNT. (a) In addition to other fees required by this chapter, an applicant for an original license must pay a fee of \$10.

(b) In addition to other fees required by this chapter, an applicant for an original certificate of registration or renewal certificate must pay a fee of \$50.

(c) The commission shall deposit to the credit of the trust account:

- (1) fees collected under Subsections (a) and (b); and
- (2) an administrative penalty collected under Subchapter O for a violation by a person licensed as a broker or salesperson.

(d) An administrative penalty collected under Subchapter O for

a violation by a person who is not licensed under this chapter or Chapter 1102 shall be deposited to the credit of the trust account or the real estate inspection recovery fund, as determined by the commission.

(e) On a determination by the commission at any time that the balance in the trust account is less than \$1 million, each license holder at the next license renewal must pay, in addition to the renewal fee, a fee that is equal to the lesser of \$10 or a pro rata share of the amount necessary to obtain a balance in the trust account of \$1.7 million. The commission shall deposit the additional fee to the credit of the trust account.

(f) To ensure the availability of a sufficient amount to pay anticipated claims on the trust account, the commission by rule may provide for the collection of assessments at different times and under conditions other than those specified by this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(a), eff. Sept. 1, 2003.

Sec. 1101.604. MANAGEMENT OF TRUST ACCOUNT. (a) The commission shall hold money credited to the trust account in trust to carry out the purpose of the trust account.

(b) Money credited to the trust account may be invested in the same manner as money of the Employees Retirement System of Texas, except that an investment may not be made that would impair the liquidity necessary to make payments from the trust account as required by this subchapter.

(c) Interest from the investments shall be deposited to the credit of the trust account.

(d) If the balance in the trust account on December 31 of a year is more than the greater of \$3.5 million or the total amount of claims paid from the trust account during the preceding four fiscal years, the commission shall transfer the excess amount of money in the trust account to the credit of the general revenue fund.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.605. DEADLINE FOR ACTION; NOTICE TO COMMISSION. (a)

An action for a judgment that may result in an order for payment from the trust account may not be brought after the second anniversary of the date the cause of action accrues.

(b) When an aggrieved person brings an action for a judgment that may result in an order for payment from the trust account, the license or certificate holder against whom the action is brought shall notify the commission in writing of the action.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.606. CLAIM FOR PAYMENT FROM TRUST ACCOUNT. (a) Except as provided by Subsection (c), an aggrieved person who obtains a court judgment against a license or certificate holder for an act described by Section 1101.602 may, after final judgment is entered, execution returned nulla bona, and a judgment lien perfected, file a verified claim in the court that entered the judgment.

(b) After the 20th day after the date the aggrieved person gives written notice of the claim to the commission and judgment debtor, the person may apply to the court that entered the judgment for an order for payment from the trust account of the amount unpaid on the judgment. The court shall proceed promptly on the application.

(c) If an aggrieved person is precluded by action of a bankruptcy court from executing a judgment or perfecting a judgment lien as required by Subsection (a), the person shall verify to the commission that the person has made a good faith effort to protect the judgment from being discharged in bankruptcy.

(d) The commission by rule may prescribe the actions necessary for an aggrieved person to demonstrate that the person has made a good faith effort under Subsection (c) to protect a judgment from being discharged in bankruptcy.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 23 (S.B. 862), Sec. 5, eff. May 12, 2009.

Sec. 1101.607. ISSUES AT HEARING. At the hearing on the application for payment from the trust account, the aggrieved person

must show:

- (1) that the judgment is based on facts allowing recovery under this subchapter;
- (2) that the person is not:
  - (A) the spouse of the judgment debtor or the personal representative of the spouse; or
  - (B) a license or certificate holder who is seeking to recover compensation, including a commission, in the real estate transaction that is the subject of the application for payment;
- (3) that, according to the best information available, the judgment debtor does not have sufficient attachable assets in this or another state to satisfy the judgment;
- (4) the amount that may be realized from the sale of assets liable to be sold or applied to satisfy the judgment; and
- (5) the balance remaining due on the judgment after application of the amount under Subdivision (4).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(b), eff. Sept. 1, 2003.

Sec. 1101.608. COMMISSION RESPONSE. (a) On receipt of notice under Section 1101.606 and the scheduling of a hearing, the commission may notify the attorney general of the commission's desire to enter an appearance, file a response, appear at the hearing, defend the action, or take any other action the commission considers appropriate.

(b) The commission and the attorney general may act under Subsection (a) only to:

- (1) protect the trust account from spurious or unjust claims; or
- (2) ensure compliance with the requirements for recovery under this subchapter.

(c) The commission may relitigate in the hearing any material and relevant issue that was determined in the action that resulted in the judgment in favor of the aggrieved person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.609. COURT ORDER FOR PAYMENT. The court shall order the commission to pay from the trust account the amount the court finds payable on the claim under this subchapter if at a hearing the court is satisfied:

(1) of the truth of each matter the aggrieved person is required by Section 1101.607 to show; and

(2) that the aggrieved person has satisfied each requirement of Sections 1101.606 and 1101.607.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.610. PAYMENT LIMITS; ATTORNEY'S FEES. (a) Payments from the trust account for claims, including attorney's fees, interest, and court costs, arising out of a single transaction may not exceed a total of \$50,000, regardless of the number of claimants.

(b) Payments from the trust account for claims based on judgments against a single license or certificate holder may not exceed a total of \$100,000 until the license or certificate holder has reimbursed the trust account for all amounts paid.

(c) If the court finds that the total amount of claims against a license or certificate holder exceeds the limitations in this section, the court shall proportionately reduce the amount payable on each claim.

(d) A person receiving payment from the trust account is entitled to receive reasonable attorney's fees in the amount determined by the court, subject to the limitations prescribed by this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.611. APPLICATION OF JUDGMENT RECOVERY. An aggrieved person who receives a recovery on a judgment against a single defendant before receiving a payment from the trust account must apply the recovery first to actual damages.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.612. SUBROGATION. (a) The commission is subrogated

to all rights of a judgment creditor to the extent of an amount paid from the trust account, and the judgment creditor shall assign to the commission all right, title, and interest in the judgment up to that amount.

(b) The commission has priority for repayment from any subsequent recovery on the judgment.

(c) The commission shall deposit any amount recovered on the judgment to the credit of the trust account.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.613. EFFECT ON DISCIPLINARY PROCEEDINGS. (a) This subchapter does not limit the commission's authority to take disciplinary action against a license or certificate holder for a violation of this chapter or a commission rule.

(b) A license or certificate holder's repayment of all amounts owed to the trust account does not affect another disciplinary proceeding brought under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.614. WAIVER OF RIGHTS. An aggrieved person who does not comply with this subchapter waives the person's rights under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.615. NOTICE TO CONSUMERS AND SERVICE RECIPIENTS. (a) Each license and certificate holder shall provide notice to consumers and service recipients of the availability of payment from the trust account for aggrieved persons:

(1) in conjunction with the notice required by Section 1101.202;

(2) on a written contract for the license or certificate holder's services;

(3) on a brochure that the license or certificate holder distributes;

(4) on a sign prominently displayed in the license or

certificate holder's place of business;

(5) in a bill or receipt for the license or certificate holder's services; or

(6) in a prominent display on the Internet website of a person regulated under this chapter.

(b) The notice must include:

(1) the commission's name, mailing address, and telephone number; and

(2) any other information required by commission rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 15, Sec. 8, eff. Sept. 1, 2003.

#### **SUBCHAPTER N. PROHIBITED PRACTICES AND DISCIPLINARY PROCEEDINGS**

Sec. 1101.651. CERTAIN PRACTICES PROHIBITED. (a) A licensed broker may not pay a commission to or otherwise compensate a person directly or indirectly for performing an act of a broker unless the person is:

(1) a license holder; or

(2) a real estate broker licensed in another state who does not conduct in this state any of the negotiations for which the commission or other compensation is paid.

(b) A salesperson may not accept compensation for a real estate transaction from a person other than the broker with whom the salesperson is associated or was associated when the salesperson earned the compensation.

(c) A salesperson may not pay a commission to a person except through the broker with whom the salesperson is associated at that time.

(d) A broker and any broker or salesperson appointed under Section 1101.560 who acts as an intermediary under Subchapter L may not:

(1) disclose to the buyer or tenant that the seller or landlord will accept a price less than the asking price, unless otherwise instructed in a separate writing by the seller or landlord;

(2) disclose to the seller or landlord that the buyer or tenant will pay a price greater than the price submitted in a written offer to the seller or landlord, unless otherwise instructed in a separate writing by the buyer or tenant;

(3) disclose any confidential information or any information a party specifically instructs the broker or salesperson in writing not to disclose, unless:

(A) the broker or salesperson is otherwise instructed in a separate writing by the respective party;

(B) the broker or salesperson is required to disclose the information by this chapter or a court order; or

(C) the information materially relates to the condition of the property;

(4) treat a party to a transaction dishonestly; or

(5) violate this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.652. GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE.

(a) The commission may suspend or revoke a license issued under this chapter or take other disciplinary action authorized by this chapter if the license holder:

(1) enters a plea of guilty or nolo contendere to or is convicted of a felony or a criminal offense involving fraud, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, without regard to an order granting community supervision that suspends the imposition of the sentence;

(2) procures or attempts to procure a license under this chapter for the license holder or a salesperson by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for a license;

(3) engages in misrepresentation, dishonesty, or fraud when selling, buying, trading, or leasing real property in the name of:

(A) the license holder;

(B) the license holder's spouse; or

(C) a person related to the license holder within the first degree by consanguinity;

(4) fails to honor, within a reasonable time, a check issued to the commission after the commission has sent by certified mail a request for payment to the license holder's last known business address according to commission records;

(5) fails or refuses to produce on request, for inspection by the commission or a commission representative, a document, book,



or record that is in the license holder's possession and relates to a real estate transaction conducted by the license holder;

(6) fails to provide, within a reasonable time, information requested by the commission that relates to a formal or informal complaint to the commission that would indicate a violation of this chapter;

(7) fails to surrender to the owner, without just cause, a document or instrument that is requested by the owner and that is in the license holder's possession;

(8) fails to use a contract form required by the commission under Section 1101.155;

(9) fails to notify the commission, not later than the 30th day after the date of a final conviction or the entry of a plea of guilty or nolo contendere, that the person has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud; or

(10) disregards or violates this chapter.

(b) The commission may suspend or revoke a license issued under this chapter or take other disciplinary action authorized by this chapter if the license holder, while acting as a broker or salesperson:

(1) acts negligently or incompetently;

(2) engages in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness;

(3) makes a material misrepresentation to a potential buyer concerning a significant defect, including a latent structural defect, known to the license holder that would be a significant factor to a reasonable and prudent buyer in making a decision to purchase real property;

(4) fails to disclose to a potential buyer a defect described by Subdivision (3) that is known to the license holder;

(5) makes a false promise that is likely to influence a person to enter into an agreement when the license holder is unable or does not intend to keep the promise;

(6) pursues a continued and flagrant course of misrepresentation or makes false promises through an agent or salesperson, through advertising, or otherwise;

(7) fails to make clear to all parties to a real estate transaction the party for whom the license holder is acting;

(8) receives compensation from more than one party to a

real estate transaction without the full knowledge and consent of all parties to the transaction;

(9) fails within a reasonable time to properly account for or remit money that is received by the license holder and that belongs to another person;

(10) commingles money that belongs to another person with the license holder's own money;

(11) pays a commission or a fee to or divides a commission or a fee with a person other than a license holder or a real estate broker or salesperson licensed in another state for compensation for services as a real estate agent;

(12) fails to specify a definite termination date that is not subject to prior notice in a contract, other than a contract to perform property management services, in which the license holder agrees to perform services for which a license is required under this chapter;

(13) accepts, receives, or charges an undisclosed commission, rebate, or direct profit on an expenditure made for a principal;

(14) solicits, sells, or offers for sale real property by means of a lottery;

(15) solicits, sells, or offers for sale real property by means of a deceptive practice;

(16) acts in a dual capacity as broker and undisclosed principal in a real estate transaction;

(17) guarantees or authorizes or permits a person to guarantee that future profits will result from a resale of real property;

(18) places a sign on real property offering the real property for sale or lease without obtaining the written consent of the owner of the real property or the owner's authorized agent;

(19) offers to sell or lease real property without the knowledge and consent of the owner of the real property or the owner's authorized agent;

(20) offers to sell or lease real property on terms other than those authorized by the owner of the real property or the owner's authorized agent;

(21) induces or attempts to induce a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract;

(22) negotiates or attempts to negotiate the sale, exchange, or lease of real property with an owner, landlord, buyer, or tenant with knowledge that that person is a party to an outstanding written contract that grants exclusive agency to another broker in connection with the transaction;

(23) publishes or causes to be published an advertisement, including an advertisement by newspaper, radio, television, the Internet, or display, that misleads or is likely to deceive the public, tends to create a misleading impression, or fails to identify the person causing the advertisement to be published as a licensed broker or agent;

(24) withholds from or inserts into a statement of account or invoice a statement that the license holder knows makes the statement of account or invoice inaccurate in a material way;

(25) publishes or circulates an unjustified or unwarranted threat of a legal proceeding or other action;

(26) establishes an association by employment or otherwise with a person other than a license holder if the person is expected or required to act as a license holder;

(27) aids, abets, or conspires with another person to circumvent this chapter;

(28) fails or refuses to provide, on request, a copy of a document relating to a real estate transaction to a person who signed the document;

(29) fails to advise a buyer in writing before the closing of a real estate transaction that the buyer should:

(A) have the abstract covering the real estate that is the subject of the contract examined by an attorney chosen by the buyer; or

(B) be provided with or obtain a title insurance policy;

(30) fails to deposit, within a reasonable time, money the license holder receives as escrow agent in a real estate transaction:

(A) in trust with a title company authorized to do business in this state; or

(B) in a custodial, trust, or escrow account maintained for that purpose in a banking institution authorized to do business in this state;

(31) disburses money deposited in a custodial, trust, or escrow account, as provided in Subdivision (30), before the

completion or termination of the real estate transaction;

(32) discriminates against an owner, potential buyer, landlord, or potential tenant on the basis of race, color, religion, sex, disability, familial status, national origin, or ancestry, including directing a prospective buyer or tenant interested in equivalent properties to a different area based on the race, color, religion, sex, disability, familial status, national origin, or ancestry of the potential owner or tenant; or

(33) disregards or violates this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.154(c), eff.

Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 9, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 9, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 23 (S.B. 862), Sec. 6, eff. May 12, 2009.

Sec. 1101.653. GROUND FOR SUSPENSION OR REVOCATION OF CERTIFICATE. The commission may suspend or revoke a certificate of registration issued under this chapter if the certificate holder:

(1) engages in dishonest dealing, fraud, unlawful discrimination, or a deceptive act;

(2) makes a misrepresentation;

(3) acts in bad faith;

(4) demonstrates untrustworthiness;

(5) fails to honor, within a reasonable time, a check issued to the commission after the commission has mailed a request for payment to the certificate holder's last known address according to the commission's records;

(6) fails to provide to a party to a transaction a written notice prescribed by the commission that:

(A) must be given before the party is obligated to sell, buy, lease, or transfer a right-of-way or easement; and

(B) contains:

(i) the name of the certificate holder;

- (ii) the certificate number;
  - (iii) the name of the person the certificate holder represents;
  - (iv) a statement advising the party that the party may seek representation from a lawyer or broker in the transaction; and
  - (v) a statement generally advising the party that the right-of-way or easement may affect the value of the property; or
- (7) disregards or violates this chapter or a commission rule relating to certificate holders.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.654. SUSPENSION OR REVOCATION OF LICENSE OR CERTIFICATE FOR UNAUTHORIZED PRACTICE OF LAW. (a) The commission shall suspend or revoke the license or certificate of registration of a license or certificate holder who is not a licensed attorney in this state and who, for consideration, a reward, or a pecuniary benefit, present or anticipated, direct or indirect, or in connection with the person's employment, agency, or fiduciary relationship as a license or certificate holder:

(1) drafts an instrument, other than a form described by Section 1101.155, that transfers or otherwise affects an interest in real property; or

(2) advises a person regarding the validity or legal sufficiency of an instrument or the validity of title to real property.

(b) Notwithstanding any other law, a license or certificate holder who completes a contract form for the sale, exchange, option, or lease of an interest in real property incidental to acting as a broker is not engaged in the unauthorized or illegal practice of law in this state if the form was:

(1) adopted by the commission for the type of transaction for which the form is used;

(2) prepared by an attorney licensed in this state and approved by the attorney for the type of transaction for which the form is used; or

(3) prepared by the property owner or by an attorney and

required by the property owner.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.655. REVOCATION OF LICENSE OR CERTIFICATE FOR CLAIM ON ACCOUNT. (a) The commission may revoke a license, approval, or registration issued under this chapter or Chapter 1102 if the commission makes a payment from the real estate recovery trust account to satisfy all or part of a judgment against the license or registration holder.

(b) The commission may probate an order revoking a license under this section.

(c) A person is not eligible for a license or certificate until the person has repaid in full the amount paid from the account for the person, plus interest at the legal rate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 10, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 10, eff. September 1, 2007.

Sec. 1101.656. ADDITIONAL DISCIPLINARY AUTHORITY OF COMMISSION.

(a) In addition to any other authority under this chapter, the commission may suspend or revoke a license, place on probation a person whose license has been suspended, or reprimand a license holder if the license holder violates this chapter or a commission rule.

(b) The commission may probate a suspension, revocation, or cancellation of a license under reasonable terms determined by the commission.

(c) The commission may require a license holder whose license suspension or revocation is probated to:

- (1) report regularly to the commission on matters that are the basis of the probation;
  - (2) limit practice to an area prescribed by the commission;
- or
- (3) continue to renew professional education until the

license holder attains a degree of skill satisfactory to the commission in the area that is the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.6561. SUSPENSION OR REVOCATION OF EDUCATIONAL PROGRAM ACCREDITATION. The commission may suspend or revoke an accreditation issued under Subchapter G or take any other disciplinary action authorized by this chapter if the provider of an educational program or course of study violates this chapter or a rule adopted under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 23, eff. September 1, 2011.

Sec. 1101.657. HEARING. (a) If the commission proposes to deny, suspend, or revoke a person's license or certificate of registration, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(3), eff. September 1, 2007.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(3), eff. September 1, 2007.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(3), eff. September 1, 2007.

(e) A hearing under this section is governed by the contested case procedures under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 15, Sec. 9, eff. Sept. 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 22, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 59(3), eff. September 1, 2007.

Sec. 1101.658. APPEAL. (a) A person aggrieved by a ruling, order, or decision under this subchapter is entitled to appeal to a

district court in the county in which the administrative hearing was held.

(b) An appeal is governed by the procedures under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 23, eff. September 1, 2007.

Sec. 1101.659. REFUND. (a) Subject to Subsection (b), the commission may order a person regulated by the commission to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference or an enforcement order instead of or in addition to imposing an administrative penalty or other sanctions.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference or an enforcement order may not exceed the amount the consumer paid to the person for a service or accommodation regulated by this commission. The commission may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 24, eff. September 1, 2007.

Sec. 1101.660. INFORMAL PROCEEDINGS. (a) The commission by rule shall adopt procedures governing informal disposition of a contested case.

(b) Rules adopted under this section must:

(1) provide the complainant and the license holder, certificate holder, or regulated entity an opportunity to be heard; and

(2) require the presence of:

(A) a public member of the commission for a case involving a consumer complaint; and

(B) at least two staff members of the commission with experience in the regulatory area that is the subject of the proceeding.



Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 24, eff. September 1, 2007.

Sec. 1101.661. FINAL ORDER. The commission may issue a final order in a proceeding under this subchapter or Subchapter O regarding a person whose license has expired during the course of an investigation or administrative proceeding.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 24, eff. September 1, 2007.

Sec. 1101.662. TEMPORARY SUSPENSION. (a) The presiding officer of the commission shall appoint a disciplinary panel consisting of three commission members to determine whether a person's license to practice under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person licensed to practice under this chapter would, by the person's continued practice, constitute a continuing threat to the public welfare, the panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the commission is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 24, eff. September 1, 2007.

#### **SUBCHAPTER O. ADMINISTRATIVE PENALTY**

Sec. 1101.701. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The

commission may impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued by the commission under this chapter.

(b) The commission shall periodically review the commission's enforcement procedures and ensure that administrative penalty and disciplinary proceedings are combined into a single enforcement procedure.

(c) The commission may combine a proceeding to impose an administrative penalty with another disciplinary proceeding, including a proceeding to suspend or revoke a license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(c), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 25, eff. September 1, 2007.

Sec. 1101.7015. DELEGATION OF ADMINISTRATOR'S AUTHORITY. The commission may authorize the administrator to delegate to another commission employee the administrator's authority to act under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(d), eff. Sept. 1, 2003.

Sec. 1101.702. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty.

(b) In determining the amount of the penalty, the administrator shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts to correct the violation; and
- (5) any other matter that justice may require.

(c) The commission by rule shall adopt a schedule of

administrative penalties based on the criteria listed in Subsection (b) for violations subject to an administrative penalty under this section to ensure that the amount of a penalty imposed is appropriate to the violation. The rules adopted under this subsection must provide authority for the commission to suspend or revoke a license in addition to or instead of imposing an administrative penalty.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(e), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 26, eff. September 1, 2007.

Sec. 1101.703. NOTICE OF VIOLATION AND PENALTY. (a) If, after investigation of a possible violation and the facts relating to that violation, the administrator determines that a violation has occurred, the administrator may issue a notice of violation stating:

(1) a brief summary of the alleged violation;

(2) the administrator's recommendation on the imposition of the administrative penalty or another disciplinary sanction, including a recommendation on the amount of the penalty; and

(3) that the respondent has the right to a hearing to contest the alleged violation, the recommended penalty, or both.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(4), eff. September 1, 2007.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 27, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 28, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 59(4), eff. September 1, 2007.

Sec. 1101.704. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice under Section 1101.703, the person may:

(1) accept the administrator's determination, including the recommended administrative penalty; or

(2) request in writing a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the administrator's determination, or fails to respond in a timely manner to the notice, the commission by order shall approve the determination and order payment of the recommended penalty or impose the recommended sanction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 29, eff. September 1, 2007.

Sec. 1101.705. HEARING; DECISION. (a) If the person requests a hearing, the administrator shall set a hearing and give notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing. The administrative law judge shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the commission a proposal for decision regarding the occurrence of the violation and the amount of any proposed administrative penalty.

(c) Based on the findings of fact, conclusions of law, and proposal for decision of the administrative law judge, the commission by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(d) A proceeding under this section is subject to Chapter 2001, Government Code.

(e) The notice of the commission's order given to the person under Chapter 2001, Government Code, must include a statement of the person's right to judicial review of the order.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(f), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 30, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 31, eff. September 1, 2007.

Sec. 1101.706. NOTICE OF ORDER. The administrator shall give notice of the commission's order to the person. The notice must:

- (1) include the findings of fact and conclusions of law, separately stated;
- (2) state the amount of any penalty imposed;
- (3) inform the person of the person's right to judicial review of the order; and
- (4) include other information required by law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.707. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the commission's order becomes final, the person shall:

- (1) pay the administrative penalty; or
- (2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account; or
  - (B) giving the court a supersedeas bond in a form approved by the court that:
    - (i) is for the amount of the penalty; and
    - (ii) is effective until judicial review of the order is final; or
- (2) request the court to stay enforcement by:
  - (A) filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and
  - (B) giving a copy of the affidavit to the administrator by certified mail.

(c) If the administrator receives a copy of an affidavit under Subsection (b)(2), the administrator may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 32, eff. September 1, 2007.

Sec. 1101.708. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the administrator may refer the matter to the attorney general for collection of the penalty.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.7085. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 33, eff. September 1, 2007.

Sec. 1101.709. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review the administrative penalty is reduced or is not upheld by the court, the court shall remit the appropriate amount, plus accrued interest, to the person if the person paid the penalty.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 34, eff. September 1, 2007.

Sec. 1101.710. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 35, eff. September 1, 2007.

#### **SUBCHAPTER P. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 1101.751. INJUNCTIVE ACTION BROUGHT BY COMMISSION. (a) In addition to any other action authorized by law, the commission may bring an action in its name to enjoin a violation of this chapter or a commission rule.

(b) To obtain an injunction under this section, the commission is not required to allege or prove that:

- (1) an adequate remedy at law does not exist; or
- (2) substantial or irreparable damage would result from the continued violation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.752. ADDITIONAL INJUNCTIVE AUTHORITY. (a) In addition to any other action authorized by law, the commission, acting through the attorney general, may bring an action to abate a violation or enjoin a violation or potential violation of this

chapter or a commission rule if the commission determines that a person has violated or is about to violate this chapter.

(b) The action shall be brought in the name of the state in the district court in the county in which:

- (1) the violation occurred or is about to occur; or
- (2) the defendant resides.

(c) An injunctive action may be brought to abate or temporarily or permanently enjoin an act or to enforce this chapter.

(d) The commission is not required to give a bond in an action under Subsection (a), and court costs may not be recovered from the commission.

(e) If the commission determines that a person has violated or is about to violate this chapter, the attorney general or the county attorney or district attorney in the county in which the violation has occurred or is about to occur or in the county of the defendant's residence may bring an action in the name of the state in the district court of the county to abate or temporarily or permanently enjoin the violation or to enforce this chapter. The plaintiff in an action under this subsection is not required to give a bond, and court costs may not be recovered from the plaintiff.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.753. CIVIL PENALTY FOR CERTAIN VIOLATIONS BY BROKER, SALESPERSON, OR CERTIFICATE HOLDER. (a) In addition to injunctive relief under Sections 1101.751 and 1101.752, a person who receives a commission or other consideration as a result of acting as a broker or salesperson without holding a license or certificate of registration under this chapter is liable to the state for a civil penalty of not less than the amount of money received or more than three times the amount of money received.

(b) The commission may recover the civil penalty, court costs, and reasonable attorney's fees on behalf of the state.

(c) The commission is not required to give a bond in an action under this section, and court costs may not be recovered from the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.



Sec. 1101.754. PRIVATE CAUSE OF ACTION FOR CERTAIN VIOLATIONS BY BROKER, SALESPERSON, OR CERTIFICATE HOLDER. (a) A person who receives a commission or other consideration as a result of acting as a broker or salesperson without holding a license or certificate of registration under this chapter is liable to an aggrieved person for a penalty of not less than the amount of money received or more than three times the amount of money received.

(b) The aggrieved person may file suit to recover a penalty under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.755. APPEAL BOND EXEMPTION. The commission is not required to give an appeal bond in an action to enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.756. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person wilfully violates or fails to comply with this chapter or a commission order.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.757. CRIMINAL PENALTY FOR CERTAIN VIOLATIONS BY RESIDENTIAL RENTAL LOCATOR. (a) A person commits an offense if the person engages in business as a residential rental locator in this state without a license issued under this chapter.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.161(a), eff.

Sept. 1, 2003.

Sec. 1101.758. CRIMINAL PENALTY FOR CERTAIN VIOLATIONS BY BROKER, SALESPERSON, OR CERTIFICATE HOLDER. (a) A person commits an offense if the person acts as a broker or salesperson without holding

a license under this chapter or engages in an activity for which a certificate of registration is required under this chapter without holding a certificate.

(b) An offense under this section is a Class A misdemeanor.

(c) to (e) Repealed by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.162(b).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.162(a), (b), eff. Sept. 1, 2003.

Sec. 1101.759. CEASE AND DESIST ORDER. (a) If it appears to the commission that a person is violating this chapter or Chapter 1102 or a rule adopted under this chapter or Chapter 1102, the commission, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter O.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 36, eff. September 1, 2007.

#### **SUBCHAPTER Q. GENERAL PROVISIONS RELATING TO LIABILITY ISSUES**

Sec. 1101.801. EFFECT OF DISCIPLINARY ACTION ON LIABILITY. Disciplinary action taken against a person under Section 1101.652 does not relieve the person from civil or criminal liability.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.802. LIABILITY RELATING TO HIV INFECTION OR AIDS. Notwithstanding Section 1101.801, a person is not civilly or criminally liable because the person failed to inquire about, make a disclosure relating to, or release information relating to whether a previous or current occupant of real property had, may have had, has, or may have AIDS, an HIV-related illness, or HIV infection as defined by the Centers for Disease Control and Prevention of the United States Public Health Service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.803. GENERAL LIABILITY OF BROKER. A licensed broker is liable to the commission, the public, and the broker's clients for any conduct engaged in under this chapter by the broker or by a salesperson associated with or acting for the broker.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.804. LIABILITY FOR PROVIDING CERTAIN INFORMATION. A license holder or nonprofit real estate board or association that provides information about real property sales prices or the terms of a sale for the purpose of facilitating the listing, selling, leasing, financing, or appraisal of real property is not liable to another person for providing that information unless the disclosure of that information is specifically prohibited by statute.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.805. LIABILITY FOR MISREPRESENTATION OR CONCEALMENT.

(a) In this section, "party" has the meaning assigned by Section 1101.551.

(b) This section prevails over any other law, including common law.

(c) This section does not diminish a broker's responsibility for the acts or omissions of a salesperson associated with or acting for the broker.

(d) A party is not liable for a misrepresentation or a concealment of a material fact made by a license holder in a real estate transaction unless the party:

(1) knew of the falsity of the misrepresentation or concealment; and

(2) failed to disclose the party's knowledge of the falsity of the misrepresentation or concealment.

(e) A license holder is not liable for a misrepresentation or a concealment of a material fact made by a party to a real estate transaction unless the license holder:

(1) knew of the falsity of the misrepresentation or

concealment; and

(2) failed to disclose the license holder's knowledge of the falsity of the misrepresentation or concealment.

(f) A party or a license holder is not liable for a misrepresentation or a concealment of a material fact made by a subagent in a real estate transaction unless the party or license holder:

(1) knew of the falsity of the misrepresentation or concealment; and

(2) failed to disclose the party's or license holder's knowledge of the falsity of the misrepresentation or concealment.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.806. LIABILITY FOR PAYMENT OF COMPENSATION OR COMMISSION. (a) This section does not:

(1) apply to an agreement to share compensation among license holders; or

(2) limit a cause of action among brokers for interference with business relationships.

(b) A person may not maintain an action to collect compensation for an act as a broker or salesperson that is performed in this state unless the person alleges and proves that the person was:

(1) a license holder at the time the act was commenced; or

(2) an attorney licensed in any state.

(c) A person may not maintain an action in this state to recover a commission for the sale or purchase of real estate unless the promise or agreement on which the action is based, or a memorandum, is in writing and signed by the party against whom the action is brought or by a person authorized by that party to sign the document.

(d) A license holder who fails to advise a buyer as provided by Section 1101.555 may not receive payment of or recover any commission agreed to be paid on the sale.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

**CHAPTER 1102. REAL ESTATE INSPECTORS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1102.001. DEFINITIONS. In this chapter:

- (1) "Apprentice inspector" means a person who is in training under the direct supervision of a professional inspector or a real estate inspector to become qualified to perform real estate inspections.
- (2) "Broker" has the meaning assigned by Section 1101.002.
- (3) "Commission" means the Texas Real Estate Commission.
- (4) "Committee" means the Texas Real Estate Inspector Committee.
- (5) "Core real estate inspection course" means an educational course approved by the commission that relates to real estate inspection, including a course on structural items, electrical items, mechanical systems, plumbing systems, roofing, business, law, standards of practice, report writing, appliances, or ethics.
- (6) "Inspector" means a person who holds a license under this chapter.
- (7) "License" means an apprentice inspector license, real estate inspector license, or professional inspector license.
- (8) "Professional inspector" means a person who represents to the public that the person is trained and qualified to perform a real estate inspection and who accepts employment to perform a real estate inspection for a buyer or seller of real property.
- (9) "Real estate inspection" means a written or oral opinion as to the condition of the improvements to real property, including structural items, electrical items, mechanical systems, plumbing systems, or equipment.
- (10) "Real estate inspector" means a person who represents to the public that the person is trained and qualified to perform a real estate inspection under the indirect supervision of a professional inspector and who accepts employment to perform a real estate inspection for a buyer or seller of real property.
- (11) "Salesperson" has the meaning assigned by Section 1101.002.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.002. APPLICABILITY OF CHAPTER. (a) This chapter does not apply to a person who repairs, maintains, or inspects improvements to real property, including an electrician, plumber,

carpenter, or person in the business of structural pest control in compliance with Chapter 1951, if the person does not represent to the public through personal solicitation or public advertising that the person is in the business of inspecting those improvements.

(b) This chapter does not prevent a person from performing an act the person is authorized to perform under a license or registration issued by this state or a governmental subdivision of this state under a law other than this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.003. RULES; INSPECTION FORMS. The commission by rule shall prescribe standard forms and require inspectors to use the forms to reduce discrepancies and create consistency in preparing reports of real estate inspections.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### **SUBCHAPTER B. TEXAS REAL ESTATE INSPECTOR COMMITTEE**

Sec. 1102.051. COMMITTEE MEMBERSHIP. (a) The Texas Real Estate Inspector Committee is an advisory committee appointed by the commission.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(5), eff. September 1, 2007.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(5), eff. September 1, 2007.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(5), eff. September 1, 2007.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 37, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 59(5), eff. September 1, 2007.

Sec. 1102.058. GENERAL POWERS AND DUTIES OF COMMITTEE; RECOMMENDATIONS. (a) Repealed by Acts 2007, 80th Leg., R.S., Ch.

1411, Sec. 59(12), eff. September 1, 2007.

(b) The committee shall recommend:

(1) rules for licensing inspectors in this state, including rules relating to:

- (A) education and experience requirements;
- (B) any qualifying examination;
- (C) continuing education requirements; and
- (D) granting or denying a license application;

(2) the form of any required application or other document;

(3) reasonable fees to implement this chapter, including application fees, examination fees, fees for renewal of a license, and any other fee required by law;

(4) rules relating to standards of practice for real estate inspection;

(5) rules establishing a code of professional conduct and ethics for an inspector; and

(6) any other commission action to provide a high degree of service to and protection of the public in dealing with an inspector.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 59(12), eff. September 1, 2007.

Sec. 1102.060. CONSIDERATION OF COMMITTEE RECOMMENDATIONS. The commission shall consider the committee's recommendations relating to qualifications and licensing of inspectors to assure the public of a quality professional inspection system in real estate transactions in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### **SUBCHAPTER C. LICENSE REQUIREMENTS**

Sec. 1102.101. APPRENTICE INSPECTOR LICENSE REQUIRED. A person may not act or attempt to act as an apprentice inspector in this state for a buyer or seller of real property unless the person:

- (1) holds an apprentice inspector license under this chapter; and
- (2) is under the direct supervision of a real estate

inspector or professional inspector.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.102. REAL ESTATE INSPECTOR LICENSE REQUIRED. A person may not act or attempt to act as a real estate inspector in this state for a buyer or seller of real property unless the person:

- (1) holds a real estate inspector license under this chapter; and
- (2) is under the indirect supervision of a professional inspector.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.103. PROFESSIONAL INSPECTOR LICENSE REQUIRED. A person may not act as a professional inspector in this state for a buyer or seller of real property unless the person holds a professional inspector license under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.104. SUPERVISION. For the purposes of this chapter, a person performing a real estate inspection or preparing a report of a real estate inspection is under:

- (1) direct supervision if the person is instructed and controlled by a professional inspector or real estate inspector who is:
  - (A) responsible for the actions of the person;
  - (B) available if needed to consult with or assist the person; and
  - (C) physically present at the time and place of the inspection; and
- (2) indirect supervision if the person is instructed and controlled by a professional inspector who is:
  - (A) responsible for the actions of the person; and
  - (B) available if needed to consult with or assist the person.



Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.105. APPLICATION. An applicant for a license under this chapter must file with the commission an application on a form prescribed by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.1051. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE. (a) The commission shall require that an applicant for a license or renewal of an unexpired license submit a complete and legible set of fingerprints, on a form prescribed by the commission, to the commission or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The commission shall refuse to issue a license to or renew the license of a person who does not comply with the requirement of Subsection (a).

(c) The commission shall conduct a criminal history check of each applicant for a license or renewal of a license using information:

(1) provided by the individual under this section; and

(2) made available to the commission by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The commission may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the department in conducting the criminal history check.

Added by Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. [2911](#)), Sec. 1, eff. September 1, 2013.

Sec. 1102.106. MORAL CHARACTER DETERMINATION. As prescribed by Section 1101.353, the commission shall determine, on request, whether

a person's moral character complies with the commission's moral character requirements for licensing under this chapter and may conduct a supplemental moral character determination of the person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.107. ELIGIBILITY FOR APPRENTICE INSPECTOR LICENSE.

To be eligible for an apprentice inspector license, an applicant must:

- (1) at the time of application be:
  - (A) at least 18 years of age;
  - (B) a citizen of the United States or a lawfully admitted alien; and
  - (C) a resident of this state;
- (2) be sponsored by a professional inspector; and
- (3) satisfy the commission as to the applicant's honesty, trustworthiness, and integrity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.108. ELIGIBILITY FOR REAL ESTATE INSPECTOR LICENSE.

(a) To be eligible for a real estate inspector license, an applicant must:

- (1) at the time of application have:
  - (A) held an apprentice inspector license for at least three months; and
  - (B) performed at least 25 real estate inspections under direct supervision;
- (2) submit evidence satisfactory to the commission of successful completion of at least 90 classroom hours of core real estate inspection courses;
- (3) demonstrate competence based on the examination under Subchapter D;
- (4) be sponsored by a professional inspector; and
- (5) satisfy the commission as to the applicant's honesty, trustworthiness, integrity, and competence.

(b) The commission by rule may specify the length and content of the courses required by Subsection (a)(2).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.109. ELIGIBILITY FOR PROFESSIONAL INSPECTOR LICENSE. To be eligible for a professional inspector license, an applicant must:

- (1) at the time of application have:
  - (A) held a real estate inspector license for at least 12 months; and
  - (B) performed at least 175 real estate inspections under indirect supervision;
- (2) submit evidence satisfactory to the commission of successful completion of at least 40 classroom hours of core real estate inspection courses, in addition to the hours required by Section 1102.108;
- (3) demonstrate competence based on the examination under Subchapter D; and
- (4) satisfy the commission as to the applicant's honesty, trustworthiness, integrity, and competence.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 15, Sec. 10, eff. Sept. 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. [2911](#)), Sec. 2, eff. September 1, 2013.

Sec. 1102.110. ELIGIBILITY OF PREVIOUS LICENSE HOLDERS. (a) Notwithstanding Section 1102.108, an applicant is eligible for and has satisfied all requirements for a real estate inspector license if the applicant:

- (1) held a real estate inspector license during the 24-month period preceding the date the application is filed;
- (2) is sponsored by a professional inspector;
- (3) satisfies the commission as to the applicant's honesty, trustworthiness, and integrity; and
- (4) submits evidence satisfactory to the commission of successful completion of not less than the number of hours of continuing education courses that would have been required for the applicant to renew the license described by Subdivision (1).

(b) Notwithstanding Section 1102.109, an applicant is eligible for and has satisfied all requirements for a professional inspector license if the applicant:

- (1) held a professional inspector license during the 24-month period preceding the date the application is filed;
- (2) satisfies the commission as to the applicant's honesty, trustworthiness, and integrity; and
- (3) submits evidence satisfactory to the commission of successful completion of not less than the number of hours of continuing education courses that would have been required for the applicant to renew the license described by Subdivision (1).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 3, eff. September 1, 2013.

Sec. 1102.111. SUBSTITUTE REQUIREMENTS. (a) The commission by rule shall provide for substitution of relevant experience and additional education in place of:

- (1) the number of real estate inspections required for licensing; and
- (2) the requirement that an applicant be:
  - (A) licensed as an apprentice inspector before being licensed as a real estate inspector; or
  - (B) licensed as a real estate inspector before being licensed as a professional inspector.

(b) Rules adopted under Subsection (a) may not require an applicant to:

- (1) complete more than 320 additional hours of core real estate inspection courses;
- (2) complete more than 40 hours of field work, if the applicant completes correspondence or other course provided by alternative means; or
- (3) have more than seven years of relevant experience.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 15, Sec. 11, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 11, eff.

September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 4, eff. September 1, 2013.

Sec. 1102.112. WAIVER FOR APPLICANT LICENSED IN ANOTHER STATE. The commission may waive any license requirement for an applicant who holds a license from another state having license requirements substantially equivalent to those of this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.113. ELIGIBILITY AS SPONSOR. A professional inspector may sponsor an apprentice inspector or a real estate inspector only if the professional inspector provides sufficient proof to the commission that the professional inspector has completed at least 200 real estate inspections as a professional inspector.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.114. ISSUANCE OF LICENSE. The commission shall issue the appropriate license to an applicant who:

- (1) meets the required qualifications;
- (2) pays the fee required by Section 1102.352(a); and
- (3) submits proof of financial responsibility as required by Section 1102.1141.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 38, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 5, eff. September 1, 2013.

Sec. 1102.1141. FINANCIAL RESPONSIBILITY REQUIREMENT. (a) An inspector must maintain financial responsibility in the form of:

- (1) a liability insurance policy with a minimum limit of \$100,000 per occurrence and an aggregate annual total of at least

\$100,000, and that:

(A) is written by an insurer authorized to engage in the business of insurance in this state, a risk retention group as defined by Chapter 2201, Insurance Code, or an eligible surplus lines insurer, as defined by Section 981.002, Insurance Code; and

(B) specifically provides for professional liability coverage to protect the public against a violation of Subchapter G; or

(2) a bond or other security accepted by the commission.

(b) A bond posted as security under Subsection (a)(2) must:

(1) be issued by a carrier admitted in this state;

(2) be in an amount not less than \$100,000;

(3) be continuous; and

(4) be cancellable by the surety only after the surety has provided at least 90 days' written notice to the commission before the effective date of the cancellation.

(c) Any security provided under this section in a form other than a bond must be convertible to cash by the commission for the benefit of a person who contracts with an inspector in this state, without requiring approval of a court, if the commission determines that the inspector has violated Subchapter G. Any amount remaining after an inspector's license has expired shall be returned to the inspector not later than the 180th day after the date the license expires.

(d) An inspector who posts a bond or other security under this section must designate an unaffiliated third party to handle the processing of any claim regarding the bond or other security.

Added by Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. [2911](#)), Sec. 6, eff. September 1, 2013.

Sec. 1102.115. DENIAL OF LICENSE. The provisions of Section 1101.364 governing the commission's denial of a license under that chapter apply to the commission's denial of a license under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.116. PROBATIONARY LICENSE. The commission may issue

a probationary license under this chapter as prescribed by Section 1101.365.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.117. INACTIVE LICENSE. The commission by rule may adopt terms by which:

(1) an inspector may apply for, renew, or place a license on inactive status; and

(2) an inactive inspector may return to active status.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.118. CONTACT INFORMATION. (a) An inspector shall provide the commission with a current mailing address, telephone number, and, if available, e-mail address.

(b) Not later than the 30th day after the date of a change in the mailing address, telephone number, or e-mail address of an inspector, the inspector shall notify the commission of the change and pay any required fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 7, eff. September 1, 2013.

#### **SUBCHAPTER D. LICENSE EXAMINATION**

Sec. 1102.151. CONTENT OF EXAMINATION. (a) A license examination must evaluate competence in the subject matter of each required core real estate inspection course.

(b) The commission shall:

(1) prescribe each license examination; and

(2) prepare or contract for the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.152. OFFERING OF EXAMINATION. The commission shall

offer each license examination at least once every two months in Austin.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.153. DEADLINE FOR COMPLETION. A license applicant who does not satisfy the examination requirement before the first anniversary of the date the application is filed must submit a new application and pay another examination fee to be eligible for examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. [2911](#)), Sec. 8, eff. September 1, 2013.

Sec. 1102.154. EXAMINATION RESULTS. (a) Not later than the 30th day after the date an examination is administered, the commission shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the commission shall notify each examinee of the results of the examination not later than the 14th day after the date the commission receives the results from the testing service.

(b) If the notice of the results of an examination graded or reviewed by a national testing service will not be given before the 91st day after the examination date, the commission shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the commission shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.155. REEXAMINATION. (a) An applicant who fails the examination may apply for reexamination by filing a request with the commission and paying another examination fee.

(b) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license



application unless after the date of the third failed examination the applicant completes additional educational requirements as prescribed by the commission and submits evidence satisfactory to the commission of successful completion of those requirements.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 9, eff. September 1, 2013.

#### **SUBCHAPTER E. LICENSE RENEWAL**

Sec. 1102.201. LICENSE TERM AND EXPIRATION. (a) The commission may issue or renew a license for a period not to exceed 24 months.

(b) A renewal fee for a license under this chapter may not exceed, calculated on an annual basis, the amount of the fee established under Section 1102.251.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 15, Sec. 12, eff. Sept. 1, 2003.

Sec. 1102.202. NOTICE OF LICENSE EXPIRATION. Not later than the 31st day before the expiration date of a person's license, the commission shall provide notice of the expiration to the person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 10, eff. September 1, 2013.

Sec. 1102.203. RENEWAL OF LICENSE; INFORMATION REQUIRED. (a) A person may renew an unexpired license by paying the required renewal fee to the commission before the expiration date of the license and providing proof of financial responsibility as required by Section 1102.1141.

(a-1) A person whose license has been expired for 90 days or less may renew the license by paying to the commission a fee equal to 1-1/2 times the required renewal fee. If a license has been expired

for more than 90 days but less than six months, the person may renew the license by paying to the commission a fee equal to two times the required renewal fee.

(b) If the person's license has been expired for six months or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination, if required, and complying with the requirements and procedures for obtaining an original license.

(c) Each applicant for renewal of a license must disclose to the commission whether the applicant has:

(1) entered a plea of guilty or nolo contendere to a felony; or

(2) been convicted of a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal.

(d) The disclosure under Subsection (c) must be provided even if an order has granted community supervision suspending the imposition of the sentence.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.163(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 39, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 11, eff. September 1, 2013.

Sec. 1102.205. CONTINUING EDUCATION REQUIREMENTS. (a) The commission shall approve, recognize, prepare, or administer a continuing education program for inspectors.

(b) As a prerequisite for renewal of a real estate inspector license, professional inspector license, or apprentice inspector license, the inspector must participate in the continuing education program and submit evidence satisfactory to the commission of successful completion of at least 16 classroom hours of core real estate inspection courses or continuing education courses for each year of the license period preceding the renewal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.164(a), eff.

Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 12, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 40, eff. September 1, 2007.

#### **SUBCHAPTER F. LICENSE FEES**

Sec. 1102.251. FEES. The commission shall charge and collect reasonable and necessary fees to cover the cost of administering this chapter for:

- (1) filing an original application for an apprentice inspector license;
- (2) filing an original application for a real estate inspector license;
- (3) filing an original application for a professional inspector license;
- (4) renewal of an apprentice inspector license;
- (5) renewal of a real estate inspector license;
- (6) renewal of a professional inspector license;
- (7) a license examination;
- (8) a request to change a place of business or to replace a lost or destroyed license; and
- (9) filing a request for issuance of a license because of a change of name, return to active status, or change in sponsoring professional inspector.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.165(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 41, eff. September 1, 2007.

#### **SUBCHAPTER G. PROHIBITED ACTS**

Sec. 1102.301. NEGLIGENCE OR INCOMPETENCE. An inspector may not perform a real estate inspection in a negligent or incompetent manner.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.302. AGREEMENT FOR SPECIFIC REPORT; DISHONESTY. An inspector may not:

(1) accept an assignment for real estate inspection if the employment or a fee is contingent on the reporting of:

(A) a specific, predetermined condition of the improvements to real property; or

(B) specific findings other than those that the inspector knows to be true when the assignment is accepted; or

(2) act in a manner or engage in a practice that:

(A) is dishonest or fraudulent; or

(B) involves deceit or misrepresentation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.303. ACTING IN CONFLICTING CAPACITIES. An inspector may not act in a transaction in the dual capacity of inspector and:

(1) undisclosed principal; or

(2) broker or salesperson.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.304. REPAIRS AND MAINTENANCE. An inspector may not perform or agree to perform repairs or maintenance in connection with a real estate inspection under an earnest money contract, lease, or exchange of real property.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.305. VIOLATION OF LAW. An inspector may not violate this chapter or a rule adopted by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### **SUBCHAPTER H. REAL ESTATE INSPECTION RECOVERY FUND**

Sec. 1102.351. REAL ESTATE INSPECTION RECOVERY FUND. The commission shall maintain a real estate inspection recovery fund to reimburse aggrieved persons who suffer actual damages from an inspector's act in violation of Subchapter G. The inspector must have held a license at the time the act was committed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.352. PAYMENTS INTO FUND. (a) In addition to any other fees required by this chapter, a person who passes a license examination must pay a fee not to exceed \$200. The commission shall deposit the fee to the credit of the fund before issuing the license.

(b) If the balance in the fund at any time is less than \$300,000, each inspector at the next license renewal must pay, in addition to the renewal fee, a fee that is equal to the lesser of \$75 or a pro rata share of the amount necessary to obtain a balance in the fund of \$450,000. The commission shall deposit the additional fee to the credit of the fund.

(c) To ensure the availability of a sufficient amount to pay anticipated claims on the fund, the commission by rule may provide for the collection of assessments at different times and under conditions other than those specified by this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.166(a), eff. Sept. 1, 2003.

Sec. 1102.353. MANAGEMENT OF FUND. (a) The commission shall hold money credited to the fund in trust to carry out the purpose of the fund.

(b) Money credited to the fund may be invested in the same manner as money of the Employees Retirement System of Texas, except that an investment may not be made that would impair the liquidity necessary to make payments from the fund as required by this subchapter.

(c) Interest from the investments shall be deposited to the credit of the fund.

(d) If the balance in the fund on December 31 of a year is more than \$600,000, the commission shall transfer the amount in excess of

\$600,000 to the credit of the general revenue fund.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.354. DEADLINE FOR ACTION; NOTICE TO COMMISSION. (a) An action for a judgment that may result in an order for payment from the fund may not be brought after the second anniversary of the date the cause of action accrues.

(b) When an aggrieved person brings an action for a judgment that may result in an order for payment from the fund, the inspector against whom the action is brought shall notify the commission in writing of the action.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.355. CLAIM FOR PAYMENT FROM FUND. (a) An aggrieved person who obtains a court judgment against an inspector for a violation of Subchapter G may, after final judgment is entered, execution returned nulla bona, and a judgment lien perfected, file a verified claim in the court that entered the judgment.

(b) After the 20th day after the date the aggrieved person gives written notice to the commission and judgment debtor, the person may apply to the court that entered the judgment for an order for payment from the fund of the amount unpaid on the judgment. The court shall proceed promptly on the application.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.356. ISSUES AT HEARING. At the hearing on the application for payment from the fund, the aggrieved person must show:

- (1) that the judgment is based on facts allowing recovery under this subchapter;
- (2) that the person is not:
  - (A) the spouse of the judgment debtor or the personal representative of the spouse; or
  - (B) an inspector;
- (3) that, according to the best information available, the

judgment debtor does not have sufficient attachable assets in this or another state to satisfy the judgment;

(4) the amount that may be realized from the sale of assets liable to be sold or applied to satisfy the judgment; and

(5) the balance remaining due on the judgment after application of the amount under Subdivision (4).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.166(b), eff.

Sept. 1, 2003.

Sec. 1102.357. COMMISSION RESPONSE. (a) On receipt of notice under Section 1102.355, the commission may notify the attorney general of the commission's desire to enter an appearance, file a response, appear at the hearing, defend the action, or take any other action the commission considers appropriate.

(b) The commission and the attorney general may act under Subsection (a) only to:

(1) protect the fund from spurious or unjust claims; or

(2) ensure compliance with the requirements for recovery under this subchapter.

(c) The commission may relitigate in the hearing any material and relevant issue that was determined in the action that resulted in the judgment in favor of the aggrieved person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.358. COURT ORDER FOR PAYMENT. The court shall order the commission to pay from the fund the amount the court finds payable on the claim under this subchapter if at the hearing the court is satisfied:

(1) of the truth of each matter the aggrieved person is required by Section 1102.356 to show; and

(2) that the aggrieved person has satisfied each requirement of Sections 1102.355 and 1102.356.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.359. PAYMENT LIMITS; ATTORNEY'S FEES. (a) Payments from the fund for claims, including attorney's fees, interest, and court costs, arising out of a single transaction may not exceed a total of \$12,500, regardless of the number of claimants.

(b) Payments from the fund for claims based on judgments against a single inspector may not exceed a total of \$30,000 until the inspector has reimbursed the fund for all amounts paid.

(c) If the court finds that the total amount of claims against an inspector exceeds the limitations contained in this section, the court shall proportionally reduce the amount payable on each claim.

(d) A person receiving payment from the fund is entitled to reasonable attorney's fees in the amount determined by the court, subject to the limitation prescribed by this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.166(c), eff. Sept. 1, 2003.

Sec. 1102.360. APPLICATION OF JUDGMENT RECOVERY. An aggrieved person who receives a recovery on a judgment against a single defendant before receiving a payment from the fund must apply the recovery first to actual damages.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.361. SUBROGATION. (a) The commission is subrogated to all rights of a judgment creditor to the extent of an amount paid from the fund, and the judgment creditor shall assign to the commission all right, title, and interest in the judgment up to that amount.

(b) The commission has priority for repayment from any subsequent recovery on the judgment.

(c) The commission shall deposit any amount recovered on the judgment to the credit of the fund.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.362. EFFECT ON DISCIPLINARY PROCEEDINGS. (a) This



subchapter does not limit the commission's authority to take disciplinary action against an inspector for a violation of this chapter or a commission rule.

(b) An inspector's repayment of all amounts owed to the fund does not affect another disciplinary proceeding brought under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.363. WAIVER OF RIGHTS. An aggrieved person who does not comply with this subchapter waives the person's rights under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.364. NOTICE TO CONSUMERS AND SERVICE RECIPIENTS. (a) Each inspector shall provide notice to consumers and service recipients of the availability of payment from the fund for aggrieved persons:

- (1) on a written contract for the inspector's services;
- (2) on a brochure that the inspector distributes;
- (3) on a sign prominently displayed in the inspector's place of business;
- (4) in a bill or receipt for the inspector's services; or
- (5) in a prominent display on the Internet website of a person regulated under this chapter.

(b) The notice must include:

- (1) the commission's name, mailing address, and telephone number; and
- (2) any other information required by commission rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 15, Sec. 13, eff. Sept. 1, 2003.

#### **SUBCHAPTER I. DISCIPLINARY PROCEEDINGS, PENALTIES, AND ENFORCEMENT PROVISIONS**

Sec. 1102.401. DISCIPLINARY POWERS OF COMMISSION. (a) The commission may investigate an action of an inspector and, after

notice and hearing as provided by Section 1101.657, reprimand the inspector, place the inspector's license on probation, or suspend or revoke the inspector's license for a violation of this chapter or a commission rule.

(b) An inspector whose license is revoked under this section may not apply to the commission for a new license until after the first anniversary of the date of the revocation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.402. LICENSE REVOCATION FOR CLAIM ON FUND. (a) The commission may revoke a license issued under this chapter or a license, approval, or registration issued under Chapter 1101 if the commission makes a payment from the real estate inspection recovery fund to satisfy all or part of a judgment against the person issued the license, approval, or registration.

(b) The commission may probate an order revoking a license.

(c) A person is not eligible for a license until the person has reimbursed the commission in full for any amount paid on the person's behalf from the real estate inspection recovery fund or the real estate recovery trust account under Subchapter M, Chapter 1101, plus interest at the legal rate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 12, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 12, eff. September 1, 2013.

Sec. 1102.403. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty as provided by Subchapter O, Chapter 1101, on a person who violates this chapter or a rule adopted or order issued by the commission under this chapter or Chapter 1101.

(b) An administrative penalty collected under this section for a violation by an inspector shall be deposited to the credit of the real estate inspection recovery fund. A penalty collected under this section for a violation by a person who is not licensed under this chapter or Chapter 1101 shall be deposited to the credit of the real

estate recovery trust account or the real estate inspection recovery fund, as determined by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(g), eff. Sept. 1, 2003.

Sec. 1102.404. INJUNCTIVE RELIEF. The commission, the attorney general, a county attorney, or a district attorney, as applicable, may bring an action to enforce this chapter or to abate or enjoin a violation of this chapter or a rule adopted under this chapter as prescribed by Sections 1101.751 and 1101.752.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.405. APPEAL BOND EXEMPTION. The commission is not required to give an appeal bond in an action to enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.406. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person wilfully violates or fails to comply with this chapter or a commission order.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.407. CRIMINAL PENALTY FOR PRACTICING WITHOUT LICENSE. (a) A person commits an offense if the person does not hold a license under this chapter and knowingly engages in the business of real estate inspecting, including performing an inspection while the person's license is revoked or suspended.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.167(a), eff. Sept. 1, 2003.

Sec. 1102.408. TEMPORARY SUSPENSION. (a) The presiding officer of the commission shall appoint a disciplinary panel consisting of three commission members to determine whether a person's license to practice under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person licensed to practice under this chapter would, by the person's continued practice, constitute a continuing threat to the public welfare, the panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the commission is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 43, eff. September 1, 2007.

## **CHAPTER 1103. REAL ESTATE APPRAISERS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1103.001. SHORT TITLE. This chapter may be cited as the Texas Appraiser Licensing and Certification Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.002. PURPOSE. The purpose of this chapter is to:

(1) conform state law relating to the regulation of real estate appraisers to the requirements adopted under Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(2) enforce standards for the appraisal of real property.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 1, eff. May 27, 2011.

Sec. 1103.003. DEFINITIONS. In this chapter:

(1) "Appraisal" means, regardless of whether prepared for a federally related transaction:

(A) an opinion of value; or

(B) the act or process of developing an opinion of value.

(2) "Appraisal Foundation" means The Appraisal Foundation, as defined by 12 U.S.C. Section 3350, or its successor.

(2-a) "Appraisal Standards Board" means the Appraisal Standards Board of the Appraisal Foundation, or its successor.

(3) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, or its successor.

(4) "Appraiser Qualifications Board" means the Appraiser Qualifications Board of the Appraisal Foundation, or its successor.

(5) "Board" means the Texas Appraiser Licensing and Certification Board.

(6) "Commissioner" means the commissioner of the Texas Appraiser Licensing and Certification Board.

(6-a) "Federally related transaction" means a real estate-related transaction that:

(A) requires the services of an appraiser; and

(B) is engaged in, contracted for, or regulated by a federal financial institution regulatory agency.

(6-b) "Federal financial institution regulatory agency" means:

(A) the Board of Governors of the Federal Reserve System;

(B) the Federal Deposit Insurance Corporation;

(C) the Office of the Comptroller of the Currency;

(D) the Office of Thrift Supervision;

(E) the National Credit Union Administration; or

(F) the successors of any of those agencies.

(7) "State-certified real estate appraiser" or "certified appraiser" means a person who is certified under this chapter.

(8) "State-licensed real estate appraiser" or "licensed appraiser" means a person who is licensed under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 2, eff. May 27, 2011.

Sec. 1103.004. EFFECT OF CHAPTER. (a) Repealed by Acts 2005, 79th Leg., Ch. 703, Sec. 22, eff. September 1, 2005.

(b) This chapter does not prohibit:

(1) a person authorized by law from performing an evaluation of real property for or providing an evaluation of real property to another person; or

(2) a real estate broker licensed under Chapter 1101 or a salesperson acting under the authority of a sponsoring broker from providing to another person a written analysis, opinion, or conclusion relating to the estimated price of real property if the analysis, opinion, or conclusion:

(A) is not referred to as an appraisal;

(B) is given in the ordinary course of the broker's or salesperson's business; and

(C) is related to the actual or potential acquisition, disposition, encumbrance, or management of an interest in real property.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 22, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 3, eff. May 27, 2011.

Sec. 1103.005. REAL ESTATE BROKER OR SALESPERSON LICENSE NOT

REQUIRED. A person is not required to be licensed as a real estate broker or salesperson under Chapter 1101 to appraise real property in this state if the person is:

- (1) certified or licensed under this chapter;
- (2) approved as an appraiser trainee under this chapter;

or

(3) certified or licensed as a real estate appraiser by another state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.006. APPLICATION OF SUNSET ACT. If the federal government removes the requirements for the preparation or use of an appraisal by federally regulated financial institutions, the board is subject to Chapter 325, Government Code (Texas Sunset Act), and is subject to sunset review in the next regular session of the legislature following the date of the federal government's action. Unless continued in existence by that legislature as provided by that chapter, the board is abolished and this chapter expires on the 90th day after the last day of the regular session of that legislature.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### **SUBCHAPTER B. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD**

Sec. 1103.051. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD. The Texas Appraiser Licensing and Certification Board is an independent subdivision of the Texas Real Estate Commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.052. BOARD MEMBERSHIP. (a) The board consists of nine members as follows:

- (1) the executive secretary of the Veterans' Land Board or the executive secretary's designee; and
- (2) eight members appointed by the governor with the advice and consent of the senate as follows:

(A) four members who are certified or licensed appraisers actively engaged in the practice of appraising real

property; and

(B) four public members who qualify for appointment based on their recognized business ability.

(b) The executive secretary of the Veterans' Land Board or the executive secretary's designee is a voting member of the board.

(c) In making appointments to the board, the governor shall ensure that:

(1) a single appraisal organization is not overrepresented on the board;

(2) the board is independent of a trade association, profession, or industry; and

(3) the board represents:

(A) the diverse geographic areas of the state; and

(B) a cross-section of disciplines in the field of real estate appraisal.

(d) Appointments to the board shall be made without regard to:

(1) the race, color, religion, sex, disability, familial status, or national origin of the appointee; or

(2) the appointee's membership in an appraisal organization.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.053. QUALIFICATIONS OF APPOINTED MEMBERS. (a) An appointed member of the board must be a qualified voter of this state.

(b) A person appointed to the board qualifies by taking the constitutional oath of office not later than the 15th day after the date of appointment.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.054. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is a certified or licensed appraiser;

(2) is certified or licensed by an occupational regulatory agency in the field of real estate brokerage or appraisal;

(3) owns or controls, directly or indirectly, a business



entity or other organization whose primary purpose is to engage in real estate sales, brokerage, or appraisal; or

(4) is employed by or participates in the management of a business entity or other organization whose primary purpose is to engage in real estate sales, brokerage, or appraisal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.055. TERMS. (a) Appointed members of the board serve staggered two-year terms, with the terms of two appraiser members and two public members expiring on January 31 of each year.

(b) An appointed member may not serve more than three consecutive two-year terms.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.056. OFFICERS; EXECUTIVE COMMITTEE. (a) At a regular meeting in February of each year, the board shall elect from its members a presiding officer, assistant presiding officer, and secretary.

(b) The officers elected under Subsection (a) constitute the executive committee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.057. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that an appointed member:

(1) does not have at the time of appointment the qualifications required by this subchapter for appointment to the board;

(2) does not maintain during service on the board the qualifications required by this subchapter for appointment to the board;

(3) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

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

the board.

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

(c) If the presiding officer of the board has knowledge that a potential ground for removal of an appointed board member exists, the presiding officer shall immediately notify the governor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.058. PER DIEM; REIMBURSEMENT. An appointed board member is entitled to receive:

(1) \$75 for each day the member engages in official duties as a board member; and

(2) reimbursement for actual and necessary expenses incurred in performing official duties as a board member.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.059. QUASI-JUDICIAL IMMUNITY. A member of the board is entitled to quasi-judicial immunity from suit for an action that:

(1) is taken as a member of the board; and

(2) is in compliance with the law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### **SUBCHAPTER C. COMMISSIONER AND OTHER BOARD PERSONNEL**

Sec. 1103.101. COMMISSIONER. (a) The administrator of the Texas Real Estate Commission shall serve as commissioner.

(b) The board may delegate to the commissioner the responsibility for administering this chapter, including the approval of consent orders and agreements.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. [914](#)), Sec. 44, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. [2375](#)), Sec. 4, eff. May

27, 2011.

Sec. 1103.102. OTHER BOARD PERSONNEL. In addition to the commissioner, the board may employ other officers and employees as necessary to administer this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.103. SALARIES. (a) The administrator of the Texas Real Estate Commission shall determine the salaries of the officers and employees of the board.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1333, Sec. 4, eff. September 1, 2011.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 45, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 4, eff. September 1, 2011.

Sec. 1103.104. DUTIES OF COMMISSIONER. The commissioner shall:

- (1) disseminate information;
- (2) administer rules adopted by the board under this chapter;
- (3) review each application for a certificate or license and make a recommendation for final action to the board;
- (4) review and make recommendations to the board regarding the adoption of rules relating to:
  - (A) the examination required by Subchapter F;
  - (B) education and experience requirements for issuance of certificates and licenses;
  - (C) continuing education for a certified or licensed appraiser;
  - (D) standards of professional practice and ethics for a certified or licensed appraiser;
  - (E) standards for a real estate appraisal performed by a certified or licensed appraiser; and

(F) the fees established by the board under Section 1103.156;

- (5) collect fees established by the board;
- (6) manage the staff and employees of the board; and
- (7) perform any other duty prescribed by the board under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 46, eff. September 1, 2007.

#### **SUBCHAPTER D. BOARD POWERS AND DUTIES**

Sec. 1103.151. RULES RELATING TO CERTIFICATES AND LICENSES.

The board may adopt:

- (1) rules for certifying or licensing an appraiser or approving an appraiser trainee in this state that are in accordance with this chapter and consistent with applicable federal law;
- (2) rules relating to the education and experience required for certifying or licensing an appraiser or approving an appraiser trainee that are consistent with the guidelines recognized by the Appraiser Qualifications Board;
- (3) rules relating to the examination required by Subchapter F; and
- (4) rules relating to procedures for the timely renewal of a certificate, license, or trainee approval.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 5, eff. May 27, 2011.

Sec. 1103.152. APPRAISER CERTIFICATE AND LICENSE CATEGORIES.

The board may:

- (1) establish certificate and license categories that are consistent with the categories recognized by the Appraiser Qualifications Board; and

(2) prescribe qualifications for each category that are consistent with the qualifications established for that category by the Appraiser Qualifications Board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 3, eff. September 1, 2005.

Sec. 1103.153. RULES RELATING TO CONTINUING EDUCATION. The board may adopt rules relating to continuing education requirements for a certified or licensed appraiser or an approved appraiser trainee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 4, eff. September 1, 2005.

Sec. 1103.154. RULES RELATING TO PROFESSIONAL CONDUCT. The board may adopt:

(1) rules as necessary to conform to the minimum written standards of the Appraisal Standards Board by incorporating the Uniform Standards of Professional Appraisal Practice;

(2) rules requiring a certified or licensed appraiser to comply with standards of competency, professional conduct, and ethics prescribed by the Uniform Standards of Professional Appraisal Practice, as adopted by the Appraisal Standards Board; and

(3) rules relating to the standards for the development of an appraisal and the conveyance of an appraisal report by a certified or licensed appraiser that are consistent with the Uniform Standards of Professional Appraisal Practice.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 5, eff. September 1, 2005.

Sec. 1103.155. ROSTER. (a) The board shall maintain a roster of persons who are certified or licensed under this chapter.

(b) The roster must indicate the type of certificate or license held by each person listed.

(c) The board shall send a copy of the roster to the Appraisal Subcommittee at least annually.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.156. FEES. (a) The board may establish reasonable fees to administer this chapter, including:

- (1) an application fee for a certificate or license;
- (2) an examination fee;
- (3) a renewal fee for a certificate or license;
- (4) a registration fee for a nonresident real estate appraiser;
- (5) an application fee for an appraiser trainee;
- (6) a renewal fee for an appraiser trainee;
- (7) a fee for filing a request for a return to active status; and
- (8) other appropriate fees.

(b) The board shall collect from each certified or licensed appraiser an annual registry fee in an amount established by the board not to exceed the amount required by the Appraisal Subcommittee. The board shall deposit the registry fees to the credit of the appraiser registry account in the general revenue fund.

(c) The fees collected under Subsection (b) shall be sent to the Appraisal Subcommittee regularly as required by federal law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 106, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. [2375](#)), Sec. 6, eff. May 27, 2011.

Sec. 1103.157. GIFTS, GRANTS, AND DONATIONS. The board may solicit, accept, and administer gifts, grants, and donations of any kind from any public or private source for the purposes of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 7, eff. May 27, 2011.

Sec. 1103.158. EXPERT WITNESS TESTIMONY BY BOARD MEMBER. Notwithstanding Section 572.051, Government Code, a board member may testify as an expert witness in an action concerning a violation of the Uniform Standards of Professional Appraisal Practice.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 7, eff. May 27, 2011.

Sec. 1103.159. ADVISORY COMMITTEE. (a) The board shall establish an advisory committee to advise the board and make recommendations on matters related to the regulation of appraisal management companies under Chapter 1104.

(b) The advisory committee consists of the assistant presiding officer of the board and two persons appointed by the governor as follows:

(1) a controlling person of an appraisal management company registered under Chapter 1104; and

(2) a public member with recognized business ability.

(c) The assistant presiding officer of the board shall serve as the presiding officer of the advisory committee.

(d) The members of the advisory committee appointed by the governor serve staggered two-year terms, with the terms of the appraisal management company member and the public member expiring on January 31 of alternating years.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 1, eff. September 1, 2011.

Redesignated from Occupations Code, Section 1103.157 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(35), eff. September 1, 2013.

#### **SUBCHAPTER E. CERTIFICATE AND LICENSE REQUIREMENTS**

Sec. 1103.201. CERTIFICATE OR LICENSE REQUIRED. (a) A person may not perform an appraisal of real estate unless the person is licensed or certified as an appraiser under this chapter, registered

as a temporary out-of-state appraiser under this chapter, or acting as an appraiser trainee under the sponsorship of a certified appraiser.

(b) Unless the person holds the appropriate license or certification, a person may not:

(1) use the title "state-certified real estate appraiser" or "state-licensed real estate appraiser"; or

(2) refer to an appraisal performed by the person as a "certified appraisal" or "licensed appraisal."

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 8, eff. May 27, 2011.

Sec. 1103.2015. GENERAL APPLICATION REQUIREMENTS. An applicant for a license or certificate issued under this chapter shall provide the board with the applicant's current mailing address, telephone number, and e-mail address, if available.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 9, eff. May 27, 2011.

Sec. 1103.202. ELIGIBILITY REQUIREMENTS FOR CERTIFICATE. To be eligible for a certificate under this chapter, an applicant must:

(1) pass the examination required by Subchapter F;

(2) successfully complete the number and type of classroom hours or other educational qualifications required by the Appraiser Qualifications Board;

(3) provide evidence satisfactory to the board that the applicant has at least the minimum number of hours of experience in performing appraisals over the specified number of calendar years as required by the Appraiser Qualifications Board; and

(4) satisfy the board as to the applicant's honesty, trustworthiness, and integrity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 6, eff. September



1, 2005.

Sec. 1103.203. ELIGIBILITY REQUIREMENTS FOR LICENSE. To be eligible for a license under this chapter, an applicant must:

- (1) pass the examination required by Subchapter F;
- (2) successfully complete the number and type of classroom hours or other educational qualifications required by the guidelines of the Appraiser Qualifications Board;
- (3) provide evidence satisfactory to the board that the applicant has at least the minimum number of hours of experience in performing appraisals over the specified number of calendar years as required by the guidelines of the Appraiser Qualifications Board; and
- (4) satisfy the board as to the applicant's honesty, trustworthiness, and integrity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 7, eff. September 1, 2005.

Sec. 1103.204. FULFILLMENT OF EDUCATION REQUIREMENTS. (a) In this section, "real estate-related financial transaction" means a transaction involving:

- (1) selling, leasing, purchasing, exchanging, investing in, or financing real property or an interest in real property;
- (2) refinancing real property or an interest in real property; or
- (3) using real property or an interest in real property as security for a loan or investment, including a mortgage-backed security.

(b) This chapter does not limit the amount of time in which an applicant for a certificate or license is required to satisfy the education requirements under this subchapter.

(c) The board shall give an applicant for a certificate or license credit toward fulfilling the requirements of Sections 1103.202(2) and 1103.203(2) for classroom hours taken in the course of becoming licensed as a real estate broker or salesperson or for professional development or continuing education courses taken,

whether the classroom hours or courses are taken by a person as a real estate broker or salesperson or as an employee of a financial institution engaged in real estate-related financial transactions, if the classroom hours or courses satisfy the requirements established by the guidelines recognized by the Appraiser Qualifications Board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 8, eff. September 1, 2005.

Sec. 1103.205. FULFILLMENT OF EXPERIENCE REQUIREMENTS. (a) Except as provided by Section 1103.208, this chapter does not limit the amount of time in which an applicant for a certificate or license is required to satisfy the experience requirements under this subchapter.

(b) An applicant for a certificate or license must provide an affidavit on a form prescribed by the board stating that the applicant has the required number of hours of experience in performing appraisals as recognized by the Appraiser Qualifications Board.

(c) For the purpose of determining the qualifications of an applicant for a certificate or license under this chapter, acceptable appraisal experience includes:

(1) any one or any combination of the categories recognized by the Appraiser Qualifications Board; and

(2) experience as a real estate lending officer of a financial institution or as a real estate broker that includes the actual performance or technical review of real estate appraisals.

(d) For purposes of this subchapter, an hour of experience means 60 minutes spent in one or more of the acceptable areas of appraisal experience recognized under this subchapter. Calculation of the hours of experience must be based solely on actual hours of experience.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 9, eff. September 1, 2005.

Sec. 1103.206. VERIFICATION OF EDUCATION AND EXPERIENCE. (a) The board shall adopt a reliable method to verify the evidence of education submitted by an applicant for a certificate or license.

(b) The board shall adopt a reliable method to verify the evidence of appraisal experience submitted by an applicant for a certificate or license. The method must include the review of appraisal experience of all applicants for certification and must rely on appropriate sampling techniques that are applied to not more than five percent of the license applications received by the board. An applicant whose application is selected for verification has at least 60 days after the date of selection to prepare any records requested by the board. The board may not require the applicant to provide more information than the information the board may obtain under Section 1103.207.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 10, eff. May 27, 2011.

Sec. 1103.207. ADDITIONAL INFORMATION FROM CERTAIN APPLICANTS.

(a) In addition to the information or documentation specified by this subchapter, the board may obtain other information or documentation from an applicant for a certificate or license under this chapter if the board determines that:

(1) a consumer complaint or peer complaint against the applicant alleging fraud, incompetency, or malpractice is reasonable; or

(2) other just cause exists for requiring further information.

(b) The board may obtain the additional information or documentation by:

(1) requiring the applicant to complete a form prescribed by the board that includes a detailed listing of the applicant's appraisal experience and states for each appraisal claimed by the applicant:

(A) the municipality or county in which the appraisal was performed;

(B) the type and description of the building or

property appraised;

(C) the approach to value used in the appraisal;

(D) the actual number of hours spent on the appraisal;

and

(E) any other information determined appropriate by the board; or

(2) engaging in other investigative research determined appropriate by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.209. RECIPROCAL CERTIFICATE OR LICENSE. (a) The board shall issue a reciprocal certificate or license to an applicant from another state if:

(1) the appraiser licensing and certification program of the other state is in compliance with 12 U.S.C. Section 3331 et seq.;

(2) the appraiser holds a valid license or certificate from a state whose requirements for licensure or certification meet or exceed the licensure or certification requirements of this state; and

(3) the appraiser satisfies the board as to the appraiser's honesty, trustworthiness, and integrity.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 131, Sec. 24, eff. May 27, 2011.

(c) The application form submitted for a reciprocal certificate or license under this section must be comparable to the form required of a resident of this state applying for a similar certificate or license.

(d) The fee charged to an appraiser from another state for a reciprocal certificate or license under this section must be comparable to the fee required of a resident of this state applying for a similar certificate or license. A person who obtains a certificate or license by reciprocity under this section must pay the federal registry fee and any other fee the board imposes.

(e) An applicant for a certificate or license under this chapter who is not a resident of this state must submit with the application an irrevocable consent that states that service of process in an action against the applicant arising out of the applicant's activities as a certified or licensed appraiser in this state may be made by delivery of the process to the commissioner if

the plaintiff in the action, using due diligence, cannot obtain personal service on the applicant. If process is served as provided by this subsection, the commissioner shall immediately send a copy of the material served on the commissioner to the certified or licensed appraiser at the appraiser's address of record.

(f) The board shall request verification from the state in which the applicant is certified or licensed to confirm that the applicant's certificate or license is valid, active, and in good standing. The board may not issue a reciprocal certificate or license without that verification.

(g) A reciprocal certificate or license expires on the second anniversary of the last day of the month in which it was issued.

(h) A reciprocal certificate or license is renewable under terms adopted by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 10, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 11, eff. May 27, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 24, eff. May 27, 2011.

Sec. 1103.2091. PROBATIONARY CERTIFICATE, LICENSE, OR TRAINEE APPROVAL. (a) The board may issue a probationary certificate or license or approve an appraiser trainee on a probationary basis.

(b) The board by rule shall adopt reasonable terms for issuing a probationary certificate or license and for approval of an appraiser trainee on a probationary basis.

(c) A person who holds a probationary certificate or license or who is approved as an appraiser trainee under this section must disclose the probationary status to all clients before accepting an assignment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 12, eff. May 27, 2011.

Sec. 1103.210. DENIAL OF CERTIFICATE OR LICENSE. (a) The

board shall immediately provide written notice to the applicant of the board's denial of a certificate or license under this chapter.

(b) An appeal of the denial of a certificate or license is governed by Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.211. CERTIFICATE OR LICENSE RENEWAL; CONTINUING EDUCATION. (a) A certificate or license issued by the board expires on the second anniversary of the date of issuance.

(b) A person may renew a certificate or license by:

(1) paying the renewal fee; and

(2) providing evidence satisfactory to the board that the person has completed continuing education requirements that comply with the guidelines recognized by the Appraiser Qualifications Board and that are imposed by rule under this chapter.

(c) For purposes of Subsection (b)(2), the board shall accept as continuing education any educational offering that complies with the guidelines recognized by the Appraiser Qualifications Board that a certified or licensed appraiser was awarded by a national appraiser organization approved by the board as a provider of qualifying appraisal education.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 11, eff. September 1, 2005.

Sec. 1103.2111. LATE RENEWAL OF CERTIFICATE, LICENSE, OR TRAINEE APPROVAL. (a) A person whose certificate, license, or approval has been expired for 90 days or less may renew the certificate, license, or approval by paying to the board a fee equal to 1-1/2 times the required renewal fee. If a certificate, license, or approval has been expired for more than 90 days but less than six months, the person may renew the certificate, license, or approval by paying to the board a fee equal to two times the required renewal fee.

(b) A certificate, license, or approval that is renewed under this section shall expire on the date that would apply had the

certificate, license, or approval been timely renewed.

(c) A person may not perform an appraisal in a federally related transaction while the person is not actively licensed or certified as an appraiser.

(d) If a person's certificate, license, or approval has been expired six months or longer, the person may not renew the certificate, license, or approval. The person may obtain a new certificate, license, or approval by complying with the requirements and procedures for an original application.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. [2375](#)), Sec. 13, eff. May 27, 2011.

Sec. 1103.212. EXTENSION OF TIME TO COMPLETE REQUIRED CONTINUING EDUCATION. (a) The board by rule may establish procedures under which a person may obtain an extension of time to complete continuing education required to renew the person's certificate or license.

(b) The board may require a person under this section to:

- (1) pay an additional fee, not to exceed \$200, on or before the date the certificate or license is scheduled to expire; and
- (2) complete the required continuing education not later than the 60th day after the date the certificate or license is scheduled to expire.

(c) Notwithstanding the other provisions of this section, a person must complete the required continuing education before performing an appraisal in a federally related transaction.

Added by Acts 2003, 78th Leg., ch. 106, Sec. 2, eff. Sept. 1, 2003.

Sec. 1103.213. INACTIVE CERTIFICATE OR LICENSE. (a) The board may place on inactive status the certificate or license of an appraiser if the appraiser:

- (1) is not acting as an appraiser;
- (2) is not sponsoring an appraiser trainee; and
- (3) submits a written application to the board before the expiration date of the appraiser's certificate or license.

(b) The board may place on inactive status the certificate or license of an appraiser whose certificate or license has expired if

the appraiser applies for inactive status on a form prescribed by the board not later than the first anniversary of the expiration date of the appraiser's certificate or license.

(c) An appraiser applying for inactive status shall terminate the appraiser's association with each appraiser trainee sponsored by the appraiser by giving written notice to each appraiser trainee before the 30th day preceding the date the appraiser applies for inactive status.

(d) An appraiser on inactive status:

(1) may not perform any activity regulated under this chapter;

(2) must pay annual renewal fees; and

(3) is not required to pay the annual registry fee described by Section 1103.156(b).

(e) The board shall maintain a list of each appraiser whose certificate or license is on inactive status.

(f) The board shall remove an appraiser's certificate or license from inactive status if the appraiser:

(1) submits an application to the board;

(2) pays the required fee; and

(3) submits proof of complying with the continuing education requirements of Section 1103.211 during the two years preceding the date the application under Subdivision (1) is filed.

Added by Acts 2003, 78th Leg., ch. 106, Sec. 2, eff. Sept. 1, 2003.

#### **SUBCHAPTER F. APPRAISER EXAMINATION**

Sec. 1103.251. EXAMINATION REQUIRED. (a) The board shall prescribe an appraiser examination.

(b) The examination must be:

(1) written; and

(2) approved by the Appraiser Qualifications Board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 12, eff. September 1, 2005.

Sec. 1103.252. TESTING SERVICE. (a) The board may contract



with a testing service to administer the examination.

(b) The testing service may collect an examination fee from an applicant for a certificate or license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.253. TIME AND PLACE OF EXAMINATION; NOTICE. (a) The examination must be offered at least twice each year.

(b) The board shall determine the time and place of the examination.

(c) The board shall give reasonable public notice of the examination in the manner provided by board rule.

(d) The board may assign an examination date and site to an applicant. The assigned site must be the nearest examination site available to the applicant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.254. EXAMINATION APPLICATION. (a) An application to take the examination must be on a form prescribed by the board.

(b) An application is active for one year beginning on the date the application is initially accepted. If an applicant does not pass the examination before the first anniversary of the date of application, the applicant must submit a new application and pay the appropriate fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. [381](#)), Sec. 13, eff. September 1, 2005.

Sec. 1103.255. EXPERIENCE NOT REQUIRED BEFORE TAKING EXAMINATION. An applicant for the examination is not required to fulfill the experience requirement for a certificate before taking the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.256. MINIMUM PASSING GRADE REQUIRED. To pass the examination, an applicant for a certificate or license must achieve the minimum score required by the Appraiser Qualifications Board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 14, eff. September 1, 2005.

Sec. 1103.257. EXAMINATION RESULTS. (a) Not later than the 31st day after the date a person takes an examination, the board shall notify the person of the examination results. If an examination is graded or reviewed by a national testing service, the board shall notify the person of the examination results not later than the 31st day after the date the board receives the results from the testing service.

(b) If notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay not later than the 90th day.

(c) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the person's performance on the examination. The request must be accompanied by a statement identifying the person and a fee in an amount determined by the board. The board shall release the analysis directly to the person requesting the analysis.

(d) The examination results are confidential.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 15, eff. September 1, 2005.

Sec. 1103.258. REEXAMINATION. (a) An applicant who fails an examination may apply to retake the examination on payment of an additional examination fee.

(b) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence satisfactory to the

board that the applicant has completed additional education, as prescribed by the board, since the date the applicant last took the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 16, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 14, eff. May 27, 2011.

Sec. 1103.259. GUIDELINES; STUDY GUIDES. (a) The board shall:

(1) periodically publish guidelines and preexamination study guides;

(2) make the guidelines and study guides available to applicants; and

(3) update the guidelines and study guides as necessary.

(b) Except for the examination and other testing products that require secure and discreet protection, the contents of study guides and other material developed by the board or with the board's authorization are within the public domain and free of copyright restrictions.

(c) If material described by Subsection (b) is reproduced for distribution by an entity other than the board:

(1) the material may not be sold at a price that exceeds the cost of reproduction and distribution; and

(2) the entity may not profit from the distribution of the material.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### **SUBCHAPTER G. TEMPORARY APPRAISAL AUTHORITY FOR OUT-OF-STATE APPRAISERS**

Sec. 1103.301. REGISTRATION REQUIRED. A person certified or licensed as a real estate appraiser by another state may appraise real property in this state without holding a certificate or license issued under this chapter if the person registers with the board under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.302. REGISTRATION APPLICATION. A person may register with the board by:

- (1) completing a registration form prescribed by the board;
- and
- (2) meeting the requirements established under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.303. ELIGIBILITY REQUIREMENTS FOR REGISTRATION. A person is eligible to register with the board if:

- (1) the certification and licensing program under which the person is certified or licensed by another state has not been disapproved by the Appraiser Qualifications Board; and
- (2) the person's appraisal business in this state does not exceed six months.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. [381](#)), Sec. 17, eff. September 1, 2005.

Sec. 1103.304. EXTENSION OF REGISTRATION. A person may obtain a 90-day extension of a temporary registration under this subchapter by completing an extension form approved by the board and paying any required fee. The board may grant only one extension for each temporary registration.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. [2375](#)), Sec. 15, eff. May 27, 2011.

#### **SUBCHAPTER H. APPRAISER TRAINEES**

Sec. 1103.351. SPONSOR. (a) The board may authorize a certified appraiser under this chapter to sponsor an appraiser trainee.

(b) An appraiser trainee may have more than one sponsor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.352. APPLICATION FOR APPRAISER TRAINEE. An applicant for approval as an appraiser trainee and each sponsor of the applicant must apply to the board on a form prescribed by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.353. ELIGIBILITY REQUIREMENTS FOR APPRAISER TRAINEE. To be eligible for approval as an appraiser trainee, an applicant must:

- (1) be at least 18 years of age;
- (2) be a citizen of the United States or a lawfully admitted alien;
- (3) have been a resident of this state for the 60 days preceding the date the application is filed;
- (4) satisfy the board as to the applicant's honesty, trustworthiness, and integrity; and
- (5) meet all other qualifications established by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. [381](#)), Sec. 18, eff. September 1, 2005.

Sec. 1103.354. APPRAISER TRAINEE REPORTS. (a) An appraiser trainee approved by the board may perform an appraisal under the direction of a sponsor or authorized supervisor of the trainee.

(b) The sponsor or authorized supervisor shall sign each report prepared by the appraiser trainee performing an appraisal under the direction of the sponsor or authorized supervisor. The sponsor or authorized supervisor is responsible to the public and to the board for the appraiser trainee's conduct.

(c) An appraiser trainee may co-sign a report prepared under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 19, eff. September 1, 2005.

Sec. 1103.355. DISCIPLINARY PROCEDURES FOR APPRAISER TRAINEES.

(a) The board may reprimand an appraiser trainee or suspend or revoke an appraiser trainee's authority to act as an appraiser trainee for a violation of this chapter or a rule adopted under this subchapter.

(b) A disciplinary proceeding under this section is governed by Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.356. RENEWAL OF APPRAISER TRAINEE APPROVAL. A person may renew an approval as an appraiser trainee by:

- (1) paying the renewal fee established by the board;
- (2) providing evidence satisfactory to the board of completion of any required continuing education; and
- (3) meeting any other renewal requirement established by the board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 16, eff. May 27, 2011.

**SUBCHAPTER I. PRACTICE BY CERTIFIED OR LICENSED APPRAISER**

Sec. 1103.401. USE OF INSIGNIA OR IDENTIFICATION. (a) A person may not use any title, designation, initials, or other insignia or identification that would mislead the public as to the person's credentials, qualifications, or competency to perform a certified appraisal service unless the person is certified under this chapter.

(b) A person may not use any title, designation, initials, or other insignia or identification that would mislead the public as to the person's credentials, qualifications, or competency to perform licensed appraisal services unless the person is licensed under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.402. SIGNATURE OR ENDORSEMENT ON APPRAISAL. (a) A person certified or licensed under this chapter may not sign or endorse an appraisal unless the appraisal is substantially produced by that person.

(b) For purposes of this section, an appraisal is substantially produced by a person who contributes in a material and verifiable manner to the research or analysis that results in the final opinion of value expressed in the appraisal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.403. CONTACT INFORMATION. (a) A certified or licensed appraiser who is a resident of this state shall maintain a fixed office in this state.

(b) Not later than the 10th day after the date an appraiser changes the appraiser's address, e-mail address, or telephone number, the appraiser shall notify the board of the change and pay any required fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 17, eff. May 27, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 18, eff. May 27, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 14.004, eff. September 1, 2013.

Sec. 1103.404. BUSINESS RECORDS. A person who is certified or licensed under this chapter or who has applied for a certificate or license shall retain all business records relating to each appraisal performed by the person until at least the fifth anniversary of the date of the appraisal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.405. PROFESSIONAL STANDARDS. A person who holds a license, certificate, or approval issued under this chapter shall comply with:

(1) the most current edition of the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation; or

(2) other standards provided by board rule that are at least as stringent as the Uniform Standards of Professional Appraisal Practice.

Added by Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 20, eff. September 1, 2005.

#### **SUBCHAPTER J. DISCIPLINARY PROCEEDINGS GENERALLY**

Sec. 1103.451. COMPLAINT. (a) Any person, including a member of the board, may initiate the complaint process under this subchapter by filing with the board a written complaint on a form prescribed by the board.

(b) The board, on its own motion, may file a formal complaint against:

(1) a certified or licensed appraiser; or

(2) an appraiser trainee who is approved by the board under Subchapter H.

(c) A complaint alleging that a certified or licensed appraiser or an approved appraiser trainee has violated a rule of professional conduct adopted by the board must be filed with the board.

(d) The board, on its own motion, may file a formal complaint against a person who engages in an activity for which a certificate or license is required under this chapter without holding a certificate or license. This subchapter and Subchapter K apply to a complaint filed under this subsection in the same manner as they apply to a complaint filed under Subsection (b).

(e) A complaint alleging a violation by a person licensed, certified, or approved under this chapter may not be terminated solely on the basis that the person fails to renew the certificate, license, or approval.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 106, Sec. 3, eff. Sept. 1, 2003.

Amended by:



Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 21, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 1, eff. September 1, 2005.

Sec. 1103.452. REVIEW AND INVESTIGATION. (a) On receipt of a complaint or on its own motion, the board shall review and investigate an alleged act or omission that the board believes is a ground for disciplinary action.

(b) An investigator designated by the presiding officer of the board shall investigate each allegation in a complaint to determine whether probable cause exists for a hearing on the complaint.

(c) If the board determines that a complaint does not present facts that are grounds for disciplinary action, the board or the commissioner shall dismiss the complaint and may not take further action.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 2, eff. September 1, 2005.

Sec. 1103.453. PEER INVESTIGATIVE COMMITTEE. (a) The presiding officer of the board, with the advice and consent of the executive committee, may appoint a peer investigative committee.

(b) A peer investigative committee consists of three certified or licensed appraisers. The presiding officer of the committee must be an appraiser member of the board. Each remaining committee member shall certify to the board that the member is familiar with the appraisal process in the appraisal that is the subject of the complaint.

(c) The peer investigative committee shall:

(1) review and determine the facts of a complaint; and

(2) submit a written report regarding the complaint to the board in a timely manner.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.454. GENERAL SUBPOENA AUTHORITY. (a) The board may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter for inspection and copying.

(b) The board may also issue a subpoena for purposes of an investigation of a complaint to determine whether the board should institute a contested case proceeding.

(c) If a person does not comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists for the issuance of the subpoena.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.455. REPORT OF INVESTIGATION REQUIRED. (a) At the conclusion of the investigation of a complaint, the investigator shall submit to the board a written report to enable the board to determine what further action is necessary.

(b) The report must contain:

(1) statements of fact;

(2) the recommendations of the investigator; and

(3) the position or defense of the investigated appraiser or appraiser trainee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. [382](#)), Sec. 3, eff. September 1, 2005.

Sec. 1103.456. ACTION BASED ON REPORT. Based on the report submitted under Section 1103.455, the board may:

(1) order further investigation of the complaint;

(2) permit the appraiser or appraiser trainee who is the subject of the complaint to attend an informal discussion as provided

by Section 1103.457;

(3) determine that there is not probable cause to believe that a violation occurred and dismiss the case; or

(4) determine that there is probable cause to believe that a violation occurred and proceed as the complainant with a contested case hearing under Subchapter K.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 4, eff. September 1, 2005.

Sec. 1103.457. INFORMAL DISCUSSION OF COMPLAINT. (a) On the action of the board or on request of the appraiser or appraiser trainee who is the subject of a complaint, the board may permit the appraiser or appraiser trainee an opportunity to appear before the board or an agent of the board for a voluntary, informal discussion of the facts and circumstances of the alleged violation.

(b) Repealed by Acts 2005, 79th Leg., Ch. 704, Sec. 16, eff. September 1, 2005.

(c) The board may seek a consent order as provided by Section 1103.458 at the time of the informal discussion.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 5, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 16, eff. September 1, 2005.

Sec. 1103.458. CONSENT ORDER. (a) The board may negotiate a settlement and enter into a consent order with an appraiser or appraiser trainee who is the subject of a complaint under this subchapter.

(b) Repealed by Acts 2005, 79th Leg., Ch. 704, Sec. 16, eff. September 1, 2005.

(c) A consent order must be:

(1) approved by the board; and

(2) signed by the commissioner and the appraiser or

appraiser trainee who is the subject of the complaint.

(d) A board member who participates in negotiating a consent order under this section is not disqualified from participating in the adjudication of a contested case that results from the negotiation.

(e) An appraiser or appraiser trainee who consents to negotiate under this section waives the right to notice and the opportunity to be heard under Chapter 2001, Government Code, during the negotiation.

(f) If the parties agree to a consent order, a statement of charges shall be filed with the consent order.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 6, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 16, eff. September 1, 2005.

Sec. 1103.459. CONSENT AGREEMENT. (a) The board may enter into a consent agreement as provided by this section rather than taking action against a violator of the rules of professional conduct adopted by the board.

(b) Repealed by Acts 2005, 79th Leg., Ch. 704, Sec. 16, eff. September 1, 2005.

(c) A consent agreement must be:

(1) approved by the board; and

(2) signed by the commissioner and the appraiser or appraiser trainee who is the subject of the complaint.

(d) An appraiser or appraiser trainee may be prosecuted for failure to comply with a consent agreement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 7, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 16, eff. September 1, 2005.

Sec. 1103.460. PUBLIC AVAILABILITY OF FINAL DECISION. A final

decision of the board relating to a disciplinary action, including a consent order or consent agreement, may be provided to another state or made available to the public.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### **SUBCHAPTER K. CONTESTED CASE HEARINGS**

Sec. 1103.501. APPLICABILITY OF ADMINISTRATIVE PROCEDURE LAW. Except as otherwise provided by this chapter, a proceeding under this chapter is subject to Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.5011. NOTICE OF VIOLATION AND PENALTY. (a) The commissioner may send an appraiser against whom a complaint has been filed a notice of violation including:

- (1) a summary of the alleged violation;
- (2) the recommended sanction, including the amount of any administrative penalty sought; and
- (3) a conspicuous notice that the respondent has the right to a hearing to contest the alleged violation, the recommended sanction, or both.

(b) Not later than the 20th day after the date the person receives the notice under Subsection (a), the person may:

- (1) accept the commissioner's determination, including the recommended sanction; or
- (2) request in writing a hearing, to be held under Chapter 2001, Government Code, on the occurrence of the violation, the sanction, or both.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. [2375](#)), Sec. 19, eff. May 27, 2011.

Sec. 1103.5012. PENALTY TO BE PAID OR HEARING REQUESTED. If the person accepts the commissioner's determination, or fails to respond in a timely manner to the notice, the board by order shall approve the determination and order payment of the recommended penalty, impose the recommended sanction, or both.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 19, eff. May 27, 2011.

Sec. 1103.502. NOTICE OF HEARING. (a) The board shall provide notice to the parties of a contested case hearing.

(b) The notice must:

(1) state the time and place of the hearing; and  
(2) state that the appraiser or appraiser trainee must submit an answer as prescribed by Section 1103.505 not later than the 20th day after the date the appraiser or appraiser trainee receives the notice.

(c) Not later than the 30th day before the hearing date, the board shall personally deliver or send by certified mail, return receipt requested, to the appraiser or appraiser trainee:

(1) the notice prescribed by this section; and  
(2) the statement of charges prescribed by Section 1103.503.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 8, eff. September 1, 2005.

Sec. 1103.503. STATEMENT OF CHARGES. (a) The attorney representing the board shall prepare the statement of charges.

(b) The statement of charges must:

(1) state each act or omission with which the appraiser or appraiser trainee is charged, including any standard of professional practice or rule of professional conduct alleged to have been violated; and  
(2) be sufficiently detailed to enable the appraiser or appraiser trainee to prepare a defense.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 9, eff. September 1, 2005.

Sec. 1103.504. ATTORNEY GENERAL REPRESENTATION. The attorney general may not represent the board in a contested case before the State Office of Administrative Hearings.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 9, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 47, eff. September 1, 2007.

Sec. 1103.505. ANSWER. The appraiser's or appraiser trainee's answer must contain:

(1) the name, address, and telephone number of the appraiser or appraiser trainee;

(2) a specific statement regarding any allegation in the complaint, which must:

(A) be in the form of an admission or denial; and

(B) contain any explanation or other statement of mitigating circumstances the appraiser or appraiser trainee determines relevant; and

(3) any additional information the appraiser or appraiser trainee determines relevant to the investigation that may assist in deciding the contested case.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 9, eff. September 1, 2005.

Sec. 1103.506. DISCOVERY PROCEDURES. The discovery procedures that are applicable to a civil action are applicable to a proceeding under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.507. SUBPOENA IN CONTESTED CASE. (a) The commissioner shall issue a subpoena to compel the attendance of a

witness or the production of records or other evidence if:

- (1) a party to the proceeding requests the subpoena orally or in writing;
- (2) the request specifies each item of evidence sought and the full name and address of each witness sought; and
- (3) the party shows reasonable cause.

(b) A party or the board may petition the district court to enforce a subpoena issued under this section. If the party or the board makes a proper showing, the district court shall order the person to whom the subpoena is issued to obey the subpoena.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.508. HEARING. (a) A contested case hearing shall be conducted before an administrative law judge of the State Office of Administrative Hearings.

(b) Repealed by Acts 2005, 79th Leg., Ch. 704, Sec. 16, eff. September 1, 2005.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(16), eff. September 1, 2007.

(d) The administrative law judge shall control the proceedings and may:

- (1) administer oaths;
- (2) admit or exclude testimony or other evidence; and
- (3) rule on all motions and objections.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 10, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 11, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 16, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 48, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 59(16), eff. September 1, 2007.



Sec. 1103.510. FAILURE TO APPEAR. (a) If an appraiser or appraiser trainee receives proper notice of a contested case hearing but does not appear in person at the hearing, the administrative law judge may conduct the hearing or enter an order, as the judge determines appropriate.

(b) The appraiser or appraiser trainee is bound by the results of the hearing to the same extent as if the appraiser or appraiser trainee had appeared.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 12, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 49, eff. September 1, 2007.

Sec. 1103.511. OPEN HEARING. A contested case hearing is open to the public.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.512. RECORD OF PROCEEDINGS. (a) Contested case proceedings shall be recorded by:

- (1) mechanical or electrical means; or
- (2) a certified shorthand reporter.

(b) At the request of a party, the proceedings or any part of the proceedings shall be transcribed. The expense of the transcription shall be charged to the requesting party.

(c) Before testimony may be presented, the record must:

- (1) show the identities of:
  - (A) any board members present;
  - (B) the administrative law judge; and
  - (C) the parties and their representatives; and
- (2) state that all testimony is being recorded.

(d) The recording, stenographic notes, or transcription of oral proceedings shall be filed with and maintained by the board until at least the fifth anniversary of the date of the decision in the contested case.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 50, eff.  
September 1, 2007.

Sec. 1103.513. ORDER OF PROCEEDINGS. A contested case hearing shall be conducted in the following order, subject to modification at the discretion of the administrative law judge:

(1) the administrative law judge shall read a summary of the charges and answers to the charges and other responsive pleadings filed by the appraiser or appraiser trainee before the hearing;

(2) the attorney representing the board shall make a brief opening statement, including a summary of the charges and a list of the witnesses and documents to support the charges;

(3) the appraiser or appraiser trainee may make an opening statement, including the names of any witnesses the appraiser or appraiser trainee may call;

(4) the attorney representing the board shall present evidence, concluding with a summary of the evidence for the state;

(5) the appraiser or appraiser trainee shall present evidence;

(6) the attorney representing the board may present rebuttal evidence;

(7) the appraiser or appraiser trainee may present rebuttal evidence; and

(8) the closing arguments shall be made in the following order:

(A) the attorney representing the board;

(B) the appraiser or appraiser trainee; and

(C) the attorney representing the board on rebuttal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 13, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 51, eff.  
September 1, 2007.

Sec. 1103.514. COPIES OF EVIDENCE. A copy of each document offered as evidence at a contested case hearing shall be provided to the opposing party.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 13, eff. September 1, 2005.

Sec. 1103.515. RESPONSE TO CERTAIN ACCUSATIONS. (a) To the extent an appraiser or appraiser trainee believes the appraiser or appraiser trainee is being asked to reply to an accusation, innuendo, or fact for the first time in a contested case hearing, the appraiser or appraiser trainee may respond to the board in writing not later than the 10th day after the last day of the hearing.

(b) If the appraiser or appraiser trainee chooses to respond as provided by this section, the attorney representing the board is entitled to continue to present evidence during the hearing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 13, eff. September 1, 2005.

Sec. 1103.516. DIRECT EXAMINATION. In a contested case hearing, the administrative law judge may conduct a direct examination of a witness at any stage of the witness's testimony.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 13, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 52, eff. September 1, 2007.

Sec. 1103.517. IMMUNITY OF WITNESSES. (a) The board in a contested case hearing may grant a witness immunity from disciplinary action by the board.

(b) The official record of the hearing must include the reason for granting immunity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 14, eff. September 1, 2005.

Sec. 1103.518. ACTION AFTER HEARING. On conclusion of a contested case hearing and on submission of all written responses allowed under Section 1103.515, the administrative law judge shall:

- (1) make findings of fact and conclusions of law; and
- (2) issue to the board a proposal for decision that the board take one or more of the following actions:
  - (A) dismiss the charges;
  - (B) suspend or revoke the appraiser's certificate or license or the appraiser trainee's approval;
  - (C) impose a period of probation with or without conditions;
  - (D) require the appraiser to submit to reexamination for a certificate or license;
  - (E) require the appraiser or appraiser trainee to participate in additional professional education or continuing education;
  - (F) issue a public or private reprimand or a warning;
  - (G) issue a consent order; or
  - (H) impose an administrative penalty as prescribed by Section 1103.552.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 15, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 53, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 20, eff. May 27, 2011.

Sec. 1103.519. APPLICATION FOR REHEARING. (a) Not later than

the 20th day after the date a final decision is issued in a contested case, a party may file an application with the board for a rehearing. The application must state:

- (1) the specific grounds for rehearing; and
- (2) the relief sought.

(b) The application is denied if the board does not grant it before the 20th day after the date the commissioner is served with the application.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.520. DECISION ON REHEARING. (a) The decision made at the conclusion of the original contested case hearing may not be reversed or modified for a procedural, evidentiary, or other error that did not cause substantial injustice to the parties.

(b) The decision made on a rehearing may incorporate by reference any part of the decision made at the conclusion of the original hearing.

(c) On rehearing, the administrative law judge shall consider facts not presented in the original hearing if:

- (1) the facts arose after the original hearing was concluded;
- (2) the party offering the evidence could not reasonably have provided the evidence at the original hearing; or
- (3) the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 54, eff. September 1, 2007.

Sec. 1103.521. DECISION; ORDER. (a) The administrative law judge shall file the judge's final decision in a contested case hearing with the commissioner.

(b) A copy of the decision and order shall immediately be:

- (1) sent by certified mail, return receipt requested, to the appraiser at the appraiser's last known address; or

(2) personally delivered to the appraiser.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 55, eff. September 1, 2007.

Sec. 1103.522. REINSTATEMENT OF CERTIFICATE OR LICENSE. A person whose certificate or license has been revoked or a person who has surrendered a certificate or license issued by the board may not apply to the board for reinstatement until the second anniversary of the date of revocation or surrender.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 21, eff. May 27, 2011.

#### **SUBCHAPTER L. PENALTIES AND OTHER ENFORCEMENT PROVISIONS**

Sec. 1103.551. INJUNCTION. (a) The board may institute an action in its own name against any person, including a person who is not certified or licensed under this chapter, to enjoin a violation of this chapter or a rule adopted by the board under this chapter.

(b) An action under this section must be brought in a district court in Travis County. The attorney general shall act as legal advisor to the board and provide necessary legal assistance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 106, Sec. 4, eff. Sept. 1, 2003.

Sec. 1103.5511. TEMPORARY SUSPENSION. (a) The presiding officer of the board shall appoint a disciplinary panel consisting of three board members to determine whether a person's license or certification to practice under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person licensed or certified to practice under this chapter would, by the person's continued

practice, constitute a continuing threat to the public welfare, the panel shall temporarily suspend the license or certification of that person.

(c) A license or certification may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a contested case hearing is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) A temporary suspension under this section automatically expires after 45 days if the board has not scheduled a hearing to take place within that time or if, at the board's request, the hearing is continued beyond the 45th day.

(e) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. [2375](#)), Sec. 22, eff. May 27, 2011.

Sec. 1103.552. ADMINISTRATIVE PENALTY. (a) The board may impose an administrative penalty for a violation of this chapter or a rule adopted or order issued by the board under this chapter in an amount not to exceed:

(1) \$1,500 for each violation; or

(2) \$5,000 for multiple violations in a single case.

(b) The person on whom the penalty is imposed shall pay the penalty not later than the 20th day after the date the order imposing the penalty becomes final.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 106, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. [2375](#)), Sec. 23, eff. May 27, 2011.

Sec. 1103.553. CIVIL PENALTY FOR FILING FRIVOLOUS COMPLAINT.

(a) A certified or licensed appraiser who files against another

certified or licensed appraiser a complaint that the board determines to be frivolous is liable for a civil penalty.

(b) The amount of a civil penalty imposed under this section may not be less than \$1,000 or more than \$10,000.

(c) At the request of the board, the attorney general or a district or county attorney may bring an action in district court to recover a civil penalty under this section.

(d) A civil penalty recovered in an action brought under this section shall be deposited in the state treasury.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 106, Sec. 6, eff. Sept. 1, 2003.

Sec. 1103.5535. CIVIL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED CERTIFICATE OR LICENSE. (a) A person who receives consideration for engaging in an activity for which a certificate or license is required under this chapter and who does not hold a certificate or license is liable for a civil penalty.

(b) The amount of a civil penalty imposed under this section may not be less than the amount of money equal to the value of the consideration received or more than three times the amount of money equal to the value of the consideration received.

(c) At the request of the board, the attorney general or a district or county attorney may bring an action in district court to recover a civil penalty under this section.

(d) A civil penalty recovered in an action under this section shall be deposited in the state treasury.

Added by Acts 2003, 78th Leg., ch. 106, Sec. 7, eff. Sept. 1, 2003.

Sec. 1103.554. CRIMINAL PENALTY FOR MISREPRESENTING QUALIFICATIONS. (a) A person commits an offense if the person knowingly:

(1) provides false information in connection with an affidavit filed under Section 1103.205; or

(2) violates Section 1103.401.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.



Amended by Acts 2003, 78th Leg., ch. 106, Sec. 8, eff. Sept. 1, 2003.

Sec. 1103.5545. CRIMINAL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED CERTIFICATE OR LICENSE. (a) A person commits an offense if the person engages in an activity for which a certificate or license is required under this chapter without holding a certificate or license.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2003, 78th Leg., ch. 106, Sec. 9, eff. Sept. 1, 2003.

#### **CHAPTER 1104. APPRAISAL MANAGEMENT COMPANIES**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1104.001. SHORT TITLE. This chapter may be cited as the Texas Appraisal Management Company Registration and Regulation Act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.002. PURPOSE. The purpose of this chapter is to establish and enforce standards related to appraisal management services for appraisal reports on residential properties located in this state with fewer than five units.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.003. DEFINITIONS. (a) The definitions in Section 1103.003 apply to this chapter.

(b) In this chapter:

(1) "Appraisal management company" means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated in a securitization, an external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets that directly or indirectly performs appraisal management services.

(2) "Appraisal management service" means to directly or indirectly perform any of the following acts:

(A) administer an appraisal panel;  
 (B) recruit, retain, or select an appraiser;  
 (C) contract with an appraiser to perform an appraisal assignment;

(D) provide a completed appraisal performed by an appraiser to one or more clients; or

(E) manage the process of having an appraisal performed, including:

(i) receiving and assigning appraisal orders and reports;

(ii) tracking and determining the status of orders for appraisals;

(iii) conducting quality control of a completed appraisal before delivery of the appraisal to the person who ordered the appraisal;

(iv) collecting fees from creditors and underwriters for services provided; or

(v) reimbursing appraisers for services performed.

(3) "Appraisal panel" means a pool of licensed or certified appraisers who perform appraisals as independent contractors for an appraisal management company.

(4) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment. The term does not include an examination of an appraisal for grammatical, typographical, mathematical, or other similar administrative errors that do not involve the appraiser's professional judgment, including compliance with the elements of the client's statement of work.

(5) "Appraiser" means a person licensed or certified under Chapter 1103.

(6) "Controlling person" means:

(A) an owner, officer, or director of an appraisal management company;

(B) an individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and the authority to enter into

agreements with appraisers for the performance of appraisals; or

(C) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

(7) "Financial institution" means:

(A) a bank, savings bank, or savings and loan association or a subsidiary or affiliate of a bank, savings bank, or savings and loan association;

(B) a state or federal credit union or a subsidiary, affiliate, or credit union service organization of a state or federal credit union;

(C) an insurance company licensed or authorized to do business in this state under the Insurance Code;

(D) a mortgage banker registered under Chapter 157, Finance Code;

(E) a person licensed under Chapter 156, Finance Code;

(F) a lender licensed under Chapter 342, Finance Code;

(G) a farm credit system institution; or

(H) a political subdivision of this state conducting an affordable home ownership program.

(8) "Uniform Standards of Professional Appraisal Practice" means the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. [1146](#)), Sec. 2, eff. September 1, 2011.

Sec. 1104.004. EXEMPTIONS. (a) This chapter does not apply to:

(1) a person who exclusively employs appraisers on an employer and employee basis for the performance of appraisals;

(2) a person acting as an appraisal firm as defined by board rule that at all times during a calendar year employs on an exclusive basis as independent contractors not more than 15 appraisers for the performance of appraisals;

(3) a financial institution, including a department or unit within the institution, that is regulated by an agency of this state or the United States government;

(4) subject to Subsection (b), a person who enters into an

agreement with an appraiser for the performance of an appraisal that on completion results in a report signed by both the appraiser who completed the appraisal and the appraiser who requested completion of the appraisal;

(5) an appraisal management company with an appraisal panel of not more than 15 appraisers at all times during a calendar year; or

(6) an appraisal management company that is a subsidiary owned and controlled by a financial institution that is subject to appraisal independence standards at least as stringent as those under Section 1104.203 or the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) through regulation by an agency of this state or the United States government.

(b) An appraisal management company may not require an employee of the appraisal management company who is an appraiser to sign an appraisal that is completed by another appraiser who contracts with the appraisal management company in order to avoid the requirements of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

#### **SUBCHAPTER B. BOARD POWERS AND DUTIES**

Sec. 1104.051. RULES. The board may adopt rules necessary to administer the provisions of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.052. FEES. (a) Subject to Subsection (b), the board by rule shall establish application, renewal, and other fees in amounts so that the sum of the fees paid by all appraisal management companies seeking registration under this chapter is sufficient for the administration of this chapter.

(b) The board shall collect from each appraisal management company registered under this chapter the national registry fee required by the appraisal subcommittee for each person who is on the appraisal panel of the company and licensed or certified as an appraiser in this state. The board shall deposit the registry fees to

the credit of the appraiser registry account in the general revenue fund.

(c) The fees collected under Subsection (b) shall be sent to the appraisal subcommittee regularly as required by federal law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

### **SUBCHAPTER C. REGISTRATION REQUIREMENTS**

Sec. 1104.101. REGISTRATION REQUIRED. Unless a person is registered under this chapter, a person may not:

- (1) act or attempt to act as an appraisal management company;
- (2) provide or attempt to provide appraisal management services; or
- (3) advertise or represent or attempt to advertise or represent the person as an appraisal management company.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.102. ELIGIBILITY FOR REGISTRATION; OWNERSHIP. (a) A person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state may not own in any manner more than one percent of an appraisal management company registered or applying for registration under this chapter unless the person has subsequently had a license or certificate to act as an appraiser granted or reinstated.

(b) An entity more than 10 percent of which is owned by a person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state may not own more than 10 percent of an appraisal management company registered or applying for registration under this chapter unless the person has subsequently had a license or certificate to act as an appraiser granted or reinstated.

(c) A person owning more than 10 percent of an appraisal management company in this state must:

- (1) be of good moral character, as determined by the board;
- and

(2) submit to a background investigation, as determined by the board.

(d) An appraisal management company applying for registration under this chapter shall certify to the board that:

(1) it has reviewed each entity that owns more than 10 percent of the company; and

(2) no entity reviewed under Subdivision (1) is more than 10 percent owned by a person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation and who has not subsequently had a license or certificate to act as an appraiser granted or reinstated.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.103. APPLICATION FOR REGISTRATION OR RENEWAL. (a) An applicant for registration or registration renewal under this chapter must submit:

(1) an application on a form approved by the board; and

(2) the application or renewal fee established under Section 1104.052(a).

(b) The application must contain:

(1) the name, business address, and telephone contact information of the entity seeking registration;

(2) if the entity is not a corporation domiciled in this state, the name and contact information for the company's agent for service of process in this state;

(3) the name, address, and contact information for any individual or any corporation, partnership, or other business entity that owns more than 10 percent of the appraisal management company;

(4) the name, address, and contact information for at least one controlling person;

(5) the designation of a primary contact under Section 1104.104;

(6) the name and contact information of at least one appraiser designated by the company to respond to and communicate with appraisers on the company's appraisal panel regarding appraisal assignments;

(7) a certification that the entity has a system in place

to ensure compliance with Subchapter D and Section 129E of the Truth in Lending Act (15 U.S.C. Section 1601 et seq.);

(8) a written irrevocable consent to service of process;  
and

(9) any other information required by the board to approve the application.

(c) The board shall adopt rules regarding the renewal of a registration under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.104. DESIGNATION OF PRIMARY CONTACT. (a) An appraisal management company applying for registration under this chapter shall designate one controlling person as the primary contact for all communication between the board and the company.

(b) The controlling person designated under Subsection (a):

(1) must:

(A) be certified as an appraiser in at least one state at all times during the designation; or

(B) have completed:

(i) the 15-hour national Uniform Standards of Professional Appraisal Practice course; and

(ii) the seven-hour national Uniform Standards of Professional Appraisal Practice update course not more than two years before the renewal of the appraisal management company's registration;

(2) may not have had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state unless the person has subsequently had a license or certificate to act as an appraiser granted or reinstated;

(3) must be of good moral character, as determined by the board; and

(4) shall submit to a background investigation, as determined by the board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.105. DENIAL OF REGISTRATION. (a) The board may deny a registration:

(1) to an applicant who fails to satisfy a requirement of this chapter; or

(2) on a determination by the board that:

(A) there is reasonable evidence that any person who owns more than 10 percent of the appraisal management company or any controlling person of the company has, within the 24 months preceding the date of the application, had a license or certification as an appraiser or a registration as an appraisal management company suspended, revoked, or put on probation in any state;

(B) the applicant has, while registered under this chapter, demonstrated incompetency, untrustworthiness, or conduct or practices that render the registrant unfit to perform appraisal management services; or

(C) the applicant no longer performs appraisal management services in good faith and is a source of detriment, injury, or loss to the public.

(b) The board shall immediately provide written notice to the applicant of the board's denial of a registration under this chapter.

(c) An appeal of the denial of a registration is governed by Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.106. ISSUANCE AND PUBLICATION OF REGISTRATION NUMBER. The board shall:

(1) issue a unique registration number to each appraisal management company registered under this chapter; and

(2) publish annually a list of the companies registered under this chapter and the registration number of each company.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.107. EXPIRATION OF REGISTRATION. Unless renewed, a registration issued under this chapter expires on the second anniversary of the date the registration is issued.



Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

**SUBCHAPTER D. PRACTICE BY APPRAISAL MANAGEMENT COMPANY**

Sec. 1104.151. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED. (a) An appraisal management company registered under this chapter may not knowingly:

(1) employ a person in a position in which the person has the responsibility to order appraisals or to review completed appraisals if the person has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state;

(2) enter into any independent contractor arrangement for the provision of appraisals or appraisal management services with any person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state; or

(3) enter into any contract, agreement, or other business relationship for the provision of appraisals or appraisal management services with any entity that employs, has entered into an independent contract arrangement, or has entered into any contract, agreement, or other business relationship with any person who has ever had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state.

(b) An appraisal management company is not in violation of Subsection (a) if the person whose license or certification was denied, revoked, or surrendered in lieu of revocation has since that denial, revocation, or surrender had a license or certificate granted or reinstated and the person maintains the license or certificate in good standing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.152. VERIFICATION OF LICENSURE OR CERTIFICATION. An appraisal management company registered under this chapter must verify that an individual to whom the company is making an assignment for the completion of an appraisal:

(1) is licensed or certified under Chapter 1103; and  
(2) has not had a license or certificate as an appraiser denied, revoked, or surrendered in lieu of revocation since the last time the company made an assignment for an appraisal to the appraiser.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.153. APPRAISAL REVIEW. A person who performs an appraisal review for an appraisal management company must be licensed or certified under Chapter 1103 with at least the same certification for the property type as the appraiser who completed the report being reviewed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.154. COMPETENCY OF APPRAISERS. Before making an assignment to an appraiser, an appraisal management company must verify that the appraiser receiving the assignment satisfies each provision of the competency rule of the Uniform Standards of Professional Appraisal Practice for the appraisal being assigned.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.155. PROFESSIONAL STANDARDS. An appraisal management company registered under this chapter shall on a periodic basis perform an appraisal review of the work of appraisers performing appraisal services for the company to ensure that the services comply with:

- (1) the edition of the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal; or
- (2) other standards prescribed by board rule.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.156. BUSINESS RECORDS. (a) An appraisal management company registered under this chapter or that has applied for registration under this chapter shall retain for at least five years all business records relating to each service request that the company receives and the appraiser who performs the appraisal for the company.

(b) The board may audit the records of an appraisal management company registered under this chapter to ensure compliance with this chapter, board rules, and the Uniform Standards of Professional Appraisal Practice.

(c) A written record of all substantive communications between an appraisal management company registered under this chapter and an appraiser relating to inclusion on an appraisal panel or to an appraisal assignment must be maintained as provided under Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.157. COMPENSATION OF APPRAISERS. (a) An appraisal management company shall:

(1) except in cases of breach of contract or substandard performance of services, pay an appraiser for the completion of an appraisal or valuation assignment not later than the 60th day after the date the appraiser provides the completed appraisal or valuation assignment to the company or its assignee; and

(2) compensate appraisers at a rate that is reasonable and customary for appraisals being performed in the market area of the property being appraised consistent with the presumptions under federal law.

(b) An appraiser who is aggrieved under this section may file a complaint with the board against the appraisal management company if the matter remains unresolved after the appraiser completes the company's dispute resolution process under Section 1104.162.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.158. STATEMENT OF FEES. (a) In reporting to a client, an appraisal management company shall separately state the fees:

- (1) paid to an appraiser for the completion of an appraisal; and
- (2) charged by the company for appraisal management services.

(b) An appraisal management company may not:

- (1) prohibit an appraiser from recording in the body of the report that is submitted by the appraiser to the company the fee that the appraiser was paid by the company for completing the appraisal; or
- (2) include any fees for appraisal management services performed by the company in the amount the company reports as charges for the actual completion of an appraisal by an appraiser.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.159. DISCLOSURE OF REGISTRATION NUMBER. An appraisal management company registered under this chapter shall disclose the company's registration number on all documents used to procure appraisals in this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.160. MANDATORY REPORTING. An appraisal management company that has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice in a manner that materially affects a value conclusion, violating applicable laws, or otherwise engaging in unethical or unprofessional conduct shall refer the matter to the board in the manner provided by Section 1104.204.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.161. REMOVAL OF APPRAISER FROM APPRAISAL PANEL. (a) Other than during the first 30 days after the date an appraiser is first added to the appraisal panel of an appraisal management company, a company may not remove an appraiser from its panel, or otherwise refuse to assign requests for appraisal services to an appraiser without:

(1) notifying the appraiser in writing of the reasons for removal from the company's panel;

(2) if the appraiser is being removed from the panel for illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice, or a violation of this chapter, notifying the appraiser of the nature of the alleged conduct or violation; and

(3) providing an opportunity for the appraiser to respond in writing to the notification.

(b) An appraiser who is removed from the appraisal panel of an appraisal management company for alleged illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice, or a violation of this chapter, may file a complaint with the board for a review of the decision of the company if the matter remains unresolved after the appraiser completes the company's dispute resolution process under Section 1104.162.

(c) In a review under Subsection (b), the board may not make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company that is unrelated to the grounds for the removal.

(d) The board shall hear and resolve a complaint filed under Subsection (b) not later than the 180th day after the date the complaint is filed with the board.

(e) If after opportunity for hearing and review, the board determines that an appraiser did not commit the alleged violation, the board shall order that the appraiser be returned to the appraisal panel of the appraisal management company. The appraisal management company may not refuse to make assignments for appraisal services or otherwise penalize the appraiser after returning the appraiser to the company's appraisal panel.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.162. DISPUTE RESOLUTION. An appraisal management company shall make a dispute resolution process available to review a written request by an appraiser who:

- (1) is dismissed from the company's appraisal panel for a reason stated in Section 1104.161(a)(2);
- (2) is not paid as required by Section 1104.157; or
- (3) alleges a violation by the company of one or more prohibitions in Section 1104.203.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

**SUBCHAPTER E. DISCIPLINARY ACTIONS AND PROCEDURES AND ADMINISTRATIVE PENALTIES**

Sec. 1104.201. DISCIPLINARY POWERS OF BOARD. (a) The board may reprimand an appraisal management company or conditionally or unconditionally suspend or revoke any registration issued under this chapter if the board determines that the appraisal management company has:

- (1) violated or attempted to violate this chapter or any rule adopted by the board under this chapter; or
- (2) procured or attempted to procure a license or registration by fraud, misrepresentation, or deceit.

(b) The board may probate the suspension or revocation of a registration under reasonable terms determined by the board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.202. ADMINISTRATIVE PENALTY. (a) In addition to any other disciplinary action under this chapter, the board may impose an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) The amount of the administrative penalty may not exceed \$10,000 for each violation. Each day of a continuing violation is a separate violation.

(c) The amount of the penalty shall be based on:

- (1) the seriousness of the violation;
- (2) the history of previous violations;

- (3) the amount necessary to deter a future violation;
- (4) efforts made to correct the violation; and
- (5) any other matter that justice may require.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.203. PROHIBITED PRACTICES. (a) An appraisal management company or an employee, director, officer, or agent of an appraisal management company may not:

(1) cause or attempt to cause the appraised value of a property assigned under an appraisal to be based on any factor other than the independent judgment of the appraiser;

(2) cause or attempt to cause the mischaracterization of the appraised value of a property in conjunction with a consumer credit transaction;

(3) seek to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of a consumer credit transaction;

(4) alter, modify, or otherwise change a completed appraisal report submitted by an appraiser by:

(A) altering or removing the appraiser's signature or seal; or

(B) adding information to, removing information from, or changing information contained in the appraisal report, including any disclosure submitted by an appraiser in or with the report;

(5) condition the request for an appraisal or the payment of an appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser;

(6) request that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time before the appraiser's completion of an appraisal;

(7) provide to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for a purchase transaction may be provided;

(8) make any part of the appraiser's fee or the appraisal

management company's fee contingent on a favorable outcome, including:

- (A) a loan closing; or
  - (B) a specific valuation being achieved by the appraiser in the appraisal report;
- (9) withhold or threaten to withhold timely payment for an appraisal report or appraisal services rendered when the appraisal report or services are provided in accordance with the contract between the parties;
- (10) withhold or threaten to withhold future business from an appraiser;
- (11) demote or terminate or threaten to demote or terminate an appraiser;
- (12) expressly or impliedly promise future business, promotions, or increased compensation for an appraiser;
- (13) provide to an appraiser, or any person related to the appraiser, stock or other financial or nonfinancial benefits;
- (14) allow the removal of an appraiser from an appraisal panel, without prior written notice to the appraiser;
- (15) obtain, use, or pay for a second or subsequent appraisal or order an automated valuation model in connection with a mortgage financing transaction unless:
- (A) there is a reasonable basis to believe that the initial appraisal was flawed or tainted and that basis is clearly and appropriately noted in the loan file;
  - (B) the subsequent appraisal or automated valuation model is done under a bona fide pre-funding or post-funding appraisal review or quality control process; or
  - (C) the subsequent appraisal or automated valuation model is otherwise required or permitted by federal or state law;
- (16) prohibit legal and allowable communication between the appraiser and:
- (A) the lender;
  - (B) a real estate license holder; or
  - (C) any other person from whom the appraiser, in the appraiser's own professional judgment, believes information would be relevant;
- (17) refuse to accept an appraisal report prepared by more than one appraiser if an appraiser provides substantial assistance to another appraiser in the preparation of the report, unless the



appraisal assignment names an individual appraiser or the statement of work requires an unassisted report; or

(18) require an appraiser to:

(A) prepare an appraisal report if the appraiser, in the appraiser's own professional judgment, believes the appraiser does not have the necessary expertise for the specific geographic area and the appraiser has notified the company of this belief;

(B) prepare an appraisal report under a schedule that the appraiser, in the appraiser's own professional judgment, believes does not afford the appraiser the ability to meet all the relevant legal and professional obligations if the appraiser has notified the company of this belief;

(C) provide the appraisal management company with the appraiser's digital signature or seal;

(D) modify any aspect of an appraisal report without the appraiser's agreement that the modification is appropriate;

(E) engage in any act or practice that does not comply with:

(i) the Uniform Standards of Professional Appraisal Practice; or

(ii) any assignment conditions and certifications required by the client;

(F) engage in any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality;

(G) enter into an agreement to not serve on the panel of another appraisal management company;

(H) indemnify or hold harmless the appraisal management company against liability except liability for errors and omissions by the appraiser; or

(I) pay a fee imposed on the appraisal management company under Section 1104.052.

(b) Subsection (a) may not be construed to prohibit:

(1) an appraiser from reimbursing an appraisal management company for the actual cost of discretionary services provided to the appraiser;

(2) an appraiser from voluntarily providing the appraiser's digital signature to another person;

(3) an appraisal management company from asking an appraiser, after a report is delivered, to:

(A) consider additional appropriate property information, including the consideration of additional comparable properties to make or support an appraisal;

(B) provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(C) correct errors in the appraisal report;

(4) an appraisal management company from requiring an appraiser to provide advance notice of and an opportunity for the appraisal management company to participate in any legal and allowable communications between the appraiser and a lender; or

(5) a copy of an executed contract for a purchase transaction being provided to an appraiser.

(c) The board may institute a disciplinary action or impose an administrative penalty under Chapter 1103 against an appraiser who, while acting as an employee, officer, or agent of an appraisal management company, engages in conduct prohibited by Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.204. COMPLAINT. (a) Any person, including a member of the board, may file with the board a written complaint on a form prescribed by the board.

(b) The board, on its own motion, may file a complaint against an appraisal management company registered under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.205. REVIEW AND INVESTIGATION. (a) On receipt of a complaint or on its own motion, the board shall review and investigate an alleged act or omission that the board believes is a ground for disciplinary action.

(b) An investigator designated by the presiding officer of the board or commissioner shall investigate each allegation in a complaint to determine whether probable cause exists for a hearing on the complaint.

(c) If the board determines that a complaint does not present facts that are grounds for disciplinary action, the board or the

commissioner shall dismiss the complaint and may not take further action.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.206. GENERAL SUBPOENA AUTHORITY. (a) The board may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter for inspection and copying.

(b) The board may also issue a subpoena for purposes of an investigation of a complaint to determine whether the board should institute a contested case proceeding.

(c) If a person does not comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists for the issuance of the subpoena.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.207. REPORT OF INVESTIGATION REQUIRED. (a) At the conclusion of the investigation of a complaint, the investigator shall submit to the board a written report to enable the board to determine what further action is necessary.

(b) The report must contain:

(1) statements of fact;

(2) the recommendations of the investigator; and

(3) the position or defense of the investigated appraisal management company.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.208. ACTION BASED ON REPORT. (a) Based on the report submitted under Section 1104.207, the board may:

- (1) order further investigation of the complaint;
- (2) determine that there is not probable cause to believe that a violation occurred and dismiss the case; or
- (3) determine that there is probable cause to believe that a violation occurred and enter into an agreed order with the respondent or proceed as the complainant with a contested case hearing under Chapter 2001, Government Code.

(b) The board by rule may delegate any of its authority under Subsection (a) to the commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.209. NOTICE OF VIOLATION AND PENALTY. (a) If, after investigating a possible violation and the facts surrounding that possible violation, the board determines that a violation occurred, the board shall give written notice of the violation to the person alleged to have committed the violation.

(b) The notice must:

- (1) include a summary of the alleged violation;
- (2) state the recommended sanction, including the amount of the proposed administrative penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(c) Not later than the 20th day after the date the person receives the notice, the person may:

- (1) accept the board's determination, including the proposed administrative penalty; or
- (2) make a written request for a hearing on that determination.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.210. PENALTY TO BE PAID OR HEARING REQUESTED. If the person accepts the board's determination or fails to respond to the notice in a timely manner, the board by order shall approve the

determination and impose the proposed penalty.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.211. TEMPORARY SUSPENSION. (a) The presiding officer of the board shall appoint a three-member disciplinary panel consisting of board members to determine whether a person's registration under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person registered under this chapter would, by the person's continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the person's registration.

(c) A registration may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a contested case hearing is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) A temporary suspension under this section automatically expires after 45 days if the board has not scheduled a hearing to take place within that time or if, at the board's request, the hearing is continued beyond the 45th day.

(e) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.212. NOTICE OF HEARING. Not later than the 30th day before the hearing date of a contested case involving an appraisal management company, the board shall personally deliver or send by certified mail to the company notice of the hearing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.213. APPLICABILITY OF ADMINISTRATIVE PROCEDURE LAW. Except as otherwise provided by this chapter, a proceeding under this subchapter is subject to Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.214. ACTION AFTER HEARING. On conclusion of a contested case hearing under this subchapter, the administrative law judge shall:

- (1) make findings of fact and conclusions of law; and
- (2) issue to the board a proposal for decision that the board shall take one or more of the following actions:
  - (A) dismiss the charges;
  - (B) revoke the appraisal management company's registration;
  - (C) suspend the registration of the appraisal management company for a period of not more than five years;
  - (D) impose a period of probation, with or without conditions;
  - (E) issue a public or private reprimand or a warning;
  - (F) impose an administrative penalty; or
  - (G) require the payment of costs expended by the board associated with the contested case, including legal fees and administrative costs.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.215. DECISION BY BOARD. (a) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the board by order may determine that:

- (1) a violation has occurred and may impose an administrative penalty or another sanction; or
  - (2) a violation did not occur.
- (b) The board shall give notice of the order to the person. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the amount of any penalty imposed or a description of any sanction imposed; and
- (3) a statement of the right of the person to judicial review of the order.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.216. APPLICATION FOR REHEARING. (a) Not later than the 20th day after the date a final decision is issued in a contested case, a party may file an application with the board for a rehearing. The application must state:

- (1) the specific grounds for rehearing; and
- (2) the relief sought.

(b) The application is denied if the board does not grant it before the 120th day after the date the commissioner is served with the application.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.217. DECISION ON REHEARING. (a) The decision made at the conclusion of the original contested case hearing may not be reversed or modified for a procedural, evidentiary, or other error that did not cause substantial injustice to the parties.

(b) The decision made on a rehearing may incorporate by reference any part of the decision made at the conclusion of the original hearing.

(c) On rehearing, the administrative law judge shall consider facts not presented in the original hearing if:

- (1) the facts arose after the original hearing was concluded;
- (2) the party offering the evidence could not reasonably have provided the evidence at the original hearing; or
- (3) the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

**SUBCHAPTER F. OTHER ENFORCEMENT PROVISIONS**

Sec. 1104.251. INJUNCTION. (a) The board may institute an action in its own name against any person, including a person who is not registered under this chapter, to enjoin a violation of this chapter or a rule adopted by the board under this chapter.

(b) An action under this section must be brought in a district court in Travis County. The attorney general shall act as legal advisor to the board and provide necessary legal assistance.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.252. CIVIL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED REGISTRATION. (a) A person who receives consideration for engaging in an activity for which registration is required under this chapter and who is not registered is liable for a civil penalty.

(b) The amount of a civil penalty imposed under this section may not be less than the amount of money equal to the value of the consideration received or more than three times the amount of money equal to the value of the consideration received.

(c) At the request of the board, the attorney general or a district or county attorney may bring an action in district court to recover a civil penalty under this section.

(d) A civil penalty recovered in an action under this section shall be deposited in the state treasury.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.253. CRIMINAL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED REGISTRATION. (a) A person commits an offense if the person engages in an activity for which registration is required under this chapter without being registered.

(b) An offense under this section is a Class A misdemeanor.



Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

**CHAPTER 1105. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF TEXAS REAL ESTATE COMMISSION**

Sec. 1105.001. DEFINITIONS. In this section:

- (1) "Agency" means the commission and the board.
- (2) "Board" means the Texas Appraiser Licensing and Certification Board.
- (3) "Commission" means the Texas Real Estate Commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.

Sec. 1105.002. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS. (a) Notwithstanding any other provision of law, the agency is self-directed and semi-independent as specified by this chapter. Any Act of the 82nd Legislature that relates to the agency and that is inconsistent with the agency being self-directed and semi-independent may be implemented by the administrator of the agency only on authorization by the agency.

(b) This chapter does not affect the board's status as an independent subdivision of the commission as provided by Section 1103.051.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.

Sec. 1105.003. BUDGET, REVENUES, AND EXPENSES. (a) Notwithstanding any other provision of law, including the General Appropriations Act, the commission and the board shall each adopt a separate budget annually using generally accepted accounting principles.

(b) The commission shall be responsible for all direct and indirect costs of the commission's existence and operation. The board shall be responsible for all direct and indirect costs of the board's existence and operation. The agency may not directly or indirectly cause the general revenue fund to incur any cost.

(c) Notwithstanding any other provision of law, the commission and the board may each set the amounts of the respective fees, penalties, charges, and revenues required or permitted by statute or rule as necessary for the purpose of carrying out the separate functions of the commission and the board and funding the respective budgets of the commission and the board adopted and approved under Subsection (a).

(d) Except as provided by Subsection (e), all fees and funds collected by the commission or the board and any funds appropriated to the commission or the board shall be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. The comptroller shall contract with the commission and the board for the maintenance of the deposit accounts under terms comparable to a contract between a commercial banking institution and the institution's customers.

(e) A fee collected under:

(1) Section 1101.153(b)(2) shall be deposited in Fund 0193 in the state treasury; and

(2) Section 1101.153(b)(3) shall be deposited in Fund 0001 in the state treasury.

(f) Not later than August 31 of each fiscal year, the agency shall remit \$750,000 to the general revenue fund.

(g) The fiscal year for the agency begins on September 1 and ends on August 31.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.

Sec. 1105.004. AUDITS. (a) This chapter does not affect the duty of the state auditor to audit the agency. The state auditor shall enter into a contract and schedule with the agency to conduct audits.

(b) Not later than August 31 of each fiscal year, the agency shall remit a nonrefundable retainer to the state auditor in an amount not less than \$10,000. The agency shall reimburse the state auditor for all costs incurred, in excess of the aggregate nonrefundable retainer amounts paid each fiscal year, in performing the audits and shall provide to the governor a copy of any audit performed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.

Sec. 1105.005. RECORDS; REPORTING REQUIREMENTS. (a) The agency shall keep financial and statistical information as necessary to disclose completely and accurately the financial condition and results of operations of the agency.

(b) Before the beginning of each regular session of the legislature, the agency shall submit to the legislature and the governor a report describing all of the agency's activities in the previous biennium. The report must include:

- (1) an audit as required by Section 1105.004;
- (2) a financial report of the previous fiscal year, including reports on the financial condition and results of operations;
- (3) a description of all changes in fees imposed on regulated persons;
- (4) a report on changes in the regulatory jurisdiction of the agency; and
- (5) a list of all new rules adopted or repealed.

(c) In addition to the reporting requirements of Subsection (b), not later than November 1 of each year, the agency shall submit to the governor, the committee of each house of the legislature that has jurisdiction over appropriations, and the Legislative Budget Board a report that contains:

- (1) the salary for all agency personnel and the total amount of per diem expenses and travel expenses paid for all agency employees;
- (2) the total amount of per diem expenses and travel expenses paid for each member of the agency;
- (3) the agency's operating plan and the annual budgets of the commission and the board; and
- (4) a detailed report of all revenue received and all expenses incurred by the agency in the previous 12 months.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.

Sec. 1105.006. ABILITY TO CONTRACT. (a) To carry out and promote the objectives of this chapter, the commission or board may enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of the commission's or board's respective affairs and for the attainment of the commission's or board's respective purposes, except as limited by Subsection (b).

(b) Any indebtedness, liability, or obligation of the commission or board incurred under this section may not:

- (1) create a debt or other liability of this state or another entity other than the commission or board, as appropriate; or
- (2) create any personal liability on the part of the members or employees of the agency.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.

Sec. 1105.007. PROPERTY. The commission or board may:

(1) acquire by purchase, lease, gift, or any other manner provided by law and maintain, use, and operate any real, personal, or mixed property, or any interest in property, necessary or convenient to the exercise of the respective powers, rights, privileges, or functions of the commission or board;

(2) sell or otherwise dispose of any real, personal, or mixed property, or any interest in property, that the commission or board, as appropriate, determines is not necessary or convenient to the exercise of the commission's or board's respective powers, rights, privileges, or functions;

(3) construct, extend, improve, maintain, and reconstruct, or cause to construct, extend, improve, maintain, and reconstruct, and use and operate all facilities necessary or convenient to the exercise of the respective powers, rights, privileges, or functions of the commission or board; and

(4) borrow money, as may be authorized from time to time by an affirmative vote of a two-thirds majority of the commission or board, as appropriate, for a period not to exceed five years if necessary or convenient to the exercise of the commission's or board's respective powers, rights, privileges, or functions.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1,

eff. September 1, 2011.

Sec. 1105.008. SUITS. (a) The office of the attorney general shall represent the agency in any litigation.

(b) Not later than August 31 of each fiscal year, the agency shall remit a nonrefundable retainer to the office of the attorney general in an amount of not less than \$75,000. The nonrefundable retainer shall be applied to any services provided to the agency. If additional litigation services are required, the attorney general may assess and collect from the agency reasonable attorney's fees, in excess of the aggregate nonrefundable retainer amount paid each fiscal year, associated with any litigation under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.

Sec. 1105.009. ADMINISTRATIVE HEARINGS. (a) Not later than August 31 of each fiscal year, the agency shall remit a nonrefundable retainer to the State Office of Administrative Hearings in an amount of not less than \$75,000 for hearings conducted by the State Office of Administrative Hearings under a law administered by the commission or the board.

(b) The nonrefundable retainer shall be applied to the costs associated with conducting the hearings. If additional costs are incurred, the State Office of Administrative Hearings may assess and collect from the agency reasonable fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with conducting the hearings.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.

Sec. 1105.010. POST-PARTICIPATION LIABILITY. (a) If the agency no longer has status under this chapter as a self-directed semi-independent agency for any reason, the agency shall be liable for any expenses or debts incurred by the agency during the time the agency was a self-directed semi-independent agency. The agency's liability under this section includes liability for any lease entered

into by the agency. This state is not liable for any expense or debt covered by this subsection, and money from the general revenue fund may not be used to repay the expense or debt.

(b) If the agency no longer has status under this chapter as a self-directed semi-independent agency for any reason, ownership of any property or other asset acquired by the agency during the time the agency was a self-directed semi-independent agency, including unexpended fees in a deposit account in the Texas Treasury Safekeeping Trust Company, shall be transferred to this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.

Sec. 1105.011. DUE PROCESS; OPEN GOVERNMENT. The commission and the board are governmental bodies for purposes of Chapters 551 and 552, Government Code. The commission is a state agency for purposes of Chapters 2001 and 2005, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.

Sec. 1105.012. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. Employees of the agency are members of the Employees Retirement System of Texas under Chapter 812, Government Code, and the commission's and the board's transition to independent status as provided by this chapter has no effect on their membership or any benefits under that system.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.

## **SUBTITLE B. PROFESSIONS RELATED TO PROPERTY TAXATION**

### **CHAPTER 1151. PROPERTY TAX PROFESSIONALS**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1151.001. SHORT TITLE. This chapter may be cited as the Property Taxation Professional Certification Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1151.002. DEFINITIONS. In this chapter:

(1) "Appraisal" means a function described by Chapter 23 or 25, Tax Code, that:

(A) is performed by an employee of a political subdivision or by a person acting on behalf of a political subdivision; and

(B) involves an opinion of value of a property interest.

(2) "Assessment" means a function described by Chapter 26, Tax Code, performed by an employee of a political subdivision or by a person acting on behalf of a political subdivision to determine an amount of ad valorem tax for the political subdivision.

(3) "Assessor-collector" means the chief administrator of the tax office of a taxing unit who is responsible for:

(A) assessment under Chapter 26, Tax Code; and

(B) collection under Chapter 31, Tax Code.

(4) Repealed by Acts 2009, 81st Leg., R.S., Ch. 450, Sec. 41(1), eff. September 1, 2009.

(5) "Code of ethics" means a formal statement of ethical standards of conduct adopted by the commission.

(6) "Collection" means a function described by Chapter 31, Tax Code, or Section 33.02, 33.03, or 33.04, Tax Code.

(7) "Collector" means the chief administrator of the tax office of a taxing unit who:

(A) is responsible for collection under Chapter 31, Tax Code; and

(B) is not responsible for assessment.

(7-a) "Commission" means the Texas Commission of Licensing and Regulation.

(7-b) "Committee" means the Texas Tax Professional Advisory Committee.

(7-c) "Department" means the Texas Department of Licensing and Regulation.

(8) "Governing body" means the governing body of a taxing unit as defined by Section 1.04, Tax Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 41(1), eff. September 1, 2009.

Sec. 1151.003. APPLICABILITY. This chapter does not apply to a county assessor-collector described by Section 14, Article VIII, Texas Constitution, or an employee of the county assessor-collector.

Added by Acts 2013, 83rd Leg., R.S., Ch. 429 (S.B. 546), Sec. 2, eff. June 14, 2013.

Sec. 1151.004. PROHIBITION AGAINST REQUIRING UNPROFESSIONAL CONDUCT. (a) An appraisal district board of directors or a governing body may not, as a necessity for employment, require an appraiser, assessor, or collector to:

- (1) act in an unprofessional manner; or
- (2) violate this chapter.

(b) The department shall thoroughly investigate a complaint of a violation of this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 2, eff. September 1, 2009.

#### **SUBCHAPTER B. TEXAS TAX PROFESSIONAL ADVISORY COMMITTEE**

Sec. 1151.051. MEMBERSHIP. (a) The Texas Tax Professional Advisory Committee consists of seven members appointed by the presiding officer of the commission with the approval of the commission as follows:

- (1) two members who are certified under this chapter as registered professional appraisers;
- (2) two members who are certified under this chapter as registered Texas collectors or registered Texas assessors; and
- (3) three members who represent the public.

(b) A vacancy on the committee is filled in the same manner as the original appointment for the unexpired portion of the term.



(c) The presiding officer of the commission shall designate one member of the committee as the presiding officer.

(d) Each appointment to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(e) Section 2110.008, Government Code, does not apply to the committee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 815, Sec. 2, eff. Sept. 1, 2003.  
Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 43.01, eff. Sept. 1, 2003.

Reenacted and amended by Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. [2447](#)), Sec. 4, eff. September 1, 2009.

Sec. 1151.0511. PUBLIC MEMBER ELIGIBILITY. A person may not be a public member of the committee if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of property tax appraisal, assessment, or collection;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the department;

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

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

(5) at any time has served on an appraisal review board.

Added by Acts 2003, 78th Leg., ch. 815, Sec. 3, eff. Sept. 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. [2447](#)), Sec. 5, eff. September 1, 2009.

Sec. 1151.0512. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the committee if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of property tax appraisal, assessment, or collection; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of property tax appraisal, assessment, or collection.

(c) A person may not be a member of the committee if the person or the person's spouse is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the committee or the department.

Added by Acts 2003, 78th Leg., ch. 815, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. [2447](#)), Sec. 6, eff. September 1, 2009.

Sec. 1151.052. TERMS. Committee members serve six-year terms, with the terms of one or two members expiring on March 1 of each odd-numbered year.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 815, Sec. 4, eff. Sept. 1, 2003;

Acts 2003, 78th Leg., ch. 1170, Sec. 43.02, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. [2447](#)), Sec. 7, eff. September 1, 2009.

Sec. 1151.055. COMPENSATION; REIMBURSEMENT. (a) A committee member may not receive compensation for the member's services.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 450, Sec. 41(5), eff. September 1, 2009.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 8, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 41(5), eff. September 1, 2009.

**SUBCHAPTER C. DUTIES OF COMMISSION, EXECUTIVE DIRECTOR, DEPARTMENT,  
AND ADVISORY COMMITTEE**

Sec. 1151.101. FEES. The commission, with the advice of the committee, shall establish fees under this chapter in amounts reasonable and necessary to cover the costs of administering the programs and activities under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 10, eff. September 1, 2009.

Sec. 1151.1015. ASSISTANCE FROM COMPTROLLER. The comptroller shall enter into a memorandum of understanding with the department under which the comptroller shall provide:

(1) information on the educational needs of and opportunities for tax professionals;

(2) review and approval of all required educational courses, examinations, and continuing education programs for registrants;

(3) a copy of any report issued by the comptroller under Section 5.102, Tax Code, and if requested by the department a copy of any work papers or other documents collected or created in connection with a report issued under that section; and

(4) information and assistance regarding administrative proceedings conducted under the commission's rules or this chapter.

Added by Acts 2003, 78th Leg., ch. 815, Sec. 8, eff. Sept. 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 11, eff. September 1, 2009.

Sec. 1151.102. GENERAL RULEMAKING AUTHORITY. The commission

may adopt and enforce rules necessary for the performance of the department's duties.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 12, eff. September 1, 2009.

Sec. 1151.103. ESTABLISHMENT OF PROFESSIONAL STANDARDS. The commission shall establish standards of professional practice, conduct, education, and ethics for appraisers, assessors, and collectors consistent with the purposes and intent of this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 13, eff. September 1, 2009.

Sec. 1151.104. ENFORCEMENT OF CHAPTER. The department may ensure strict compliance with and enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 14, eff. September 1, 2009.

Sec. 1151.106. CLASSIFICATION SYSTEM FOR REGISTRANTS. (a) The commission by rule shall:

- (1) adopt a classification system for registrants; and
- (2) establish minimum requirements for each classification.

(b) The requirements must be based on experience in property taxation administration, education and training, professional performance and achievements, and compliance with the code of ethics.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 15, eff. September 1, 2009.

Sec. 1151.107. ROSTER OF REGISTRANTS. (a) The department shall maintain a roster of registrants that includes each registrant's name, place of employment, and classification.

(b) A copy of the roster shall be made available to a registrant and to the public on request.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 16, eff. September 1, 2009.

Sec. 1151.108. COMMITTEE DUTIES. The committee shall:

(1) recommend to the commission rules and standards regarding technical issues relating to tax professionals;

(2) provide advice to the commission regarding continuing education courses and curricula for registrants;

(3) provide advice to the commission regarding the contents of any examination required by the commission under this chapter; and

(4) educate, and respond to questions from, the commission and the department regarding issues affecting tax professionals.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 17, eff. September 1, 2009.

#### **SUBCHAPTER D. REGISTRATION AND CERTIFICATION**

Sec. 1151.151. REGISTRATION REQUIRED; EXEMPTION. The following persons must register with the department:

(1) the chief appraiser of an appraisal district, an appraisal supervisor or assistant, a property tax appraiser, an appraisal engineer, and any other person authorized to render judgment on, recommend, or certify an appraised value to the appraisal review board of an appraisal district;

(2) a person who engages in appraisal of property for ad valorem tax purposes for an appraisal district or a taxing unit;

(3) an assessor-collector other than a county assessor-

collector;

(4) a collector or another person designated by a governing body as the chief administrator of the taxing unit's assessment functions, collection functions, or both; and

(5) a person who performs assessment or collection functions for a taxing unit and is required to register by the chief administrator of the unit's tax office.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 815, Sec. 12, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 18, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 429 (S.B. 546), Sec. 3, eff. June 14, 2013.

Sec. 1151.152. ELIGIBILITY FOR REGISTRATION. To be eligible for registration, an applicant must:

- (1) be at least 18 years of age;
- (2) reside in this state;
- (3) be of good moral character;
- (4) be a graduate of an accredited high school or establish high school graduation equivalency; and
- (5) be actively engaged in appraisal, assessment, or collection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1151.153. REGISTRATION APPLICATION. (a) An application for registration must be made on the printed form provided by the department. In prescribing the contents of an application form, the commission shall ensure that the form requires information sufficient to properly classify the applicant.

(b) Each application form the department provides must be accompanied by the code of ethics.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 19, eff. September 1, 2009.

Sec. 1151.154. SUBMISSION OF APPLICATION. An initial application for registration must be accompanied by:

- (1) a nonrefundable processing fee; and
- (2) a nonrefundable registration fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 815, Sec. 19(3), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 20, eff. September 1, 2009.

Sec. 1151.155. ACTION ON APPLICATION. (a) The department shall act on an application for registration not later than the 30th day after the date the application is received.

(b) The department shall:

- (1) classify and register each applicant the department approves; and
- (2) notify the registrant of the requirements for:
  - (A) maintenance of the registrant's current registration; and
  - (B) professional certification by the department.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 450, Sec. 41(14), eff. September 1, 2009.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 21, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 41(14), eff. September 1, 2009.

Sec. 1151.156. DISCRIMINATION PROHIBITED. The department may not refuse to register an applicant because of the race, color, disability, sex, religion, age, or national origin of the applicant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 22, eff. September 1, 2009.

Sec. 1151.157. ISSUANCE AND POSSESSION OF IDENTIFICATION CARD REQUIRED. (a) The department shall issue an identification card to each person registered under this chapter. While on official duty, the registrant shall have the identification card in the registrant's possession.

(b) An identification card issued under Subsection (a) must:

- (1) be serially numbered;
- (2) describe any registration classification into which the person is placed; and
- (3) state the expiration date of the person's registration.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 23, eff. September 1, 2009.

Sec. 1151.158. ANNUAL FEE; EXPIRATION AND RENEWAL OF REGISTRATION. (a) Except as otherwise provided by the commission, a registration under this chapter is valid for one year and must be renewed annually. A registrant must pay an annual fee. The commission by rule may adopt a system under which registrations expire on various dates during the year.

(b) The department shall notify a registrant under this chapter of the impending expiration of the registrant's registration as provided by Section 51.401(f).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 24, eff. September 1, 2009.

Sec. 1151.1581. CONTINUING EDUCATION. (a) The commission shall recognize, prepare, or administer continuing education programs



for registrants under this chapter.

(b) The comptroller must review and approve all continuing education programs for registrants.

(c) A registrant must participate in the programs to the extent required by the department to keep the person's certificate of registration.

(d) The commission may set fees for continuing education courses and providers of continuing education courses in amounts reasonable and necessary to cover the department's costs in administering the department's duties under this section.

(e) The comptroller may set fees for continuing education courses and providers of continuing education courses in amounts reasonable and necessary to cover the comptroller's costs in administering the comptroller's duties under this section.

(f) As part of the continuing education requirements for a registered professional appraiser who is the chief appraiser of an appraisal district, the commission by rule shall require the registrant to complete:

(1) at least half of the required hours in a program devoted to one or more of the topics listed in Section 1151.164(b); and

(2) at least two of the required hours in a program of professional ethics specific to the chief appraiser of an appraisal district, including a program on the importance of maintaining the independence of an appraisal office from political pressure.

Added by Acts 2003, 78th Leg., ch. 815, Sec. 13, eff. Sept. 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 25, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1259 (H.B. 585), Sec. 1, eff. January 1, 2014.

Sec. 1151.160. CERTIFICATION LEVELS AND REQUIREMENTS; RULES.

(a) The commission by rule shall adopt minimum requirements for the certification of registrants. The requirements for certification of a registrant must emphasize the areas of responsibility of the registrant in performing the registrant's duties for the taxing unit.

(b) "Registered professional appraiser" is the highest level of

certification established by the commission for a person engaged in appraisal. "Registered Texas assessor" is the highest level of certification established by the commission for a person engaged in assessment. "Registered Texas collector" is the highest level of certification established by the commission for a person engaged in collection.

(c) A person registered as an appraiser shall become certified as a registered professional appraiser not later than the fifth anniversary of the date of the person's original registration. The person shall obtain certification by:

(1) successfully completing the certification requirements established by commission rule; or

(2) if the person is certified or licensed under Chapter 1103 as an appraiser by the Texas Appraiser Licensing and Certification Board, passing the appropriate examination required under Section 1151.161.

(d) A person registered as an assessor or assessor-collector other than a county assessor-collector shall become certified as a registered Texas assessor not later than the fifth anniversary of the date of the person's original registration.

(e) A person registered as a collector shall become certified as a registered Texas collector not later than the third anniversary of the date of the person's original registration.

(f) In this subsection, "break in service" means time during which a person is not employed in the type of employment for which the person is registered, other than a period resulting from termination for cause. A registrant who has a break in service is entitled to an adjustment of the applicable anniversary date described by Subsection (c), (d), or (e) equal to the length of the break in service, as determined by commission rule. A person who has a break in service that exceeds five years must submit a new application and proof of completion of current course requirements, unless otherwise excepted under commission rule.

(g) A registrant who has not obtained the certification required by Subsection (c), (d), or (e) within the time required by the applicable subsection is entitled to a one-year extension to meet the certification requirements if:

(1) the applicant submits proof of active military status performed after the date of the applicant's original registration;

(2) the applicant submits proof of leave under the federal

Family and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.) taken after the date of the applicant's original registration;

(3) the applicant submits proof of a death or illness in the family or an unforeseen emergency occurring after the date of the applicant's original registration that prevented the registrant from meeting certification requirements;

(4) a chief appraiser, chief administrative officer of a political subdivision, or other person authorized by the commission by rule requests the extension on behalf of an employee;

(5) the applicant requesting the extension is a chief appraiser; or

(6) the applicant meets another reasonable qualification for an extension established by the commission by rule.

(h) The commission shall establish reasonable qualifications for reapplication for a registration by an applicant who does not meet any of the requirements of Subsection (g) or Section 1151.1605.

(i) The commission shall adopt rules as necessary to implement this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 26, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 258 (H.B. 1179), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 258 (H.B. 1179), Sec. 2, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 429 (S.B. 546), Sec. 4, eff. June 14, 2013.

Sec. 1151.161. EXAMINATION FOR CERTIFICATION; APPLICATION; FEE.

(a) The commission by rule shall require a registrant to pass one or more examinations to be certified. The commission by rule shall ensure that any examination required for certification is administered in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(b) An applicant for examination under this section must apply to take the examination in the manner prescribed by the department.

(c) The department may accept, develop, or contract for the

examinations required by this section, including the administration of the examinations. The comptroller must approve the content of an examination accepted, developed, or contracted for by the department. The department may require a third-party vendor to collect a fee associated with the examination directly from examinees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 815, Sec. 14, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 27, eff. September 1, 2009.

Sec. 1151.162. RULES RELATING TO RECERTIFICATION AND SPECIALIZATION. The commission may adopt rules:

- (1) regarding recertification to ensure that each person certified under this chapter who is engaged in appraisal, assessment, or collection is registered and professionally competent; and
- (2) establishing specialized classifications, designations, and requirements as necessary to accomplish the purposes of this chapter, including maintaining high standards of professional practice in all phases of property taxation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 28, eff. September 1, 2009.

Sec. 1151.163. REGISTRATION BY ENDORSEMENT. The department may waive any prerequisite to obtaining a certificate of registration for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license or certificate of registration issued by another jurisdiction that has requirements substantially equivalent to those of this state.

Added by Acts 2003, 78th Leg., ch. 815, Sec. 16, eff. Sept. 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 29, eff. September 1, 2009.

Sec. 1151.164. CHIEF APPRAISER TRAINING PROGRAM. (a) The department shall implement a training program for newly appointed chief appraisers and shall prescribe the curriculum for the training program as provided by this section.

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

- (1) this chapter;
- (2) the programs operated by the department;
- (3) the role and functions of the department;
- (4) the rules of the commission, with an emphasis on the rules that relate to ethical behavior;
- (5) the role and functions of the chief appraiser, the appraisal district board of directors, and the appraisal review board;
- (6) the importance of maintaining the independence of an appraisal office from political pressure;
- (7) the importance of prompt and courteous treatment of the public;
- (8) the finance and budgeting requirements for an appraisal district, including appropriate controls to ensure that expenditures are proper; and
- (9) the requirements of:
  - (A) the open meetings law, Chapter 551, Government Code;
  - (B) the public information law, Chapter 552, Government Code;
  - (C) the administrative procedure law, Chapter 2001, Government Code;
  - (D) other laws relating to public officials, including conflict-of-interest laws; and
  - (E) the standards of ethics imposed by the Uniform Standards of Professional Appraisal Practice.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 450, Sec. 41(17), eff. September 1, 2009.

Added by Acts 2005, 79th Leg., Ch. 1111 (H.B. [2382](#)), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 30, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 41(17), eff. September 1, 2009.

Sec. 1151.165. INACTIVE STATUS. The commission may adopt rules to allow a registrant to place a registration issued by the department on inactive status in the same manner as a license is placed on inactive status under Section 51.4011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 258 (H.B. 1179), Sec. 4, eff. June 17, 2011.

#### **SUBCHAPTER E. ENFORCEMENT**

Sec. 1151.202. DENIAL OF REGISTRATION; DISCIPLINARY ACTION.

(a) The department may deny an application for registration of or take other disciplinary action as described by Chapter 51 against a person who violates this chapter or a commission rule.

(b) The commission by rule shall adopt written guidelines to ensure that denials of registration under this section and other disciplinary actions under Chapter 51 are administered consistently.

(c) Before imposing an administrative penalty under Subchapter F, Chapter 51, against a registrant, the department must consider evidence that the registrant:

(1) attempted in good faith to implement or execute a law, policy, rule, order, budgetary restriction, or other regulation provided by the laws of this state, the comptroller, or the governing body or the chief administrator of the appraisal district or taxing jurisdiction that employs the registrant;

(2) acted on the advice of counsel or the comptroller; or

(3) had discretion over the matter on which the complaint is based, if the complaint is based solely on grounds that the registrant decided incorrectly or failed to exercise discretion in favor of the complainant.

(d) The department may notify the local governmental entity that employs a registrant of a complaint against the registrant by sending a copy of the complaint letter to the local governmental entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 815, Sec. 17, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 31, eff. September 1, 2009.

Sec. 1151.204. DISMISSAL OF COMPLAINTS. (a) After investigation, the department may dismiss a complaint, in part or entirely, without conducting a hearing if the complaint does not credibly allege a violation of this chapter or the standards established by the commission for registrants under this chapter.

(b) After investigation, the department shall dismiss a complaint, in part or entirely, without conducting a hearing if:

(1) the complaint challenges:

(A) the imposition of or failure to waive penalties or interest under Sections 33.01 and 33.011, Tax Code;

(B) the appraised value of a property;

(C) the appraisal methodology;

(D) the grant or denial of an exemption from taxation;

or

(E) any matter for which Title 1, Tax Code, specifies a remedy, including an action that a property owner is entitled to protest before an appraisal review board under Section 41.41(a), Tax Code; and

(2) the subject matter of the complaint has not been finally resolved in the complainant's favor by an appraisal review board, a governing body, an arbitrator, a court, or the State Office of Administrative Hearings under Section 2003.901, Government Code.

(c) This section does not apply to:

(1) a matter referred to the department by the comptroller under Section 5.102, Tax Code, or a successor statute;

(2) a complaint concerning a registrant's failure to comply with the registration and certification requirements of this chapter; or

(3) a complaint concerning a newly appointed chief appraiser's failure to complete the training program described by Section 1151.164.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 32, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 748 (S.B. 464), Sec. 1, eff. June 14, 2013.

Sec. 1151.205. SUBPOENA AUTHORITY. (a) The department may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath;  
and

(2) the production of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter or a commission rule for inspection and copying.

(b) If a person does not comply with the subpoena, the department, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the department may be held.

(c) The court shall order compliance with the subpoena if the court determines that good cause exists for the issuance of the subpoena.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 33, eff. September 1, 2009.

Sec. 1151.206. COMPLAINT OF VIOLATION. A person may file a complaint with the department concerning a violation of this chapter or a rule adopted by the commission under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 36, eff. September 1, 2009.

Transferred and redesignated from Occupations Code, Section 1151.253 by Acts 2013, 83rd Leg., R.S., Ch. 110 (S.B. 972), Sec. 3, eff. May 18, 2013.



**CHAPTER 1152. PROPERTY TAX CONSULTANTS****SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1152.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 12.014(1); Acts 2003, 78th Leg., ch. 1276, Sec. 14A.201(a).

(3) "Department" means the Texas Department of Licensing and Regulation.

(3-a) "Executive director" means the executive director of the department.

(4) "Person" means an individual, partnership, corporation, or association.

(5) "Property tax consultant" means a person who performs or supervises another person in the performance of property tax consulting services for compensation.

(6) "Property tax consulting services" means:

(A) preparing for another person a rendition statement or property report under Chapter 22, Tax Code;

(B) representing another person in a protest under Subchapter C, Chapter 41, Tax Code;

(C) consulting or advising another person concerning:  
 (i) the preparation of a rendition statement or property report under Chapter 22, Tax Code; or

(ii) an action the other person may protest under Subchapter C, Chapter 41, Tax Code;

(D) negotiating or entering into an agreement with an appraisal district on behalf of another person concerning an action that is or may be the subject of a protest under Subchapter C, Chapter 41, Tax Code; or

(E) acting as the agent of a property owner designated in accordance with Section 1.111, Tax Code.

(7) "Registrant" means a person who is registered as a property tax consultant or a senior property tax consultant under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
 Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.014(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.201(a), (b), eff. Sept. 1, 2003.

Sec. 1152.002. EXEMPTIONS FROM REGISTRATION. (a) A person is not required to be registered under this chapter if the person:

(1) is acting under a general power of attorney, unless the person represents that the person is a property tax consultant, agent, advisor, or representative;

(2) is licensed to practice law in this state;

(3) is an employee of a property owner or of an affiliated or subsidiary company of a property owner and performs property tax consulting services for:

(A) the property owner; or

(B) a partnership, joint venture, or corporation in which the property owner owns an interest;

(4) is a lessee of a property owner and is designated as the agent of the owner in accordance with Section 1.111, Tax Code;

(5) is a public employee or officer and assists a property owner in the course of the employee's or officer's duties;

(6) is a certified public accountant under Chapter 901;

(7) assists another person in the performance of property tax consulting services or provides testimony on behalf of the other person at a protest hearing under Subchapter C, Chapter 41, Tax Code; or

(8) provides property tax consulting services only in connection with farms, ranches, or single-family residences and:

(A) holds an active real estate broker license or an active real estate salesperson license under Chapter 1101; or

(B) is a licensed real estate appraiser or certified real estate appraiser under Chapter 1103.

(b) A person described by Subsection (a)(7) is not exempt from the registration requirements of this chapter if:

(1) the person is designated as the agent of the other person under Section 1.111, Tax Code; or

(2) more than 50 percent of the person's employment time is devoted to, or more than 50 percent of the person's income is derived from, performing or supervising the performance of property tax consulting services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 705, Sec. 1, eff. June 20, 2003.

**SUBCHAPTER B. DUTIES OF COMMISSION, EXECUTIVE DIRECTOR, AND  
DEPARTMENT**

Sec. 1152.051. STANDARDS OF CONDUCT FOR REGISTRANTS. The commission by rule shall establish standards of practice, conduct, and ethics for registrants.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.003, eff. Sept. 1, 2003.

Sec. 1152.052. MONEY RECEIVED BY DEPARTMENT. The department shall receive and account for all money derived under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1152.053. FEE INCREASE. (a) The fee for the registration of a person under this chapter and the fee for the renewal of a registration under this chapter is increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 14(d), eff. Sept. 1, 2003.

**SUBCHAPTER C. PROPERTY TAX CONSULTANTS ADVISORY COUNCIL**

Sec. 1152.101. DEFINITION. In this subchapter, "council" means the Property Tax Consultants Advisory Council.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1152.102. COUNCIL MEMBERSHIP. (a) The council is composed of seven members appointed by the presiding officer of the commission, with the commission's approval.

(b) The presiding officer of the commission may appoint not

more than two members who are qualified for an exemption under Section 1152.002(a)(3).

(c) Except as provided by Subsection (d), each person appointed for membership on the council must:

- (1) be a registered senior property tax consultant;
- (2) be a member of a nonprofit and voluntary trade

association:

(A) whose membership consists primarily of persons who perform property tax consulting services in this state or who engage in property tax management in this state for other persons;

(B) that has written experience and examination requirements for membership; and

(C) that subscribes to a code of professional conduct or ethics;

(3) be a resident of this state for the five years preceding the date of the appointment; and

(4) have performed or supervised the performance of property tax consulting services as the person's primary occupation continuously for the five years preceding the date of the appointment.

(d) One member of the council must be a public member.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.004, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 457 (H.B. [2548](#)), Sec. 2, eff. September 1, 2009.

Sec. 1152.103. MEMBERSHIP RESTRICTIONS. A person is not eligible for appointment as a member of the council if the person is:

(1) required to register with the secretary of state under Chapter 305, Government Code;

(2) required to register with the department under Chapter 1151; or

(3) exempt from the registration requirements imposed by this chapter, except as provided by Section 1152.102.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 37, eff. September 1, 2009.

Sec. 1152.104. TERMS; VACANCY. (a) Members of the council serve staggered three-year terms, with the terms of two members expiring on February 1 of each year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint to fill the unexpired part of the term a replacement who meets the qualifications of the vacated office.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.005, eff. Sept. 1, 2003.

Sec. 1152.105. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, shall appoint a member of the council to serve as presiding officer of the council for two years.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.006, eff. Sept. 1, 2003.

Sec. 1152.106. MEETINGS; VOTE REQUIRED FOR ACTION. (a) The council shall meet at least semiannually at the call of the presiding officer or at the call of a majority of its members.

(b) A decision of the council is not effective unless it receives the affirmative vote of at least four members.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1152.107. COMPENSATION; REIMBURSEMENT. A council member is not entitled to receive compensation for serving as a member. A council member is entitled to reimbursement for reasonable expenses incurred in performing duties as a member, subject to applicable limitations in the General Appropriations Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1152.108. COUNCIL POWERS. The council shall:

- (1) recommend to the commission standards of practice, conduct, and ethics for registrants to be adopted under this chapter;
- (2) recommend to the commission amounts for the fees it may set under this chapter;
- (3) recommend to the commission contents for the senior property tax consultant registration examination and standards of acceptable performance;
- (4) assist and advise the commission in recognizing continuing education programs and educational courses for registrants; and
- (5) advise the commission in establishing educational requirements for initial applicants.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.007, eff. Sept. 1, 2003.

#### **SUBCHAPTER D. REGISTRATION REQUIREMENTS**

Sec. 1152.151. REGISTRATION REQUIRED. (a) A person may not perform property tax consulting services for compensation unless the person holds a certificate of registration issued under this chapter.

(b) A person may not represent that a person is a registered property tax consultant, agent, advisor, or representative unless the person is a registrant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1152.152. ASSOCIATION WITH SENIOR PROPERTY TAX CONSULTANT REQUIRED. (a) A registered property tax consultant may not perform property tax consulting services for compensation unless the person is employed by or associated with and acting for:

- (1) a registered senior property tax consultant; or
- (2) an attorney who is licensed to practice law in this state and who has successfully completed the senior property tax consultant registration examination required under Section 1152.160.

(b) Subsection (a) does not apply to a person who is registered under Section 1152.156(a)(2) or 1152.158.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1064 (H.B. 2352), Sec. 1, eff. September 1, 2007.

Sec. 1152.153. VOLUNTARY REGISTRATION. (a) A person who is not required to hold a certificate of registration under this chapter may register if the person satisfies the registration requirements of this chapter.

(b) A person exempt from the registration requirements of this chapter who elects to register is subject to this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1152.154. REGISTRATION APPLICATION; FEES. (a) An applicant for registration must file an application with the department on a printed form prescribed by the executive director.

(b) The application must be accompanied by:

- (1) a nonrefundable application fee; and
- (2) a registration fee.

(c) The department shall refund the registration fee if the executive director does not approve the application.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.022, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.206, eff. Sept. 1, 2003.

Sec. 1152.155. GENERAL ELIGIBILITY FOR REGISTRATION. (a) To be eligible for registration, an applicant must:

- (1) be at least 18 years of age;
- (2) hold a high school diploma or its equivalent;
- (3) pay the fees required by the commission;
- (4) have a place of business in this state or designate a resident of this state as the applicant's agent for service of

process; and

(5) meet any additional qualifications required by this chapter or by the commission under this chapter or Chapter 51.

(b) Notwithstanding Subsection (a), a person is eligible for registration if the person holds:

(1) an active real estate broker license or an active real estate salesperson license under Chapter 1101; or

(2) an active real estate appraiser license or certificate under Chapter 1103.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.008, eff. Sept. 1, 2003.

Sec. 1152.156. ELIGIBILITY TO REGISTER AS PROPERTY TAX CONSULTANT. (a) In addition to satisfying the requirements of Section 1152.155, an applicant for registration as a property tax consultant must:

(1) complete at least 40 classroom hours of educational courses approved by the executive director, including at least four hours of instruction on laws and legal issues in this state related to property tax consulting services and pass a competency examination under Section 1152.160; or

(2) if the person is eligible for registration under Section 1152.155(b), submit to the commission evidence that the applicant has completed at least four classroom hours of educational programs or courses on the laws and legal issues in this state related to property tax consulting services.

(b) The executive director may give appropriate credit to an initial applicant for:

(1) educational courses on principles of law related to property tax consulting services completed by the applicant not more than two years before the date of application; and

(2) educational programs or courses completed by the applicant on:

- (A) property taxation;
- (B) the property tax system;
- (C) property tax administration;
- (D) ethical standards; or



(E) general principles of appraisal, accounting, or law as they relate to property tax consulting services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.023, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.208, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1313 (H.B. 2591), Sec. 1, eff. September 1, 2009.

Sec. 1152.157. ELIGIBILITY TO REGISTER AS SENIOR PROPERTY TAX CONSULTANT. In addition to satisfying the requirements of Section 1152.155, an applicant for registration as a senior property tax consultant must:

- (1) acquire at least 25 credits as provided by Section 1152.159;
- (2) have performed or supervised the performance of property tax consulting services as the applicant's primary occupation for at least four of the seven years preceding the date of application; and
- (3) pass the examination adopted under Section 1152.160 or hold a professional designation in property taxation granted by a nonprofit and voluntary trade association, institute, or organization:
  - (A) whose membership consists primarily of persons who represent property owners in property tax and transactional tax matters;
  - (B) that has written experience and examination requirements for granting the designation; and
  - (C) that subscribes to a code of professional conduct or ethics.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1152.158. REGISTRATION OF CERTAIN REAL ESTATE BROKERS. Sections 1152.156 and 1152.157 do not apply to a person who:

- (1) applied for registration before March 1, 1992;
- (2) on the date of application held an active real estate

broker license under The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), as that law existed on the application date; and

(3) does not perform or supervise the performance of property tax consulting services for compensation in connection with personal property.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1152.159. CREDITS FOR SENIOR PROPERTY TAX CONSULTANT APPLICANTS. (a) The executive director shall grant credit to an applicant for registration as a senior property tax consultant as follows:

(1) two credits for each year the applicant completed at an institution of higher education that meets program and accreditation standards comparable to those for public institutions of higher education as determined by the Texas Higher Education Coordinating Board, not to exceed six credits;

(2) four credits to an applicant who holds a bachelor's degree or equivalent from an institution of higher education described by Subdivision (1); and

(3) one credit for each year in excess of five years that the applicant's primary occupation involved the performance or supervision of property tax consulting services or property appraisal, assessment, or taxation, not to exceed 10 credits.

(b) The executive director may grant additional credits to an applicant for registration as a senior property tax consultant for:

(1) successful completion of educational programs or courses on:

(A) property taxation;

(B) the property tax system;

(C) property tax administration;

(D) ethical standards; or

(E) general principles of appraisal, accounting, and law as they relate to property tax consulting services;

(2) completion of other educational programs or courses; or

(3) advanced or postgraduate educational achievement, occupational experience, professional licenses, or professional

designations obtained from recognized associations, institutes, or organizations.

(c) The executive director may assign not less than one credit or more than five credits to a program or course described by Subsection (b)(1). In determining the amount of credit for the program or course, the executive director shall consider:

- (1) the nature of the program or course;
- (2) the number of actual instructional hours in the program or course;
- (3) whether an examination is required for successful completion of the program or course; and
- (4) other factors the executive director determines appropriate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.024, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.208, eff. Sept. 1, 2003.

Sec. 1152.160. REGISTRATION EXAMINATIONS. (a) The executive director shall:

- (1) adopt an examination for registration as a senior property tax consultant;
- (2) adopt an examination for registration as a property tax consultant; and
- (3) establish the standards for passing the examinations.

(b) The department shall offer the examinations at times and places designated by the executive director.

(c) To be eligible to take an examination, an applicant must pay to the department an examination fee.

- (d) The examination must test the applicant's knowledge of:
- (1) property taxation;
  - (2) the property tax system;
  - (3) property tax administration;
  - (4) ethical standards; and
  - (5) general principles of appraisal, accounting, and law as they relate to property tax consulting services.

(e) An attorney who is licensed to practice law in this state may take the senior property tax consultant registration examination

under this section without completing any other eligibility requirements for registration as a senior property tax consultant under this chapter.

(f) The department shall accept, develop, or contract for the examinations required by this section, including the administration of the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.009, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1064 (H.B. 2352), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1313 (H.B. 2591), Sec. 2, eff. September 1, 2009.

Sec. 1152.162. ISSUANCE OF CERTIFICATE OF REGISTRATION. (a) The executive director shall act on an initial application for registration filed under Section 1152.154 not later than the 31st day after the date the department receives the application.

(b) The executive director shall issue to an applicant who qualifies for registration the appropriate certificate of registration.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.025, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.208, eff. Sept. 1, 2003.

#### **SUBCHAPTER E. RENEWAL OF CERTIFICATE OF REGISTRATION**

Sec. 1152.201. TERM OF CERTIFICATE OF REGISTRATION. Except as otherwise provided by the commission, a certificate of registration expires on the first anniversary of the date of issuance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.010, eff. Sept. 1, 2003.

Sec. 1152.202. PROCEDURE FOR RENEWAL. (a) The executive director shall issue to an eligible registrant a certificate of renewal of registration on the timely receipt of the required renewal fee. The certificate expires on the second anniversary of the date of issuance.

(b) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 12.014(4).

(c) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 12.014(4).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.011, 12.014(4), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.210, eff. Sept. 1, 2003.

Sec. 1152.204. RECOGNITION OF EDUCATIONAL PROGRAMS AND COURSES.

(a) The commission by rule shall recognize appropriate continuing education programs for registrants.

(b) The commission shall recognize a continuing education course, including a course on the legal issues and law related to property tax consulting services, that is:

(1) approved by the Texas Real Estate Commission or the Texas Appraiser Licensing and Certification Board; and

(2) completed by a registrant who also holds:

(A) an active real estate broker license or an active real estate salesperson license under Chapter 1101; or

(B) an active real estate appraiser license or certificate under Chapter 1103.

(c) The commission may recognize an educational program or course:

(1) related to property tax consulting services; and

(2) offered or sponsored by a public provider or a recognized private provider, including:

(A) the comptroller;

(B) the State Bar of Texas;

(C) the Texas Real Estate Commission;

(D) an institution of higher education that meets program and accreditation standards comparable to those for public institutions of higher education as determined by the Texas Higher Education Coordinating Board; or

(E) a nonprofit and voluntary trade association,

institute, or organization:

(i) whose membership consists primarily of persons who represent property owners in property tax or transactional tax matters;

(ii) that has written experience and examination requirements for membership or for granting professional designation to its members; and

(iii) that subscribes to a code of professional conduct or ethics.

(d) The commission may recognize a private provider of an educational program or course if the provider:

(1) applies to the department on a printed form prescribed by the executive director; and

(2) pays in the amounts set by the commission:

(A) a nonrefundable application fee; and

(B) an educational provider's fee.

(e) The department shall refund the educational provider's fee if the commission does not recognize the provider's educational program or course.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.012, eff. Sept. 1, 2003.

#### **SUBCHAPTER E-1. PROHIBITED ACTS**

Sec. 1152.231. GENERAL PROHIBITED ACTS. (a) A person required to register under this chapter may not serve as a registered senior property tax consultant for more than 10 registered property tax consultants unless each additional tax consultant sponsored or supervised by the registered senior property tax consultant has for the previous six months:

(1) been employed and engaged as a tax consultant on a full-time basis;

(2) performed tax consultant related services as an employee of a property owner; or

(3) performed licensed appraisal services.

(b) Except for protests filed with the approval of a lessee under Section 41.413, Tax Code, a person required to register under this chapter may not file a protest under Chapter 41, Tax Code,

without the approval of the property owner.

(c) A person required to register under this chapter may not falsify an agent appointment, exemption application, protest, or other legal document that is filed with or presented to an appraisal district, an appraisal review board, or a taxing unit.

(d) A person required to register under this chapter may not file a motion or protest concerning residential property on behalf of a person whom the registrant does not represent unless the registrant has authorization from:

(1) that person; or

(2) another person, other than the agent or the firm that employs the agent, who is authorized by the person to designate agents under Section 1.111, Tax Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1313 (H.B. 2591), Sec. 3, eff. January 1, 2010.

Sec. 1152.232. PROHIBITED ACTS: SOLICITATION OF BUSINESS. A person required to register under this chapter may not solicit a property tax consulting assignment by assuring a specific outcome.

Added by Acts 2009, 81st Leg., R.S., Ch. 1313 (H.B. 2591), Sec. 3, eff. January 1, 2010.

Sec. 1152.233. PROHIBITED ACTS: USE OF INTERNET WEBSITE. (a) A person required to register under this chapter may not maintain an Internet website for any purpose associated with the provision of tax consulting services by the registrant that has a domain name or other Internet address that implies that the website is a government website.

(b) A person required to register under this chapter may not use or maintain an Internet website for the purpose of soliciting clients if the website does not identify the company prominently on the home page of the website.

Added by Acts 2009, 81st Leg., R.S., Ch. 1313 (H.B. 2591), Sec. 3, eff. January 1, 2010.

Sec. 1152.234. PROHIBITED ACTS: CERTAIN LEGAL ACTIONS. A person required to register under this chapter may not engage the services of an attorney for purposes of filing an appeal under Chapter 42, Tax Code, without the prior consent of the client.

Added by Acts 2009, 81st Leg., R.S., Ch. 1313 (H.B. 2591), Sec. 3, eff. January 1, 2010.

#### **SUBCHAPTER F. PENALTIES AND ENFORCEMENT**

Sec. 1152.251. DISCIPLINARY POWERS OF COMMISSION. After a hearing, the commission may deny a certificate of registration and may impose an administrative sanction or penalty and seek injunctive relief and a civil penalty against a registrant as provided by Chapter 51 for:

- (1) a violation of this chapter or a rule applicable to the registrant adopted by the commission under this chapter;
- (2) gross incompetency in the performance of property tax consulting services;
- (3) dishonesty or fraud committed while performing property tax consulting services; or
- (4) a violation of the standards of ethics adopted by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.013, eff. Sept. 1, 2003.

### **SUBTITLE C. REGULATION OF CERTAIN TYPES OF HOUSING AND BUILDINGS**

#### **CHAPTER 1201. MANUFACTURED HOUSING**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1201.001. SHORT TITLE. This chapter may be cited as the Texas Manufactured Housing Standards Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.002. LEGISLATIVE FINDINGS AND PURPOSES; LIBERAL CONSTRUCTION. (a) The legislature finds that:

- (1) there is a growing need to provide state residents with



safe, affordable, and well-constructed housing;

(2) manufactured housing has become a primary housing source for many state residents;

(3) statutes and rules in effect before September 1, 1969, were inadequate to:

(A) fully protect the consumer; and

(B) prevent certain discrimination in this state regarding manufactured housing;

(4) the state is responsible for:

(A) protecting state residents who want to purchase manufactured housing by regulating the construction and installation of manufactured housing;

(B) providing economic stability to manufactured housing manufacturers, retailers, installers, and brokers; and

(C) providing fair and effective consumer remedies;

and

(5) the expansion of certain regulatory powers is:

(A) necessary to address the problems described by Subdivisions (1)-(4); and

(B) the most economical and efficient means to address those problems and serve the public interest.

(b) The purposes of this chapter are to:

(1) encourage the construction of housing for state residents; and

(2) improve the general welfare and safety of purchasers of manufactured housing in this state.

(c) This chapter shall be liberally construed to promote its policies and accomplish its purposes.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.003. DEFINITIONS. In this chapter:

(1) "Advertisement" means a commercial message that promotes the sale, exchange, or lease-purchase of a manufactured home and that is presented on radio, television, a public-address system, or electronic media or appears in a newspaper, a magazine, a flyer, a catalog, direct mail literature, an inside or outside sign or window display, point-of-sale literature, a price tag, or other printed material. The term does not include educational material or material

required by law.

(2) "Affiliate" means a person who is under common control.

(3) "Alteration" means the replacement, addition, modification, or removal of equipment in a new manufactured home after sale by a manufacturer to a retailer but before sale and installation by a retailer to a purchaser in a manner that may affect the home's construction, fire safety, occupancy, or plumbing, heating, or electrical system. The term includes the modification of a manufactured home in a manner that may affect the home's compliance with the appropriate standards but does not include:

(A) the repair or replacement of a component or appliance that requires plug-in to an electrical receptacle, if the replaced item is of the same configuration and rating as the replacement; or

(B) the addition of an appliance that requires plug-in to an electrical receptacle and that was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which the appliance is connected.

(4) "Attached" in reference to a manufactured home means that the home has been:

(A) installed in compliance with the rules of the department; and

(B) connected to a utility, including a utility providing water, electric, natural gas, propane or butane gas, or wastewater service.

(5) "Board" means the Manufactured Housing Board within the Texas Department of Housing and Community Affairs.

(6) "Broker" means a person engaged by one or more other persons to negotiate or offer to negotiate a bargain or contract for the sale, exchange, or lease-purchase of a manufactured home for which a certificate or other document of title has been issued and is outstanding. The term does not include a person who maintains a location for the display of manufactured homes.

(7) "Business use" means the use of a manufactured home for a purpose other than as a permanent or temporary dwelling.

(8) "Consumer" means a person, other than a person licensed under this chapter, who seeks to acquire or acquires by purchase, exchange, or lease-purchase a manufactured home.

(9) "Control" means, with respect to another person, the

possession of the power, directly or indirectly, to vote an interest of 25 percent or more.

(10) "Department" means the Texas Department of Housing and Community Affairs operating through its manufactured housing division.

(11) "Director" means the executive director of the manufactured housing division of the Texas Department of Housing and Community Affairs.

(12) "HUD-code manufactured home":

(A) means a structure:

(i) constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development;

(ii) built on a permanent chassis;

(iii) designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;

(iv) transportable in one or more sections; and

(v) in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet;

(B) includes the plumbing, heating, air conditioning, and electrical systems of the home; and

(C) does not include a recreational vehicle as defined by 24 C.F.R. Section 3282.8(g).

(13) "Installation" means the temporary or permanent construction of the foundation system and the placement of a manufactured home or manufactured home component on the foundation. The term includes supporting, blocking, leveling, securing, anchoring, and properly connecting multiple or expandable sections or components and making minor adjustments.

(14) "Installer" means a person, including a retailer or manufacturer, who contracts to perform or performs an installation function on manufactured housing.

(15) "Label" means a device or insignia that is:

(A) issued by the director to indicate compliance with the standards, rules, and regulations established by the United States Department of Housing and Urban Development; and

(B) permanently attached to each transportable section of each HUD-code manufactured home constructed after June 15, 1976,

for sale to a consumer.

(16) "Lease-purchase" means entering into a lease contract for a manufactured home, in which the lessor retains title, containing a provision or, in another agreement, conferring on the lessee an option to purchase a manufactured home.

(17) "License holder" or "licensee" means a person who holds a department-issued license as a manufacturer, retailer, broker, salesperson, or installer.

(18) "Manufactured home" or "manufactured housing" means a HUD-code manufactured home or a mobile home.

(19) "Manufacturer" means a person who constructs or assembles manufactured housing for sale, exchange, or lease-purchase in this state.

(20) "Mobile home":

(A) means a structure:

(i) constructed before June 15, 1976;

(ii) built on a permanent chassis;

(iii) designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;

(iv) transportable in one or more sections; and

(v) in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet; and

(B) includes the plumbing, heating, air conditioning, and electrical systems of the home.

(21) "New manufactured home" means a manufactured home that is not a used manufactured home, regardless of its age.

(22) "Person" means an individual or a partnership, company, corporation, association, or other group, however organized.

(23) "Related person" means a person who directly or indirectly participates in management or policy decisions.

(24) "Retailer" means a person who:

(A) is engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering manufactured homes for sale, exchange, or lease-purchase to consumers, including a person who maintains a location for the display of manufactured homes; and

(B) sells, exchanges, or lease-purchases at least two manufactured homes to consumers in a 12-month period.

(25) "Rules" means the rules of the department.

(26) "Salesperson" means a person who, as an employee or agent of a retailer or broker, sells or lease-purchases or offers to sell or lease-purchase manufactured housing to a consumer.

(27) "Salvaged manufactured home" means a manufactured home determined to be salvaged under Section 1201.461.

(28) "Seal" means a device or insignia issued by the director that, for title purposes, is to be attached to a used manufactured home as required by the director.

(29) "Standards code" means the Texas Manufactured Housing Standards Code.

(30) "Statement of ownership and location" means a statement issued by the department and setting forth:

(A) the ownership and location of a manufactured home in this state as provided by Section 1201.205; and

(B) other information required by this chapter.

(31) "Trust fund" means the manufactured homeowners' recovery trust fund.

(32) "Used manufactured home" means a manufactured home which has been occupied for any use or for which a statement of ownership and location has been issued. The term does not include:

(A) a manufactured home that was used as a sales model at a licensed retail location; or

(B) a manufactured home that:

(i) was sold as a new manufactured home and installed but never occupied;

(ii) had a statement of ownership and location; and

(iii) was taken back from the consumer or transferee because of a first payment default or agreement to rescind or unwind the transaction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 338, Sec. 1, eff. June 18, 2003;

Acts 2003, 78th Leg., ch. 1276, Sec. 14A.251(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 1, eff. January 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.03, eff. September 1, 2013.

Sec. 1201.004. DEFINITIONS BINDING. The definitions of "mobile home," "HUD-code manufactured home," and "manufactured housing" provided by Section 1201.003 are binding as a matter of law on each person and agency in this state, including a home-rule municipality or other political subdivision. A mobile home is not a HUD-code manufactured home and a HUD-code manufactured home is not a mobile home for any purpose under state law. Those terms may not be defined in a manner that is not identical to the definitions provided by Section 1201.003.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.005. CONSUMER WAIVER VOID. A waiver by a consumer of this chapter is contrary to public policy and void.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.006. APPLICABILITY OF BUSINESS & COMMERCE CODE. The Business & Commerce Code applies to transactions relating to manufactured housing except to the extent that it conflicts with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.007. EXCEPTION FOR REAL ESTATE BROKERS AND SALESPERSONS. This chapter does not:

- (1) modify or amend Chapter 1101 or 1102; or
- (2) apply to a person who is licensed as a real estate broker or salesperson under Chapter 1101 and who, as agent of a buyer or seller, negotiates the sale or lease of a manufactured home and the real property to which the home is attached if:
  - (A) the same person is the record owner of both the manufactured home and the real property; and
  - (B) the sale or lease occurs in a single real estate transaction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.008. REGULATION BY MUNICIPALITY. (a) A municipality may prohibit the installation of a mobile home for use as a dwelling in the municipality. The prohibition must be prospective and may not apply to a mobile home previously legally permitted by and used as a dwelling in the municipality. If a mobile home is replaced by a HUD-code manufactured home in the municipality, the municipality shall grant a permit for use of the manufactured home as a dwelling in the municipality.

(b) On application, the municipality shall permit the installation of a HUD-code manufactured home for use as a dwelling in any area determined appropriate by the municipality, including a subdivision, planned unit development, single lot, and rental community or park. An application to install a new HUD-code manufactured home for use as a dwelling is considered to be granted unless the municipality in writing denies the application and states the reason for the denial not later than the 45th day after the date the application is received.

(c) Subsections (a) and (b) do not affect the validity of an otherwise valid deed restriction.

(d) Except as approved by the department, a local governmental unit may not require a permit, a fee, a bond, or insurance for the transportation and installation of manufactured housing by a licensed retailer or installer. This subsection does not prohibit the collection of actual costs incurred by a local governmental unit that result from the transportation of a manufactured home.

(e) Notwithstanding any zoning or other law, in the event that a manufactured home occupies a lot in a municipality, the owner of the manufactured home may remove the manufactured home from its location and place another manufactured home on the same property, provided that the replacement is a newer manufactured home and is at least as large in living space as the prior manufactured home.

(f) An owner's ability to replace the home as a result of a fire or natural disaster cannot be restricted. Other than in the case of a fire or natural disaster, a general-rule or home-rule municipality by an ordinance or charter may limit the ability of the owner to replace his home to a single replacement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 2, eff.

January 1, 2008.

Sec. 1201.009. ELECTRONIC MEANS AUTHORIZED. If feasible, any action required under this chapter may be accomplished by electronic means.

Added by Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 1, eff. September 1, 2009.

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

Sec. 1201.051. ADMINISTRATION AND ENFORCEMENT OF CHAPTER. The director shall administer and enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.052. GENERAL RULEMAKING AUTHORITY. (a) The director shall adopt rules, issue orders, and otherwise act as necessary to ensure compliance with the purposes of this chapter to implement and provide for uniform enforcement of this chapter and the standards code.

(b) To protect the public health, safety, and welfare and to ensure the availability of low cost manufactured housing for all consumers, the director shall adopt rules to:

- (1) protect the interests of consumers who occupy or want to purchase or install manufactured housing; and
- (2) govern the business conduct of license holders.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.053. RULES RELATING TO COMPLIANCE WITH NATIONAL STANDARDS FOR MANUFACTURED HOUSING CONSTRUCTION AND SAFETY; STATE PLAN. (a) The board shall adopt rules and otherwise act as necessary to:

- (1) comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), including adopting and enforcing rules reasonably required to implement the notification and correction procedures provided by



42 U.S.C. Section 5414; and

(2) provide for the effective enforcement of all HUD-code manufactured housing construction and safety standards in order to have the state plan authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.) approved by the secretary of housing and urban development.

(b) The state plan described by Subsection (a)(2) must provide for a third-party inspection agency approved by the United States Department of Housing and Urban Development to act as an in-plant inspection agency.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 3, eff. January 1, 2008.

Sec. 1201.054. PROCEDURE FOR ADOPTING RULES. (a) Rules must be adopted in accordance with Chapter 2001, Government Code, and with this section.

(b) If requested, the board shall, after at least 10 days' notice, hold a hearing on any rule that it proposes to adopt, other than a rule that is to be adopted under emergency rulemaking, in which case only the requirements of Chapter 2001, Government Code, shall apply.

(c) A rule takes effect on the 30th day after the date of publication of notice that the rule has been adopted, except that a rule relating to installation standards may not take effect earlier than the 60th day after the date of publication of notice unless the board has determined that an earlier effective date is required to meet an emergency and the standard was adopted under the emergency rulemaking provisions of Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 4, eff. January 1, 2008.

Sec. 1201.055. INSPECTION, REVIEW, AND RELATED FEES. (a) With guidance from the federal Housing and Community Development Act of

1974 (42 U.S.C. Section 5301 et seq.) and from the rules and regulations adopted under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), the board shall establish fees as follows:

(1) if the department acts as a design approval primary inspection agency, a schedule of fees for the review of HUD-code manufactured home blueprints and supporting information, to be paid by the manufacturer seeking approval of the blueprints and supporting information;

(2) except as provided by Subsection (e), a fee for the inspection of each HUD-code manufactured home manufactured or assembled in this state, to be paid by the manufacturer of the home;

(3) a fee for the inspection of an alteration made to the structure or plumbing, heating, or electrical system of a HUD-code manufactured home, to be charged on an hourly basis and to be paid by the person making the alteration;

(4) a fee for the inspection of the rebuilding of a salvaged manufactured home, to be paid by the retailer;

(5) a fee for the inspection of a used manufactured home to determine whether the home is habitable for the issuance of a new statement of ownership and location; and

(6) a fee for the issuance of a seal for a used mobile or HUD-code manufactured home.

(b) In addition to the fees imposed under Subsections (a)(2), (3), and (4), a manufacturer or a person making an alteration, as appropriate, shall be charged for the actual cost of travel of a department representative to and from:

(1) the manufacturing facility, for an inspection described by Subsection (a)(2); or

(2) the place of inspection, for an inspection described by Subsection (a)(3) or (4).

(c) The board shall establish a fee for the inspection of the installation of a mobile or HUD-code manufactured home, to be paid by the installer of the home.

(c-1) The department may permit the use of any device or procedure that has been reviewed and approved by a licensed engineer provided that such use or procedure complies with any instructions, conditions, or other requirements specified by that engineer.

(d) The board shall charge a fee for a consumer complaint home inspection requested by a manufacturer or retailer under Section

1201.355(b), to be paid by the manufacturer or retailer.

(e) The fee described by Subsection (a)(2) does not apply if an inspection agency authorized by the United States Department of Housing and Urban Development, other than the department, acts as the in-plant inspection agency.

(f) The fee described by Subsection (c) must accompany notice to the department of the exact location of the mobile or HUD-code manufactured home. The department shall make an appropriate fee distribution to a local governmental unit that performs an inspection under a contract or other official designation if that unit does not collect a local inspection fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 338, Sec. 2, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 5, eff. January 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.04, eff. September 1, 2013.

Sec. 1201.056. LICENSE FEES. (a) The board shall establish fees for the issuance and renewal of licenses for:

- (1) manufacturers;
- (2) retailers;
- (3) brokers;
- (4) salespersons; and
- (5) installers.

(b) The board by rule may establish a fee for reprinting a license issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.05, eff. September 1, 2013.

Sec. 1201.057. INSTRUCTION FEE. The board shall charge a fee to each person attending a course of instruction described by Section 1201.104.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.058. AMOUNT OF FEES. (a) The board shall establish reasonable fees for all matters under this chapter providing for fees. If the department's rules provide an option to file a document electronically, the department may charge a discounted fee for the electronic filing.

(b) Ten dollars of the fee for each purchase, exchange, or lease-purchase of a manufactured home shall be deposited to the credit of the trust fund and used for the protection programs described by Subchapter I.

(c) All fees established by this chapter or the rules are deemed to be earned and not subject to refund after receipt by the department.

(d) Notwithstanding Subsection (c), the director may, in limited and appropriate circumstances and in accordance with rules adopted by the board, approve the refund of fees.

(e) If the governor by executive order or proclamation declares a state of disaster under Chapter 418, Government Code, the director, in accordance with rules adopted by the board, may waive the imposition of any fee under this chapter in the affected area.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 6, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 2, eff. September 1, 2009.

Sec. 1201.060. VENUE FOR HEARING. A hearing under this chapter shall be held in Travis County unless all parties agree to another location.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.061. COOPERATION WITH LOCAL GOVERNMENTAL UNITS. The department shall cooperate with all local governmental units in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.062. SEAL PROPERTY OF DEPARTMENT. A seal is the property of the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### **SUBCHAPTER C. LICENSING**

Sec. 1201.101. LICENSE REQUIRED. (a) A person may not construct or assemble in this state or ship into this state a new HUD-code manufactured home unless the person holds, at the time the home is constructed or assembled, a manufacturer's license.

(b) Except as otherwise provided by this chapter, a person may not sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase two or more manufactured homes to consumers in this state in a 12-month period unless the person holds a retailer's license.

(c) A person may not offer to negotiate or negotiate for others a bargain or contract for the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in this state in a 12-month period unless the person holds a broker's license.

(d) A person may not act as an installer in this state unless the person holds an installer's license.

(e) A person may not repair, rebuild, or otherwise alter a salvaged manufactured home unless the person holds a retailer's license.

(f) A person may not act as a salesperson of manufactured housing unless the person holds a salesperson's license. A retailer or broker may not employ or otherwise use the services of a salesperson who is not licensed. A licensed salesperson may not participate in a sale of a manufactured home unless the sale is through the retailer or broker who sponsored the salesperson's application as required by Section 1201.103(d).

(f-1) A retailer may not be licensed to operate more than one location under a single license.

(g) A person may not make an announcement concerning the sale, exchange, or lease-purchase of, or offer to sell, exchange, or lease-purchase, a manufactured home to a consumer in this state through an

advertisement unless the person holds a manufacturer's, retailer's, or broker's license. This subsection does not apply to:

- (1) a person exempt from licensing; or
- (2) an advertisement concerning real property on which there is a manufactured home that has been converted to real property in accordance with Section 1201.2055.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 338, Sec. 4, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 1, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 7, eff. January 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.06, eff. September 1, 2013.

Sec. 1201.102. EXCEPTIONS TO LICENSE REQUIREMENT. (a) A licensed installer may employ unlicensed persons to assist in performing installation functions provided that the licensed installer maintains a list of the persons so employed. The director may issue an order to prohibit a person who is not licensed as an installer from performing installation functions under the oversight of a licensed installer.

(b) A licensee may engage another person who is not licensed under this chapter but possesses another license issued by the State of Texas to provide goods and services subject to that other license. Without limiting the generality of the foregoing, this includes engaging others to install, connect, or otherwise work on air conditioning, plumbing, and electrical systems.

(c) An individual who holds a retailer's license or broker's license or who is a related person of such a licensee is not required to apply for a salesperson's license.

(d) A person who holds a real estate broker's or salesperson's license under Chapter 1101 may act as a broker or salesperson under this chapter without holding a license or filing a bond or other security as required by this chapter if negotiations for the sale, exchange, or lease-purchase of a manufactured home are conducted for a consumer for whom the person is also acting as a real estate broker

or salesperson under Chapter 1101 consistent with Section 1201.007.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.252(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 8, eff. January 1, 2008.

Sec. 1201.1025. EXEMPTION FROM RETAILER'S LICENSE REQUIREMENT.

(a) Notwithstanding any other law, in any 12-month period a person is exempt from holding a retailer's license as required by Section 1201.101(b) if during that period the person sells or offers to sell not more than three manufactured homes.

(b) The department by rule shall develop a form necessary for a person to establish eligibility for the exemption provided by this section.

(c) A person who is eligible for an exemption under this section remains subject to the other applicable provisions of this subchapter regarding the sale of manufactured homes.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1270 (H.B. 944), Sec. 1, eff. September 1, 2013.

Sec. 1201.103. LICENSE APPLICATION. (a) An applicant for a license as a manufacturer, retailer, broker, or installer must file with the director a license application containing:

(1) the legal name, address, and telephone number of the applicant and each person who will be a related person at the time the requested license is issued;

(2) all trade names, and the names of all other business organizations, under which the applicant does business subject to this chapter, the name of each such business organization registered with the secretary of state, and the address of such business organization;

(3) the dates on which the applicant became the owner and operator of the business; and

(4) the location to which the license will apply.

(a-1) All required records of a licensee under Subsection (a)

are to be maintained at the licensee's principal office or such other location within this state as the licensee may designate.

(b) A license application must be accompanied by:

- (1) proof of the security required by this subchapter;
- (2) payment of the fee required for issuance of the

license; and

(3) the information and the cost required under Section 1201.1031.

(c) If a change occurs in the information filed with the director under Subsection (a), the applicant shall amend the application to state the correct information.

(d) An applicant for a salesperson's license must:

- (1) file with the director an application that provides any information the director considers necessary and that is sponsored by a currently licensed retailer or broker; and
- (2) pay the required fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. [2438](#)), Sec. 2, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. [1460](#)), Sec. 9, eff. January 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. [3361](#)), Sec. 3.07, eff. September 1, 2013.

Sec. 1201.1031. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE. (a) The department shall require that an applicant for a license or renewal of an unexpired license submit a complete and legible set of fingerprints, on a form prescribed by the board, to the department or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The applicant is required to submit a set of fingerprints only once under this section unless a replacement set is otherwise needed to complete the criminal history check required by this section.

(b) The department shall refuse to issue a license to or renew the license of a person who does not comply with the requirement of Subsection (a).



(c) The department shall conduct a criminal history check of each applicant for a license or renewal of a license using information:

(1) provided by the individual under this section; and

(2) made available to the department by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The department may enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section.

(e) The applicant shall pay the cost of a criminal history check under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. [3361](#)), Sec. 3.08, eff. September 1, 2013.

Sec. 1201.104. QUALIFICATIONS FOR LICENSE. (a) Except as provided by Subsection (g), as a requirement for a manufacturer's, retailer's, broker's, installer's, or salesperson's license, a person who was not licensed or registered with the department or a predecessor agency on September 1, 1987, must, not more than 12 months before applying for the person's first license under this chapter, attend and successfully complete eight hours of instruction in the law, including instruction in consumer protection regulations.

(a-1) If the applicant is not an individual, the applicant must have at least one related person who satisfies the requirements of Subsection (a). If that applicant is applying for a retailer's license, the related person must be a management official who satisfies the requirements of Subsections (a) and (a-2) at each retail location operated by the applicant.

(a-2) An applicant for a retailer's license must complete four hours of specialized instruction relevant to the sale, exchange, and lease-purchase of manufactured homes. The instruction under this subsection is in addition to the instruction required under Subsection (a).

(a-3) An applicant for an installer's license must complete four hours of specialized instruction relevant to the installation of manufactured homes. The instruction under this subsection is in addition to the instruction required under Subsection (a).

(a-4) An applicant for a joint installer-retailer license must comply with Subsections (a-2) and (a-3), for a total of eight hours of specialized instruction. The instruction under this subsection is in addition to the instruction required under Subsection (a).

(b) Except in the case of an applicant for a salesperson's license, successful completion of the course of instruction is a prerequisite to obtaining the license.

(c) An applicant for a salesperson's license may apply for a license without having completed the course of instruction if the person successfully completes the course not later than the 90th day after the date of the person's licensure. If the person fails to complete such course successfully and in a timely manner, the person's license is automatically suspended until the person successfully completes the course.

(d) The course of instruction must be offered at least quarterly.

(e) The board shall adopt rules relating to course content and approval.

(f) An applicant for an initial installer's license shall receive a license on a provisional basis. The person's provisional status remains in effect until a sufficient number of installations completed by the person have been inspected by the department and found not to have any identified material violations of the department's rules. The board, with the advice of the advisory committee to be established under Section 1201.251, shall adopt rules to establish what constitutes a sufficient number of installations under this subsection.

(g) Subsections (a), (a-2), (a-3), and (a-4) do not apply to a license holder who applies:

- (1) for a license for an additional business location; or
- (2) to renew or reinstate a license.

(h) An examination must be a requirement of successful completion of any initial required course of instruction under this section. The period needed to complete an examination under this subsection may not be used to satisfy the minimum education requirements under Subsection (a), (a-2), (a-3), or (a-4).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 10, eff.

January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 3, eff.

September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 74.06, eff.

September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.09, eff.

September 1, 2013.

Sec. 1201.105. SECURITY REQUIRED. (a) The department may not issue or renew a license unless a bond or other security in a form prescribed by the director is filed with the department as provided by this subchapter. The bond or other security is payable to the trust fund.

(b) If a bond is filed, the bond must be issued by a company authorized to do business in this state and must conform to applicable provisions of the Insurance Code. If other security is filed, that security must be maintained in or by a federally insured depository institution located in this state.

(c) If the department experiences significant problems in obtaining timely reimbursements from a surety or the surety has experienced a deterioration in its financial condition, the board may direct the director to stop accepting bonds issued by the surety.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 10, eff.

January 1, 2008.

Sec. 1201.106. SECURITY: AMOUNT. (a) An applicant for a license or a license holder shall file a bond or other security under Section 1201.105 for the issuance or renewal of a license in the following amount:

- (1) \$100,000 for a manufacturer;
- (2) \$50,000 for a retailer;
- (3) \$50,000 for a broker; or
- (4) \$25,000 for an installer.

(a-1) Notwithstanding the provisions of Subsection (a), the director may require additional security for the licensing, renewal,

or relicensing of a person who, either directly, as a related person, or through a related person, has been the subject of a license revocation, has caused the trust fund to incur unreimbursed costs or liabilities in excess of available surety bond coverage, or has failed to pay an administrative penalty that has been assessed by final order.

(b) To ensure the availability of prompt and satisfactory warranty service, a manufacturer that does not have a licensed manufacturing plant or other facility in this state from which warranty service and repairs can be provided shall file a bond or other security in the additional amount of \$100,000.

(c) The bond or other security is open to successive claims up to the face value of the bond or other security. The surety is not liable for successive claims in excess of the face value of the bond, regardless of the number of years the bond remains in force.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 3, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 11, eff. January 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.10, eff. September 1, 2013.

Sec. 1201.107. SECURITY: LOCATION. (a) A manufacturer, retailer, broker, or installer who maintains a place of business at one or more locations shall file with the department a separate bond or other security for each location.

(b) Property used for the business that is not contiguous to, or located within 300 feet of, a bonded location requires a separate bond. A location at which a manufactured home is shown to the public or at which the home is offered for sale, exchange, or lease-purchase by a retailer to consumers requires a bond.

(c) A manufactured home installed on a permanent foundation system and offered for sale as real property does not require a bond. A temporary location for a bona fide trade show sponsored by a nonprofit corporation that qualifies for an exemption from federal income taxation under Section 501(a), Internal Revenue Code of 1986,

by being listed as an exempt organization under Section 501(c) of that code does not require a bond.

(d) If a retailer or broker offers for sale or participates in any way in the sale of a manufactured home at a location other than an undivided parcel of real property where more than one manufactured home is located and offered for sale, exchange, or lease-purchase by a retailer or broker to the public, the retailer or broker must:

- (1) identify the bond on file with the department in conjunction with that person's license; and
- (2) provide contractually in the sales transaction that the identified bond applies to the sale.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 4, eff. June 18, 2005.

Sec. 1201.108. SECURITY: CHANGE IN OWNERSHIP OR LOCATION. (a) A new bond is not required for a change in:

- (1) ownership of a licensee or a business entity under which a license holder conducts business; or
- (2) location.

(b) A licensee shall notify the department of a change described by Subsection (a) not later than the 10th day before the date the change occurs.

(c) After a change described by Subsection (a), the licensee shall provide to the department a proper endorsement to the original bond showing that the bond continues to apply to the license without interruption.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 12, eff. January 1, 2008.

Sec. 1201.109. SECURITY: CANCELLATION OR OTHER IMPAIRMENT.

(a) If a bond required by this subchapter is canceled, the license for which the security is filed is suspended on the effective date of cancellation. The surety shall provide written notice to the

director before the 60th day preceding the effective date of cancellation.

(b) If a surety files for liquidation or reorganization in bankruptcy or is placed in receivership, the license holder shall obtain other security not later than the 60th day after the date that notice of the filing or receivership is received.

(c) If the required face amount of a security is impaired by the payment of a claim, the license holder shall restore the security to the required face amount not later than the 60th day after the date of impairment.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.110. SECURITY: DURATION. The department shall maintain on file a security other than a bond canceled as provided by Section 1201.109(a) until the later of:

(1) the second anniversary of the date the manufacturer, retailer, broker, or installer ceases doing business; or

(2) the date the director determines that a claim does not exist against the security.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. [3361](#)), Sec. 3.11, eff. September 1, 2013.

Sec. 1201.111. EXCEPTIONS TO SECURITY AND INSTRUCTION REQUIREMENTS. (a) Notwithstanding any other provision of this chapter, a state or national bank, state or federal savings and loan association, federal savings bank, or state or federal credit union engaged in the business of selling, exchanging, or lease-purchasing or offering for sale, exchange, or lease-purchase manufactured homes that the institution has acquired through repossession of collateral is not required to attend a course of instruction or file a bond or other security to be licensed as a retailer.

(b) A licensed retailer is not required to file a bond or other security to be licensed as a broker or installer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

## Sec. 1201.113. CERTIFICATION AND CONTINUING EDUCATION PROGRAMS.

(a) The board shall approve or administer continuing education programs for licensees under this chapter. A continuing education program must be at least eight hours long and must include the current rules of the department and such other matters as the board may deem relevant.

(b) Completion of an approved or administered continuing education course described by Subsection (a) is a prerequisite to renewal of a license.

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 13

Without reference to the amendment of this subsection, this subsection was repealed by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 73(a)(3), eff. January 1, 2008.

(c) No test shall be given in relation to any continuing education program.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 863, Sec. 73(a)(3), eff. January 1, 2008.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 863, Sec. 73(a)(3), eff. January 1, 2008.

(f) Repealed by Acts 2007, 80th Leg., R.S., Ch. 863, Sec. 73(a)(3), eff. January 1, 2008.

(g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 863, Sec. 73(a)(3), eff. January 1, 2008.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 338, Sec. 5, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 5, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 13, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 73(a)(3), eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 4, eff. September 1, 2009.

Sec. 1201.114. LICENSE EXPIRATION. Any license under this chapter is valid for two years. A license may be renewed as provided by the director. A person whose license has been suspended or revoked or whose license has expired may not engage in activities that require a license until the license has been reinstated or renewed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.254(a), eff.

Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 6, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 14, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 5, eff. September 1, 2009.

Sec. 1201.115. NOTICE OF LICENSE EXPIRATION. Not later than the 30th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.254(a), eff. Sept. 1, 2003.

Sec. 1201.116. PROCEDURE FOR LICENSE RENEWAL. (a) The department shall renew a license if, before the expiration date of the license, the department receives the renewal application and payment of the required fee as well as the cost required under Section 1201.1031.

(b) If the department needs additional information for the renewal application or verification of continuing insurance or bond coverage, the license holder must provide the requested information or verification not later than the 20th day after the date of receipt of notice from the department.

(c) The renewal license expires on the second anniversary of the date the license was renewed.



(d) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(e) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(f) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.254(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. [2238](#)), Sec. 6, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. [3361](#)), Sec. 3.12, eff. September 1, 2013.

Sec. 1201.117. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without fulfilling the instruction requirements of Section 1201.104(a).

(b) The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.254(a), eff. Sept. 1, 2003.

Sec. 1201.118. RULES RELATING TO CERTAIN PERSONS. The board shall adopt rules providing for additional review and scrutiny of any application for an initial or renewal license that involves a person who has previously:

(1) been found in a final order to have participated in one or more violations of this chapter that served as grounds for the suspension or revocation of a license;

(2) been found to have engaged in activity subject to this chapter without possessing the required license;

(3) caused the trust fund to incur unreimbursed payments or claims; or

(4) failed to abide by the terms of a final order, including the payment of any assessed administrative penalties.

Added by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 15, eff. January 1, 2008.

#### **SUBCHAPTER D. PRACTICE**

Sec. 1201.1505. DEPOSIT ON SPECIALLY ORDERED MANUFACTURED HOMES. A retailer may require a deposit on a specially ordered manufactured home.

Added by Acts 2003, 78th Leg., ch. 338, Sec. 10, eff. June 18, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 16, eff. January 1, 2008.

Sec. 1201.151. REFUNDS. (a) Except as otherwise provided by this section, a retailer must refund a consumer's deposit not later than the 15th day after the date that a written request for the refund is received from the consumer.

(b) The deposit may be retained only if:

(1) the consumer specially orders from the manufacturer a manufactured home that is not in the retailer's inventory;

(2) the home conforms to the specifications of the special order and any representations made to the consumer;

(3) the consumer fails or refuses to accept delivery and installation of the home by the retailer; and

(4) the consumer was given conspicuous written notice of the requirements for retaining the deposit.

(c) The retailer may not retain more than five percent of the estimated cash price of the specially ordered home and must refund any amount that exceeds five percent.

(d) This section does not apply to:

(1) a deposit held in escrow in a real estate transaction;

or

(2) money stated to be a down payment in an executed retail sales contract.

(e) A deposit becomes a down payment upon execution of a binding written agreement. Thereafter, if the consumer exercises a right of rescission, the retailer shall, not later than the 15th day after the date of the rescission, refund to the consumer all money and other consideration received from the consumer, without offset or deduction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 7, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 17, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 18, eff. January 1, 2008.

Sec. 1201.152. VOIDABLE CONTRACT. (a) If a retailer purchases a new manufactured home from an unlicensed manufacturer in violation of Section 1201.505, a consumer's contract with the retailer for the purchase, exchange, or lease-purchase of the home is voidable until the second anniversary of the date of purchase, exchange, or lease-purchase of the home.

(b) If an unlicensed retailer, broker, or installer enters into a contract with a consumer concerning a manufactured home, the consumer may void the contract until the second anniversary of the date of purchase of the home.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.1521. RESCISSION OF CONTRACT FOR SALE, EXCHANGE, OR LEASE-PURCHASE OF HOME. (a) A person who acquires a manufactured home from or through a licensee by purchase, exchange, or lease-purchase may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge.

(b) Subject to rules adopted by the board, a consumer may waive a right of rescission in the event of a bona fide emergency. Such

rules shall, to the extent practical, be modeled on the federal rules for the waiver of a right of rescission under 12 C.F.R. Part 226.

Added by Acts 2003, 78th Leg., ch. 338, Sec. 10, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 19, eff. January 1, 2008.

Sec. 1201.153. FORMALDEHYDE HEALTH NOTICE. (a) A retailer or manufacturer may not transfer ownership of a HUD-code manufactured home or otherwise sell, assign, or convey a HUD-code manufactured home to a consumer unless the retailer or manufacturer delivers to the consumer a formaldehyde health notice, subject to the director's rules concerning the notice.

(b) The notice must be delivered before the execution of a mutually binding sales agreement or retail installment sales contract.

(c) The notice must:

(1) contain the information required by the United States Department of Housing and Urban Development; and

(2) be of the type, size, and format required by the director.

(d) A retailer or manufacturer may not vary the content or form of the notice.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 338, Sec. 6, eff. June 18, 2003.

Sec. 1201.154. SUFFICIENCY OF FORMALDEHYDE HEALTH NOTICE; RETAILER AND MANUFACTURER COMPLIANCE. (a) The formaldehyde health notice required by Section 1201.153 is sufficient, as a matter of law, to advise a consumer of the risks of occupying a HUD-code manufactured home.

(b) The consumer's written acknowledgement of the receipt of the notice is conclusive proof of the delivery of the notice and the posting of the notice in compliance with federal regulations.

(c) A retailer's or manufacturer's compliance with United States Department of Housing and Urban Development regulations and the director's rules concerning the notice is conclusive proof that:

(1) the consumer received sufficient notice of the risks of occupying the home; and

(2) the home is habitable with respect to formaldehyde emissions.

(d) A retailer's or manufacturer's compliance, from September 1, 1981, to September 1, 1985, with Section 1201.153 and the revised formaldehyde warning as adopted by the department is conclusive proof that:

(1) the consumer received sufficient notice of the risks of occupying the home; and

(2) the home is habitable with respect to formaldehyde emissions.

(e) A retailer's or manufacturer's knowing and wilful failure to comply with the regulations and rules described by Subsection (c) is conclusive proof that:

(1) the retailer or manufacturer breached the duty to notify the consumer about formaldehyde; and

(2) the home is not habitable.

(f) A retailer's or manufacturer's knowing and wilful failure, from September 1, 1981, to September 1, 1985, to comply with Section 1201.153 and the revised formaldehyde warning as adopted by the department is conclusive proof that:

(1) the retailer or manufacturer breached the duty to notify the consumer about formaldehyde; and

(2) the home is not habitable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.155. DISCLAIMER OF IMPLIED WARRANTY. The seller's proper provision of the warranties and notices as required by Subchapter H or J is a valid disclaimer of an implied warranty of fitness for a particular purpose or of merchantability as described by Chapter 2, Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.156. ADVERTISEMENT AS OFFER. An advertisement relating to manufactured housing is an offer to sell, exchange, or lease-purchase manufactured housing to consumers.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.157. RETAILER AS WAREHOUSEMAN. (a) A licensed retailer is a "warehouseman" as defined by Section 7.102, Business & Commerce Code, for the storage of manufactured homes for hire.

(b) The provisions of the Business & Commerce Code relating to the storage of goods for hire apply to a licensed retailer acting as a warehouseman.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.158. SALESPERSON. A licensed salesperson may work only for the salesperson's sponsoring retailer or broker.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 20, eff. January 1, 2008.

Sec. 1201.159. BROKER. (a) Except as provided by Section 1201.456, a broker shall ensure that the seller gives the buyer the applicable disclosures and warranties that the buyer would have received if the buyer had purchased the manufactured home through a licensed retailer.

(b) A person is not required to be a broker licensed under this chapter but may be required to be a real estate broker or salesperson licensed under Chapter 1101 if:

- (1) the manufactured home is attached; and
- (2) the home is offered as real property.

(c) A broker shall provide any person who engages the broker's services with a written disclosure of which interests in the transaction, if any, the broker represents.

(d) If the seller is required to possess a license by this chapter, a broker may assist in the sale of a manufactured home only if that seller has a current license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 7, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 8, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 21, eff. January 1, 2008.

Sec. 1201.161. TRANSPORTATION OF MANUFACTURED HOUSING. (a) Notwithstanding any other statute or rule or ordinance, a licensed retailer or licensed installer is not required to obtain a permit, certificate, or license or pay a fee to transport manufactured housing to the place of installation except as required by the Texas Department of Motor Vehicles under Subchapter E, Chapter 623, Transportation Code.

(b) The department shall cooperate with the Texas Department of Motor Vehicles by providing current lists of licensed manufacturers, retailers, and installers.

(c) The Texas Department of Motor Vehicles shall send the department monthly:

(1) a copy of each permit issued in the preceding month for the movement of manufactured housing on the highways; or

(2) a list of the permits issued in the preceding month and the information on the permits.

(d) Unless the information provided for in Subsection (c) is provided electronically, the department shall pay the reasonable cost of providing the copies or the list and information under Subsection (c).

(e) The copies and lists to be provided under this section may be provided electronically.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 22, eff. January 1, 2008.

Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 98, eff. September 1, 2011.

Sec. 1201.162. DISCLOSURE BY RETAILER AND LENDER. (a) Before the completion of a credit application or more than one day before

entering into any agreement for a sale, exchange, or the exercise of the lease purchase option that will not be financed, the retailer must provide to the consumer a written disclosure in the form promulgated by the board. The disclosure shall be in at least 12-point type and must address matters of concern relating to costs and obligations that may be associated with home ownership, matters to be considered in making financing decisions, related costs that may arise when purchasing a manufactured home, and such other matters as the board may deem appropriate to promote informed purchase, financing, and related decisions regarding the acquisition and ownership of a manufactured home. The form shall also conspicuously disclose the consumer's right of rescission.

(b) A federally insured financial institution or lender approved or authorized by the United States Department of Housing and Urban Development as a mortgagee with direct endorsement underwriting authority that fully complies with federal Truth in Lending disclosures concerning the terms of a manufactured housing transaction is exempt from the disclosure provisions of this section.

(c) The right of rescission described in Subsection (a) shall apply only to the sale transaction between the retailer and the consumer. Failure by the retailer to comply with the disclosure provisions of this section does not affect the validity of a subsequent conveyance or transfer of title of a manufactured home or otherwise impair a title or lien position of a person other than the retailer. The consumer shall continue to have the right of rescission with regard to the retailer until the end of the third day after the retailer delivers a copy of the disclosure required by Subsection (a). The consumer's execution of a signed receipt of a copy of the disclosure required by Subsection (a) shall constitute conclusive proof of the delivery of the disclosure. If the consumer grants a person other than the retailer a lien on the manufactured home, the right of rescission shall immediately cease on the filing of the lien with the department.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.255(a), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 338, Sec. 8, 51, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 23, eff. January 1, 2008.



Sec. 1201.164. ADVANCE COPY OF CONTRACT AND DISCLOSURE STATEMENTS; OFFER BY RETAILER. (a) In a transaction that is to be financed and that will not be subject to the federal Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533) and its implementing regulations, a retailer shall deliver to a consumer at least 24 hours before the contract is fully executed the contract, with all required information included, signed by the retailer. The delivery of the contract, with all required information included, signed by the retailer constitutes a firm offer by the retailer. Except as provided for in Subsection (b), the consumer may accept the offer not earlier than 24 hours after the delivery of the contract. If the consumer has not accepted the offer within 72 hours after the delivery of the contract, the retailer may withdraw the offer.

(b) The consumer may modify or waive the right to rescind and the deadlines for disclosures before the execution of the contract that are provided by Subsection (a) if the consumer determines that the purchase of the manufactured home is needed to meet a bona fide personal emergency. If the consumer has a bona fide personal emergency that necessitates the immediate purchase of the manufactured home, the consumer shall give the retailer a dated written statement that describes the emergency, specifically modifies or waives the notice periods and any right of rescission, and bears the signature of all of the consumers entitled to the disclosures and right of rescission. In such event the retailer shall immediately give the consumer all of the disclosures required by this code and sell the manufactured home without the required waiting periods or the right of rescission. Printed forms for this purpose are prohibited except in a county that has been declared by the governor to be a major disaster area. If the governor declares a county to be a major disaster area, the retailer may use printed forms promulgated by the department. This exception shall expire one year after the county has been declared a major disaster area.

Added by Acts 2003, 78th Leg., ch. 338, Sec. 10, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. [2438](#)), Sec. 10, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1284 (H.B. [2438](#)), Sec. 34(1), eff. June

18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 24, eff. January 1, 2008.

**SUBCHAPTER E. MANUFACTURED HOME STATEMENTS OF OWNERSHIP AND LOCATION**

Sec. 1201.201. DEFINITIONS. In this subchapter:

(1) "Debtor" has the meaning assigned by Section 9.102, Business & Commerce Code.

(2) "Document of title" means a written instrument issued solely by and under the authority of the director before September 1, 2003, that provides the information required by Section 1201.205, as that section existed before that date. Beginning September 1, 2003, a document of title is considered to be a statement of ownership and location and may be exchanged for a statement of ownership and location as provided by Section 1201.214.

(3) "First retail sale" means a consumer's initial acquisition of a new manufactured home from a retailer by purchase, exchange, or lease-purchase. The term includes a bargain, sale, transfer, or delivery of a manufactured home for which the director has not previously issued a statement of ownership and location, with intent to pass an interest in the home, other than a lien.

(4) "Identification number" means the number permanently attached to or imprinted on a manufactured home or section of the home as prescribed by department rule.

(5) "Inventory" has the meaning assigned by Section 9.102, Business & Commerce Code.

(6) "Lien" means:

(A) a security interest created by a lease, conditional sales contract, deed of trust, chattel mortgage, trust receipt, reservation of title, or other security agreement if an interest other than an absolute title is sought to be held or given in a manufactured home; or

(B) a lien on a manufactured home created by the constitution or a statute.

(7) "Manufacturer's certificate" means a document that meets the requirements prescribed by Section 1201.204.

(8) "Secured party" has the meaning assigned by Section 9.102, Business & Commerce Code.

(9) "Security agreement" has the meaning assigned by

Section 9.102, Business & Commerce Code.

(10) "Security interest" has the meaning assigned by Section 1.201, Business & Commerce Code.

(11) "Subsequent sale" means a bargain, sale, transfer, or delivery of a manufactured home, with intent to pass an interest in the home, other than a lien, from one person to another after the first retail sale and initial issuance of a statement of ownership and location.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 12, eff. June 18, 2003.

Sec. 1201.202. APPLICATION OF CHAPTER TO CERTAIN CERTIFICATES OF TITLE OR LIENS. (a) This chapter applies to a certificate of title to a manufactured home issued before March 1, 1982, under Chapter 501, Transportation Code.

(b) A lien recorded before March 1, 1982, with the Texas Department of Transportation or a predecessor agency of that department is recorded with the department for the purposes of this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.203. FORMS; RULES. (a) The board shall adopt rules and forms relating to:

- (1) the manufacturer's certificate;
- (2) the statement of ownership and location;
- (3) the application for a statement of ownership and location; and
- (4) the issuance of an initial or revised statement of ownership.

(b) The board shall adopt rules for the documenting of the ownership and location of a manufactured home that has been previously owned in this state or another state. The rules must protect a lienholder recorded with the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 13, eff. June 18,

2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 25, eff. January 1, 2008.

Sec. 1201.204. MANUFACTURER'S CERTIFICATE. (a) A manufacturer's certificate must show:

(1) on a form prescribed by the director, the original transfer of a manufactured home from the manufacturer to the retailer; and

(2) on a form prescribed by the director, each subsequent transfer of a manufactured home between retailers and from retailer to owner, if the transfer from retailer to owner involves a completed application for the issuance of a statement of ownership and location.

(b) At the first retail sale of a manufactured home, a manufacturer's certificate automatically converts to a document that does not evidence any ownership interest in the manufactured home described in the document. A security interest in inventory evidenced by a properly recorded inventory finance lien automatically converts to a security interest in proceeds and cash proceeds.

(c) After the first retail sale of a manufactured home, the retailer must submit the original manufacturer's certificate for that home to the department. If an application for an initial statement of ownership is made without the required manufacturer's certificate and the retailer does not provide it as required, the department shall, on or before the issuance of the requested statement of ownership and location, send written notice to each party currently reflected on the department's records as having a recorded lien on the inventory of that retailer with respect to that home. Failure to include the original manufacturer's certificate with such an application does not impair a consumer's ability to obtain, on submittal of an otherwise complete application, a statement of ownership and location free and clear of any liens other than liens created by or consented to by the consumer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 338, Sec. 13, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 25, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 7, eff. September 1, 2009.

Sec. 1201.205. STATEMENT OF OWNERSHIP AND LOCATION FORM. A statement of ownership and location must be evidenced by a board-approved form issued by the department setting forth:

(1) the name and address of the seller and the name and, if it is different from the location of the home, the mailing address of the new owner;

(2) the manufacturer's name and address and any model designation, if available;

(3) in accordance with the board's rules:

(A) the outside dimensions of the manufactured home when installed for occupancy, as measured to the nearest one-half foot at the base of the home, exclusive of the tongue or other towing device; and

(B) the approximate square footage of the home when installed for occupancy;

(4) the identification number for each section or module of the home;

(5) the physical address where the home is installed for occupancy, including the name of the county, and, if it is different from the physical address, the mailing address of the owner of the home;

(6) in chronological order of recordation, the date of each lien, other than a tax lien, on the home and the name and address of each lienholder, or, if a lien is not recorded, a statement of that fact;

(7) a statement regarding tax liens as follows:

"On January 1st of each year, a new tax lien comes into existence on a manufactured home in favor of each taxing unit having jurisdiction where the home is actually located on January 1st. In order to be enforced, any such lien must be recorded with the Texas Department of Housing and Community Affairs - Manufactured Housing Division as provided by law. You may check that division's records through its website or contact that division to learn any recorded

tax liens. To find out about the amount of any unpaid tax liabilities, contact the tax office for the county where the home was actually located on January 1st of that year.";

(8) a statement that if two or more eligible persons, as determined by Section 1201.213, file with the application for the issuance of a statement of ownership and location an agreement signed by all the persons providing that the home is to be held jointly with a right of survivorship, the director shall issue the statement of ownership and location in all the names;

(9) the location of the home;

(10) a statement of whether the owner has elected to treat the home as real property or personal property;

(11) statements of whether the home is a salvaged manufactured home and whether the home is reserved for business use only; and

(12) any other information the board requires.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 338, Sec. 13, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 25, eff. January 1, 2008.

Sec. 1201.2055. ELECTION BY OWNER. (a) In completing an application for the issuance of a statement of ownership and location, an owner of a manufactured home shall indicate whether the owner elects to treat the home as personal property or real property. An owner may elect to treat a manufactured home as real property only if the home is attached to:

(1) real property that is owned by the owner of the home;

or

(2) land leased to the owner of the home under a long-term lease, as defined by department rule.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 77, Sec. 15(2), eff. September 1, 2009.

(c) If the department issues a statement of ownership and location to an owner who has elected to treat a manufactured home as personal property, the statement of ownership and location on file

with the department is evidence of ownership of the home. A lien, charge, or other encumbrance on a home treated as personal property may be made only by filing the appropriate document with the department.

(d) If an owner elects to treat a manufactured home as real property, the department shall issue to the owner a certified copy of the statement of ownership and location that on its face reflects that the owner has elected to treat the manufactured home as real property at the location listed on the statement. Not later than the 60th day after the date the department issues a certified copy of the statement of ownership and location to the owner, the owner must:

(1) file the certified copy in the real property records of the county in which the home is located; and

(2) notify the department and the chief appraiser of the applicable appraisal district that the certified copy has been filed.

(e) A real property election for a manufactured home is not considered to be perfected until a certified copy of the statement of ownership and location has been filed and the department and the chief appraiser of the applicable appraisal district have been notified of the filing as provided by Subsection (d).

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 46, Sec. 8(1), eff. September 1, 2011.

(g) After a real property election is perfected under Subsection (e):

(1) the home is considered to be real property for all purposes; and

(2) no additional issuance of a statement of ownership and location is required with respect to the manufactured home, unless:

(A) the home is moved from the location specified on the statement of ownership and location;

(B) the real property election is changed; or

(C) the use of the property is changed as described by Section 1201.216.

(h) The provisions of this chapter relating to the construction or installation of a manufactured home or to warranties for a manufactured home apply to a home regardless of whether the home is considered to be real or personal property.

(i) Notwithstanding the 60-day deadline specified in Subsection (d), if the closing of a mortgage loan to be secured by real property including the manufactured home is held, the loan is funded, and a

deed of trust covering the real property and all improvements on the property is recorded and the licensed title company or attorney who closed the loan failed to complete the conversion to real property in accordance with this chapter, the holder or servicer of the loan may apply for a statement of ownership and location electing real property status, obtain a certified copy of the statement of ownership and location, and make the necessary filings and notifications to complete such conversion at any time provided that:

(1) the record owner of the home, as reflected on the department's records, has been given at least 60 days' prior written notice at:

(A) the location of the home and, if it is different, the mailing address of the owner as specified in the department records; and

(B) any other location the holder or servicer knows or believes, after a reasonable inquiry, to be an address where the owner may have been or is receiving mail or is an address of record;

(2) such notification shall be given by certified mail; and

(3) the department by rule shall require evidence that the holder or servicer requesting such after-the-fact completion of a real property election has complied with the requirements of this subsection.

Added by Acts 2003, 78th Leg., ch. 338, Sec. 14, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 11, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 26, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 15(2), eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 8(1), eff. September 1, 2011.

Sec. 1201.206. APPLICATION FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) At the first retail sale of a manufactured home, the retailer shall provide for the installation of



the home and ensure that the application for the issuance of a statement of ownership and location is properly completed. The consumer shall return the completed application to the retailer. In accordance with Section 1201.204, the retailer shall surrender to the department the original manufacturer's statement of origin at the same time that the retailer applies for the first statement of ownership and location.

(b) Not later than the 60th day after the date of the retail sale, the retailer shall provide to the department the completed application for the issuance of a statement of ownership and location. If for any reason the retailer does not timely comply with the requirements of this subsection, the consumer may apply for the issuance of the statement.

(c) Not later than the 60th day after the date of each subsequent sale or transfer of a home that is considered to be personal property, the seller or transferor shall provide to the department a completed application for the issuance of a new statement of ownership and location. If for any reason the seller or transferor does not timely comply with the requirements of this subsection, the consumer may apply for the issuance of the statement.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 46, Sec. 8(2), eff. September 1, 2011.

(e) Ownership of a manufactured home does not pass or vest at a sale or transfer of the home until a completed application for the issuance of a statement of ownership and location is filed with the department.

(f) If the owner of a manufactured home relocates the home, the owner shall apply for the issuance of a new statement of ownership and location not later than the 60th day after the date the home is relocated. The department shall require that the owner submit evidence that the home was relocated in accordance with the requirements of the Texas Department of Motor Vehicles.

(g) When an application for the issuance of a statement of ownership and location for a used manufactured home that is not in a retailer's inventory is filed, a statement from the tax assessor-collector for the taxing unit having power to tax the manufactured home shall also be filed with the department. The statement from the tax assessor-collector must indicate that there are no personal property taxes due on the manufactured home that may have accrued on each January 1 that falls within the 18 months before the date of the

sale.

(h) If a person selling a manufactured home to a consumer for residential use fails to file with the department the application for the issuance of a statement of ownership and location and the appropriate filing fee before the 61st day after the date of the sale, the department may assess a fee of at least \$100 against the seller. The department shall have the authority to enforce the collection of any fee from the seller through judicial means. The department shall place on the application for the issuance of a statement of ownership and location the following legend in a clear and conspicuous manner:

"THE FILING OF AN APPLICATION FOR THE ISSUANCE OF A STATEMENT OF OWNERSHIP AND LOCATION LATER THAN SIXTY (60) DAYS AFTER THE DATE OF A SALE TO A CONSUMER FOR RESIDENTIAL USE MAY RESULT IN A FEE OF UP TO ONE HUNDRED DOLLARS (\$100.00). ANY SUCH APPLICATION THAT IS SUBMITTED LATE MAY BE DELAYED UNTIL THE FEE IS PAID IN FULL."

(i) When a properly completed notice of installation on the department's promulgated form is filed that relates to a secondary move, the notice must be accompanied by either:

(1) one true and correct copy of the original notice of installation; or

(2) a certification that a true and correct copy of the notice of installation has been provided to the chief appraiser for the county in which the home was installed; the delivery of the copy of the notice to the chief appraiser may be accomplished either by certified mail or by electronic mailing of the electronically reproduced document in a commonly readable format.

(i-1) If the method specified in Subsection (i)(2) is used to report the installation, the department may adopt a discounted fee for the filing of the notice of installation.

(j) In addition to providing each chief appraiser the monthly report required by Section 1201.220, the department shall, on request, provide the tax collector one copy of any requested reported notice of installation.

(k) Notwithstanding any provision in this chapter to the contrary, if a person has acquired a manufactured home and the owner of record or any intervening owners of liens or equitable interests cannot be located to assist in documenting the chain of title, the department may issue a statement of ownership and location to the person claiming ownership if the person can provide a supporting

affidavit describing the chain of title and such reasonable supporting proof as the director may require.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 15, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 12, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 34(1), eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 27, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 8, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 8(2), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 4, eff. September 1, 2013.

Sec. 1201.207. ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION.

(a) Except as provided for in Subsection (a-1), the department shall process any completed application for the issuance of a statement of ownership and location not later than the 15th working day after the date the application is received by the department. If the department rejects an application, the department shall provide a clear and complete explanation of the reason for the rejection and instructions on how to cure any defects, if possible.

(a-1) For the period immediately following June 30 of each year, the department shall, except for applications relating to new manufactured homes and applications accompanied by a tax certificate, cease issuing statements of ownership and location until all tax liens filed with the department before June 30 have been processed and either recorded or rejected. During this period the department will post on its website a notice as to when it is anticipated that processing statements of ownership and location will resume and when it is anticipated that such processing will be within the 15-working-day time frame provided by Subsection (a).

(b) If the department issues a statement of ownership and

location for a manufactured home, the department shall maintain a record of the issuance in its electronic records and shall mail a copy to the owner and each lienholder.

(c) Except with respect to any change in use, servicing of a loan on a manufactured home, release of a lien on a manufactured home by an authorized lienholder, or change in ownership of a lien on a manufactured home, but subject to Section 1201.2075, if the department has issued a statement of ownership and location for a manufactured home, the department may issue a subsequent statement of ownership and location for the home only if all parties reflected in the department's records as having an interest in the manufactured home give their written consent or release their interest, either in writing or by operation of law, or the department has followed the procedures provided by Section 1201.206(k) to document ownership and lien status. Once the department issues a statement of ownership and location, the department shall not alter the record of the ownership or lien status, other than to change the record to accurately reflect the proper owner's or lienholder's identity or to release a lien if an authorized lienholder files with the department a request for that release, of a manufactured home for any activity occurring before the issuance of the statement of ownership and location without either the written permission of the owner of record for the manufactured home, their legal representative, or a court order.

(d) Notwithstanding any other provision of this chapter, if the consumer purchases a new manufactured home from a licensed retailer in the ordinary course of business, whether or not a statement of ownership and location has been issued for the manufactured home, the consumer is a bona fide purchaser for value without notice and is entitled to ownership of the manufactured home free and clear of all liens and to a statement of ownership and location reflecting the same on payment by the consumer of the purchase price to the retailer. If there is an existing lien on the new manufactured home perfected with the department, the owner of the lien is entitled to recover the value of the lien from the retailer.

(e) Notwithstanding any other provision of this chapter, if the consumer purchases a used manufactured home from a retailer in the ordinary course of business, the consumer takes the manufactured home free and clear of any liens created by the selling retailer even if they are recorded.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 15, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 13, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 27, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 9, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 2, eff. September 1, 2011.

Sec. 1201.2075. CONVERSION FROM PERSONAL PROPERTY TO REAL PROPERTY. (a) Except as provided by Subsection (b) or Section 1201.206(k), the department may not issue a statement of ownership and location for a manufactured home that is being converted from personal property to real property until:

(1) each lien on the home is released by the lienholder; or  
(2) each lienholder gives written consent, to be placed on file with the department.

(b) The department may issue a statement of ownership and location before the release of any liens or the consent of any lienholders as required by this section if the department releases a certified copy of the statement to:

(1) a licensed title insurance company that has issued a commitment to issue a title insurance policy covering all prior liens on the home in connection with a loan that the title company has closed; or

(2) a federally insured financial institution or licensed attorney who has obtained from a licensed title insurance company a title insurance policy covering all prior liens on the home.

Added by Acts 2003, 78th Leg., ch. 338, Sec. 16, eff. June 18, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 27, eff. January 1, 2008.

Sec. 1201.2076. CONVERSION FROM REAL PROPERTY TO PERSONAL PROPERTY. (a) The department may not issue a statement of ownership and location for a manufactured home that is being converted from real property to personal property until the department has inspected the home and determined that it is habitable and:

(1) each lien, including a tax lien, on the home is released by the lienholder; or

(2) each lienholder, including a taxing unit, gives written consent, to be placed on file with the department.

(b) For the purposes of Subsection (a)(1), the department may rely on a commitment for title insurance, a title insurance policy, or a lawyer's title opinion to determine that any liens on real property have been released.

Added by Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 14, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 27, eff. January 1, 2008.

Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 3, eff. September 1, 2011.

Sec. 1201.208. PAYMENT OF TAXES REQUIRED FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) Any licensee who sells, exchanges, or lease-purchases a new manufactured home to any consumer is responsible for the payment of all required sales and use tax on such home.

(b) If it is determined that a new manufactured home was sold, exchanged, or lease-purchased without the required sales and use tax being paid, the payment shall be made from the fund, up to the available penal amount of the licensee's bond or the remaining balance of the security for the license, and a claim for reimbursement shall be filed with the licensee's surety or the amount deducted from the security for the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 338, Sec. 17, 18, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 27, eff.

January 1, 2008.

Sec. 1201.209. GROUND FOR REFUSAL TO ISSUE OR FOR SUSPENSION OR REVOCATION OF STATEMENT OF OWNERSHIP AND LOCATION. The department may not refuse to issue a statement of ownership and location and may not suspend or revoke a statement of ownership and location unless:

(1) the application for issuance of the statement of ownership and location contains a false or fraudulent statement, the applicant failed to provide information required by the director, or the applicant is not entitled to issuance of the statement of ownership and location;

(2) the director has reason to believe that the manufactured home is stolen or unlawfully converted, or the issuance of a statement of ownership and location would defraud the owner or a lienholder of the manufactured home;

(3) the director has reason to believe that the manufactured home is salvaged, and an application for the issuance of a new statement of ownership and location that indicates that the home is salvaged has not been filed;

(4) the required fee has not been paid;

(5) the state sales and use tax has not been paid in accordance with Chapter 158, Tax Code, and Section 1201.208; or

(6) a tax lien was filed and recorded under Section 1201.219 and the lien has not been extinguished.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 338, Sec. 19, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.256(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 15, eff. June 18, 2005.

Sec. 1201.210. PROCEDURE FOR REFUSAL TO ISSUE OR SUSPENSION OR REVOCATION OF STATEMENT OF OWNERSHIP AND LOCATION. (a) If the director refuses to issue or suspends or revokes a statement of ownership and location, the director shall give, by certified mail, written notice of that action to:

(1) the seller and purchaser or transferor and transferee, as applicable; and

(2) the holder of a lien or security interest of record.

(b) An action by the director under Subsection (a) is a contested case under Chapter 2001, Government Code.

(c) A notice of appeal and request for hearing must be filed with the director not later than the 30th day after the date of notice of the director's action. If appeal is not timely made, the revocation or suspension described in the notice of the director's action becomes final.

(d) Until a revocation or suspension has become final, the department shall place a hold on any activity relating to the statement of ownership and location other than the recordation of liens, including tax liens.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 20, 21, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 28, eff. January 1, 2008.

Sec. 1201.212. TRANSFER OF OWNERSHIP BY OPERATION OF LAW. (a) If the ownership of a manufactured home in this state is transferred by inheritance, devise, or bequest, by bankruptcy, receivership, judicial sale, or other involuntary divestiture of ownership, or by any other operation of law, the department shall issue a new statement of ownership and location after receiving a certified copy of:

(1) the order or bill of sale from an officer making a judicial sale;

(2) the order appointing a temporary administrator;

(3) the probate proceedings;

(4) the letters testamentary or the letters of administration; or

(5) if administration of an estate is not necessary, an affidavit by all of the heirs at law showing:

(A) that administration is not necessary; and

(B) the name in which the statement of ownership and



location should be issued.

(b) The department may issue a new statement of ownership and location in the name of the purchaser at a foreclosure sale:

(1) for a lien or security interest foreclosed according to law by nonjudicial means, if the lienholder or secured party files an affidavit showing the nonjudicial foreclosure according to law; or

(2) for a foreclosed constitutional or statutory lien, if the person entitled to the lien files an affidavit showing the creation of the lien and the resulting divestiture of title according to law.

(c) The department shall issue a new statement of ownership and location to a survivor if:

(1) an agreement providing for a right of survivorship is signed by two or more eligible persons, as determined under Section 1201.213; and

(2) on the death of one of the persons, the department is provided with a copy of the death certificate of that person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 22, eff. June 18, 2003.

Sec. 1201.213. ELIGIBILITY TO SIGN RIGHT OF SURVIVORSHIP AGREEMENT. (a) A person is eligible to sign a right of survivorship agreement under this subchapter if the person:

(1) is married and the spouse of the signing person is the only other party to the agreement;

(2) is unmarried and attests to that unmarried status by affidavit; or

(3) is married and provides the department with an affidavit from the signing person's spouse that attests that the signing person's interest in the manufactured home is the signing person's separate property.

(b) If the statement of ownership and location is being issued in connection with the sale of the home, the seller is not eligible to sign a right of survivorship agreement under this subchapter unless the seller is the child, grandchild, parent, grandparent, or sibling of each other person signing the agreement. A family relationship required by this subsection may be a relationship

established by adoption.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 23, eff. June 18, 2003.

Sec. 1201.214. DOCUMENT OF TITLE. (a) Effective September 1, 2003, all outstanding documents of title are considered to be statements of ownership and location.

(b) An owner or lienholder may provide to the department a document of title and any additional information required by the department and request that the department issue a statement of ownership and location to replace the document of title. The department shall mail to the owner or lienholder a copy of the statement of ownership and location issued under this subsection.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 863, Sec. 73(a)(5), eff. January 1, 2008.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 863, Sec. 73(a)(5), eff. January 1, 2008.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 24, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 29, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 73(a)(5), eff. January 1, 2008.

Sec. 1201.216. CHANGE IN USE. (a) If the owner of a manufactured home notifies the department that the owner intends to treat the home as real property or to reserve its use for a business purpose or salvage, the department shall indicate on the statement of ownership and location for the home that:

(1) the owner of the home has elected to treat the home as real property or to reserve its use for a business purpose or salvage; and

(2) except as provided by Section 1201.2055(h), the home is no longer a manufactured home for purposes of regulation under this

chapter or of recordation of liens, including tax liens.

(b) On application and subject to Sections 1201.2076 and 1201.209, the department shall issue for the structure described in the application a new statement of ownership and location restoring the structure's designation as a manufactured home only after an inspection and determination that the structure is habitable as provided by Section 1201.453.

(c) Repealed by Acts 2005, 79th Leg., Ch. 1284, Sec. 34(1), eff. June 18, 2005.

(d) Repealed by Acts 2005, 79th Leg., Ch. 1284, Sec. 34(1), eff. June 18, 2005.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 24, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 16, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 34(1), eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 30, eff. January 1, 2008.

Sec. 1201.217. MANUFACTURED HOME ABANDONED. (a) The owner of real property on which a manufactured home owned by another is located may declare the home abandoned as provided by this section if:

(1) the home has been continuously unoccupied for at least four months; and

(2) any indebtedness secured by the home or related to a lease agreement between the owner of the real property and the owner of the home is considered delinquent.

(b) Before declaring a manufactured home abandoned, the owner of real property on which the home is located must send a notice of intent to declare the home abandoned to the record owner of the home, all lienholders at the addresses listed on the home's statement of ownership and location on file with the department, the tax collector for each taxing unit that imposes ad valorem taxes on the real property where the home is located, and any intervening owners of

liens or equitable interests. The notice must include the address where the home is currently located. If the person giving such notice knows that a person to whom the notice is being given no longer resides and is no longer receiving mail at a known address, a reasonable effort shall be made to locate the person and give the person notice at an address where the person is receiving mail. Mailing of the notice by certified mail, return receipt requested, postage prepaid, to the persons required to be notified by this subsection constitutes conclusive proof of compliance with this subsection.

(c) On receipt of a notice of intent to declare a manufactured home abandoned, the record owner of the home, a lienholder, a tax assessor-collector for a taxing unit that imposes ad valorem taxes on the real property on which the home is located, or an intervening owner of a lien or equitable interest may enter the real property on which the home is located to remove the home. The real property owner must disclose to the record owner, lienholder, tax assessor-collector, or intervening owner seeking to remove the home the location of the home and grant the person reasonable access to the home. A person removing a home is responsible to the real property owner for any damage to the real property resulting from the removal of the home.

(d) If the manufactured home remains on the real property for at least 45 days after the date the notice is postmarked:

- (1) all liens on the home are extinguished; and
- (2) the real property owner may declare the home abandoned and may apply to the department for a statement of ownership and location listing the real property owner as the owner of the manufactured home.

(e) A new statement of ownership and location issued by the department under this section transfers, free of any liens, if there is evidence of United States Postal Service return receipt from all lienholders, title to the manufactured home to the real property owner.

(f) This section does not apply if the person who owns the real property on which the manufactured home is located and who is declaring that the home is abandoned, or any person who is related to or affiliated with that person, has now, or has ever owned, an interest in the manufactured home.

Added by Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 17, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 31, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 10, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 4, eff. September 1, 2011.

Sec. 1201.219. PERFECTION, EFFECT, AND RELEASE OF LIENS. (a) A lien on manufactured homes in inventory is perfected only by filing the lien with the department on the required form. Once perfected, the lien applies to the manufactured homes in the inventory as well as to any proceeds from the sale of those homes. The department may suspend or revoke the license of a retailer who fails to satisfy a perfected inventory lien.

(b) Except as provided by Subsection (a) and subject to Subsection (d), a lien on a manufactured home is perfected only by filing with the department the notice of lien on a form provided by the department. The department shall disclose on its website the date of each lien filing. A lien recorded with the department has priority, according to the chronological order of recordation, over another lien or claim against the manufactured home.

(b-1) Notwithstanding any other law, a lien perfected with the department may be released only by filing a request for the release with the department on the form provided by the department or by following the department's procedures for electronic lien release on the department's Internet website. This subsection does not apply to the release of a tax lien perfected with the department.

(c) Notwithstanding any other provision of this section or any other law, the filing of a lien security agreement on the inventory of a retailer does not prevent a buyer in the ordinary course of business, as defined by Section 1.201, Business & Commerce Code, from acquiring good and marketable title free of that lien, and the department may not consider that lien for the purpose of title issuance.

(d) A tax lien on a manufactured home not held in a retailer's inventory is perfected only by filing with the department the notice

of the tax lien on a form provided by the department in accordance with the requirements of Chapter 32, Tax Code. The form must require the disclosure of the original dollar amount of the tax lien and the name and address of the person in whose name the manufactured home is listed on the tax roll. The department shall disclose on its Internet website the date of each tax lien filing, the original amount of the tax lien claimed by each filing, and the fact that the amount shown does not include additional sums, including interest, penalties, and attorney's fees. The statement required by Section 1201.205(7) is notice to all persons that the tax lien exists. A tax lien recorded with the department has priority over another lien or claim against the manufactured home. Tax liens shall be filed by the tax collector for any taxing unit having the power to tax the manufactured home. A single filing by a tax collector is a filing for all the taxing units for which the tax collector is empowered to collect.

(e) A tax lien perfected with the department may be released only by:

- (1) filing with the department a tax certificate or tax paid receipt in accordance with Section 32.015, Tax Code;
- (2) filing a request for the release with the department on the form provided by the department;
- (3) following the department's procedures for electronic tax lien release on the department's Internet website;
- (4) a tax collector filing a tax lien release with the department as provided by Subsection (f); or
- (5) the department in the manner provided by Subsection (h).

(f) On request by any person, a tax collector shall file a tax lien release with the department if the four-year statute of limitations to file a suit for collection of personal property taxes in Section 33.05(a)(1), Tax Code, has expired.

(g) The department may request that a tax collector confirm that no tax suit has been timely filed on any manufactured home tax lien more than four years in delinquency. The department may make a request under this subsection electronically, and a taxing authority may provide notice of the existence or absence of a timely filed tax suit electronically.

(h) The department shall remove from a manufactured home's statement of ownership and location a reference to any tax lien

delinquent more than four years for which no suit has been timely filed in accordance with Section 33.05(a)(1), Tax Code, if:

- (1) a tax collector confirms no suit has been filed; or
- (2) the department:

(A) has submitted to a tax collector two requests under Subsection (g) sent not fewer than 15 days apart; and

(B) has not received any response from the tax collector before the 60th day after the tax collector's receipt of the second request.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 25, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 18, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 34(1), eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 32, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 11, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 5, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1095 (H.B. 3613), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1095 (H.B. 3613), Sec. 3, eff. September 1, 2013.

Sec. 1201.220. REPORT TO CHIEF APPRAISER. The department shall make available in electronic format, or in hard-copy format on request, to each chief appraiser of an appraisal district in this state a monthly report that, for each manufactured home reported as having been installed during the preceding month in the county for which the district was established and for each manufactured home previously installed in the county for which a transfer of ownership was recorded by the issuance of a statement of ownership and location during the preceding month, lists:

- (1) the name of the owner of the home;

- (2) the name of the manufacturer of the home, if available;
- (3) the model designation of the home, if available;
- (4) the identification number of each section or module of the home;
- (5) the address or location where the home was reported as installed; and
- (6) the reported date of the installation of the home.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 338, Sec. 26, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.257(b), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 32, eff. January 1, 2008.

Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 6, eff. September 1, 2011.

Sec. 1201.221. INFORMATION ON OWNERSHIP AND TAX LIEN. (a) On written request, the department shall provide information held by the department on:

- (1) the current ownership and location of a manufactured home; and
- (2) the existence of all tax liens on that home for which notice has been filed with the department.

(b) A request under Subsection (a) must contain:

- (1) the name of the owner of the home as reflected on the statement of ownership and location; or
- (2) the identification number of the home.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 338, Sec. 27, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 19, eff. June 18, 2005.

Sec. 1201.222. CERTAIN MANUFACTURED HOMES CONSIDERED REAL PROPERTY. (a) A manufactured home is treated as real property only



if:

(1) the owner of the home has elected to treat the home as real property as provided by Section 1201.2055; and

(2) a certified copy of the statement of ownership and location for the home has been filed in the real property records of the county in which the home is located.

(b) Repealed by Acts 2005, 79th Leg., Ch. 1284, Sec. 34(1), eff. June 18, 2005.

(c) Installation of a manufactured home considered to be real property under this chapter must occur in a manner that satisfies the lending requirements of the Federal Housing Administration (FHA), Fannie Mae, or Freddie Mac for long-term mortgage loans or for FHA insurance. The installation of a new manufactured home must meet, in addition to applicable state standards, the manufacturer's specifications required to validate the manufacturer's warranty.

(d) A civil action to enjoin a violation of this section may be brought by:

(1) a purchaser in the county in which the violation occurs; or

(2) the county in which the violation occurs.

(e) Repealed by Acts 2003, 78th Leg., ch. 338, Sec. 51.

(f) This section does not require a retailer or retailer's agent to obtain a license under Chapter 1101.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.258(a), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 338, Sec. 28, 51, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. [2438](#)), Sec. 34(1), eff. June 18, 2005.

#### **SUBCHAPTER F. STANDARDS**

Sec. 1201.251. STANDARDS AND REQUIREMENTS ADOPTED BY BOARD.

(a) The board shall adopt standards and requirements for:

(1) the installation and construction of manufactured housing that are reasonably necessary to protect the health, safety, and welfare of the occupants and the public; and

(2) the construction of HUD-code manufactured homes in compliance with the federal standards and requirements established

under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.).

(b) The standards and requirements adopted under Subsection (a)(1) are the standards code.

(c) The standards adopted under Subsection (a)(1) must ensure that manufactured housing installed on both permanent and nonpermanent foundation systems resists overturning and lateral movement, according to the design loads for the particular wind zone for which the housing was constructed.

(d) In order to ensure that the determinations required by this section are properly made by qualified persons:

(1) the board's rules may provide for the approval of foundation systems and devices that have been approved by licensed engineers; and

(2) any generic installation standards promulgated by rule shall first be reviewed by an advisory committee established by the board comprised of representatives of manufacturers, installers, and manufacturers of stabilization systems or devices, including one or more licensed engineers.

(e) The advisory committee established by Subsection (d) shall make a report to the board setting forth each comment and concern over any proposed rules. The members of the committee shall have no personal liability for providing this advice.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 33, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 34, eff. January 1, 2008.

Sec. 1201.252. POWER OF LOCAL GOVERNMENTAL UNIT TO ADOPT DIFFERENT STANDARD. (a) A local governmental unit of this state may not adopt a standard for the construction or installation of manufactured housing in the local governmental unit that is different from a standard adopted by the board unless, after a hearing, the board expressly approves the proposed standard.

(b) To adopt a different standard under this section, the local governmental unit must demonstrate that public health and safety

require the different standard.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 35, eff. January 1, 2008.

Sec. 1201.253. HEARING ON STANDARD OR REQUIREMENT. The director shall publish notice and conduct a public hearing before:

(1) adopting a standard or requirement authorized by this subchapter;

(2) amending a standard authorized by this subchapter; or

(3) approving a standard proposed by a local governmental unit under Section 1201.252.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 36, eff. January 1, 2008.

Sec. 1201.254. EFFECTIVE DATE OF REQUIREMENT OR STANDARD. Each requirement or standard that is adopted, modified, amended, or repealed by the board must state its effective date.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 36, eff. January 1, 2008.

Sec. 1201.255. INSTALLATION OF MANUFACTURED HOUSING. (a) Except as authorized under Section 1201.252, manufactured housing that is installed must be installed in compliance with the standards and rules adopted and orders issued by the department. An uninstalled manufactured home may not be occupied for any purpose.

(b) An installer may not install a used manufactured home at a location on a site that has evidence of ponding, runoff under heavy rains, or bare uncompacted soil unless the installer first obtains the owner's signature on a form promulgated by the board disclosing

that such conditions may contribute to problems with the stabilization system for that manufactured home, including possible damage to that home, and the owner accepts that risk.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 36, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 12, eff. September 1, 2009.

Sec. 1201.256. WIND ZONE REGULATIONS. (a) Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, and Willacy counties are in Wind Zone II. All other counties are in Wind Zone I.

(b) To be installed in a Wind Zone II county, a manufactured home constructed on or after September 1, 1997, must meet the Wind Zone II standards adopted by the United States Department of Housing and Urban Development.

(c) A manufactured home constructed before September 1, 1997, may be installed in a Wind Zone I or II county without restriction.

(d) A retailer who sells a manufactured home constructed on or after September 1, 1997, to Wind Zone I standards must, before the execution of a mutually binding sales agreement or retail installment sales contract, give the consumer notice that:

(1) the home was not designed or constructed to withstand a hurricane force wind occurring in a Wind Zone II or III area;

(2) installation of the home is not permitted in a Wind Zone II county in this state; and

(3) another state may prohibit installation of the home in a Wind Zone II or III area.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### **SUBCHAPTER G. INSPECTIONS AND MONITORING**

Sec. 1201.301. STATE INSPECTORS. (a) The director may employ state inspectors to:

(1) carry out the functions the department is required to perform under this chapter;

(2) implement this chapter; and  
 (3) enforce the rules adopted and orders issued under this chapter.

(b) In enforcing this chapter, the director may authorize a state inspector to travel inside or outside of the state to inspect a licensee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 37, eff. January 1, 2008.

Sec. 1201.302. INSPECTION BY LOCAL GOVERNMENTAL UNITS. (a) To ensure that a manufactured home sold or installed in this state complies with the standards code, the director may by contract provide for a federal agency or an agency or political subdivision of this state or another state to perform an inspection or inspection program under this chapter or under rules adopted by the board.

(b) On request, the department shall authorize a local governmental unit in this state to perform an inspection or enforcement activity related to the construction of a foundation system or the erection or installation of manufactured housing at a homesite under a contract or other official designation and rules adopted by the board. The department may withdraw the authorization if the local governmental unit fails to follow the rules, interpretations, and written instructions of the department.

(c) The department:

(1) shall advise each local governmental unit biennially in writing of the program for contracting installation inspections;

(2) shall encourage local building inspection officials to perform enforcement and inspection activities for manufactured housing installed in the local governmental unit; and

(3) may establish cooperative inspection training programs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 38, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 39, eff. January 1, 2008.

For contingent expiration of Subsections (c)-(g), see Subsection (g).

Sec. 1201.303. INSPECTIONS. (a) The director may inspect manufactured homes at the state border and adopt rules necessary for the inspection of manufactured homes entering this state to ensure:

(1) compliance with:

(A) the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.);

(B) the standards code; and

(C) the rules adopted by the director; and

(2) payment of any use tax owed to the state.

(b) The department shall establish an installation inspection program in which at least 75 percent of installed manufactured homes are inspected on a sample basis for compliance with the standards and rules adopted and orders issued by the director. The program must place priority on inspecting multisection homes and homes installed in Wind Zone II counties.

(c) On or after January 1, 2015, the director by rule shall establish a third-party installation inspection program to supplement the inspections of the department if the department is not able to inspect at least 75 percent of manufactured homes installed in each of the calendar years 2012, 2013, and 2014.

(d) The third-party installation inspection program established under Subsection (c) must:

(1) establish qualifications for third-party inspectors to participate in the program;

(2) require third-party inspectors to register with the department before participating in the program;

(3) establish a biennial registration and renewal process for third-party inspectors;

(4) require the list of registered third-party inspectors to be posted on the department's Internet website;

(5) establish clear processes governing inspection fees and payment to third-party inspectors;

(6) establish the maximum inspection fee that may be charged to a consumer;

(7) require a third-party inspection to occur not later than the 14th day after the date of installation of the manufactured home;

(8) establish a process for a retailer or broker to contract, as part of the sale of a new or used manufactured home, with an independent third-party inspector to inspect the installation of the home;

(9) establish a process for an installer to schedule an inspection for each consumer-to-consumer sale where a home is reinstalled;

(10) if a violation is noted in an inspection, require the installer to:

(A) remedy the violations noted;

(B) have the home reinspected at the installer's expense; and

(C) certify to the department that all violations have been corrected;

(11) require an inspector to report inspection results to the retailer, installer, and the department;

(12) require all persons receiving inspection results under Subdivision (11) to maintain a record of the results at least until the end of the installation warranty period;

(13) authorize the department to charge a filing fee and an inspection fee for third-party inspections;

(14) authorize the department to continue to conduct no-charge complaint inspections under Section 1201.355 on request, but only after an initial installation inspection is completed;

(15) establish procedures to revoke the registration of inspectors who fail to comply with rules adopted under this section; and

(16) require the department to notify the relevant state agency if the department revokes an inspector registration based on a violation that is relevant to a license issued to the applicable person by another state agency.

(e) Not later than January 1, 2015, the department shall submit to the Legislative Budget Board, the Governor's Office of Budget, Planning, and Policy, and the standing committee of each house of the legislature having primary jurisdiction over housing a report concerning whether the department inspected at least 75 percent of manufactured homes installed in each of the calendar years 2012, 2013, and 2014.

(f) Not later than December 1, 2015, the director shall adopt rules as necessary to implement Subsections (c) and (d) if the

department did not inspect at least 75 percent of manufactured homes installed in each of the calendar years 2012, 2013, and 2014. Not later than January 1, 2016, the department shall begin registering third-party inspectors under Subsections (c) and (d) if the department inspections did not occur as described by this subsection.

(g) If the department is not required to establish a third-party installation inspection program as provided by Subsection (c), Subsections (c), (d), (e), and (f) and this subsection expire September 1, 2016.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 74.07, eff. September 28, 2011.

Sec. 1201.304. INSPECTION SEARCH WARRANTS. If required by law or otherwise necessary, the director may obtain an inspection search warrant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.305. PROGRAM MONITORING. The director may enter into a contract with the United States Department of Housing and Urban Development or its designee to monitor the programs of that department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### **SUBCHAPTER H. WARRANTIES**

Sec. 1201.351. MANUFACTURER'S WARRANTY. (a) The manufacturer of a new HUD-code manufactured home shall warrant, in a separate written document, that:

(1) the home is constructed or assembled in accordance with all building codes, standards, requirements, and regulations prescribed by the United States Department of Housing and Urban Development under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.); and

(2) the home and all appliances and equipment included in



the home are free from defects in materials or workmanship except for cosmetic defects.

(b) The manufacturer's warranty is in effect until at least the first anniversary of the date of initial installation of the home at the consumer's homesite or the closing of the consumer's purchase or acquisition of an already installed new home, whichever is later.

(c) At the time the manufacturer delivers the home to the retailer, the manufacturer shall also deliver to the retailer:

- (1) the manufacturer's warranty; and
- (2) the warranties given by the manufacturers of appliances or equipment installed in the home.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 40, eff. January 1, 2008.

Sec. 1201.352. RETAILER'S WARRANTY ON A NEW HUD-CODE MANUFACTURED HOME. (a) The retailer of a new HUD-code manufactured home shall warrant to the consumer in writing that:

(1) installation of the home at the initial homesite was or will be, as applicable, completed in accordance with all department standards, rules, orders, and requirements; and

(2) appliances and equipment included with the sale of the home and installed by the retailer are or will be:

(A) installed in accordance with the instructions or specifications of the manufacturers of the appliances or equipment; and

(B) free from defects in materials or workmanship.

The warranty may expressly disclaim or limit any warranty regarding cosmetic defects.

(b) The retailer's warranty on a new HUD-code manufactured home is in effect until the first anniversary of the later of the date of initial installation of the home at the consumer's homesite or the closing of the consumer's purchase or acquisition of the home.

(c) Before the signing of a binding retail installment sales contract or other binding purchase agreement on a new HUD-code manufactured home, the retailer must give the consumer a copy of:

- (1) the manufacturer's warranty;

(2) the retailer's warranty;

(3) the warranties given by the manufacturers of appliances or equipment included with the home; and

(4) the name and address of the manufacturer or retailer to whom the consumer is to give notice of a warranty service request.

(d) Not later than the 30th day after the installation of a new HUD-code manufactured home, the retailer shall deliver to the consumer a copy of the warranty given by the licensed installer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 20, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 41, eff. January 1, 2008.

Sec. 1201.353. NOTICE OF NEED FOR WARRANTY SERVICE. (a) The consumer shall give written notice to the manufacturer, retailer, or installer, as applicable, of a need for warranty service or repairs.

(b) Written notice to the department is deemed to be notice to the manufacturer, retailer, or installer commencing three business days after receipt and forwarding of the notice by the department to the licensee by regular mail or electronic mail of a scanned copy of the notice.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 41, eff. January 1, 2008.

Sec. 1201.354. CORRECTIVE ACTION REQUIRED. The manufacturer, retailer, or installer, as applicable, shall take appropriate corrective action within a reasonable period as required by department rules to fulfill the written warranty obligation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 41, eff. January 1, 2008.

Sec. 1201.355. CONSUMER COMPLAINT HOME INSPECTION. (a) If the manufacturer, retailer, or installer does not provide the consumer with proper warranty service, the consumer may, at any time, request the department to perform a consumer complaint home inspection. The department may not charge a fee for the inspection.

(b) On payment of the required inspection fee, the manufacturer, retailer, or installer may request the department to perform a consumer complaint home inspection if the manufacturer, retailer, or installer:

(1) believes the consumer's complaints are not covered by the warranty of the manufacturer, retailer, or installer, as applicable;

(2) believes that the warranty service was properly provided; or

(3) disputes responsibility concerning the warranty obligation.

(c) The department shall perform a consumer complaint home inspection not later than the 30th day after the date of receipt of a request for the inspection.

(d) Notwithstanding any other provision of this section, the department may make an inspection at any time if it believes that there is a reasonable possibility that a condition exists that would present an imminent threat to health or safety.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 41, eff. January 1, 2008.

Sec. 1201.356. REPORT AND ORDER; AMENDMENT; COMPLIANCE. (a) Not later than the 10th day after the date of a consumer complaint home inspection, the department shall send a written report and any order to the consumer, manufacturer, retailer, and installer by certified mail, return receipt requested.

(b) The report shall specify:

(1) each of the consumer's complaints; and

(2) whether the complaint is covered by the manufacturer's,

retailer's, or installer's warranty and, if so, which of those warranties.

(c) The director shall issue to the manufacturer, retailer, or installer an appropriate order for corrective action by the manufacturer, retailer, or installer specifying a reasonable period for completion of the corrective action. With regard to new manufactured homes, both the installer and the retailer are responsible for the warranty of installation. If the department determines that a complaint is covered by the installation warranty, the director shall issue the order to the installer for the corrective action. If the installer fails to perform the corrective action, the installer shall be subject to the provisions of Section 1201.357. In that instance, the director shall issue the same order for corrective action to the retailer with a new time frame not to exceed 10 days unless additional time is needed for compliance upon a showing of good cause. If the retailer is compelled to perform corrective action because of the failure of the installer to comply with the director's order, the retailer may seek reimbursement from the installer. The period for the performance of any required warranty work may be shortened by the director as much as is feasible if the warranty work is believed necessary to address a possible imminent threat to health or safety.

(d) The department may issue an amended report and order if all parties receive notice of and are given an opportunity to respond to that report and order. The amended report and order supersede the initial report and order.

(e) The manufacturer, retailer, or installer shall comply with the report and order of the director.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 42, eff. January 1, 2008.

Sec. 1201.357. FAILURE TO PROVIDE WARRANTY SERVICE. (a) If the manufacturer, retailer, or installer, as applicable, fails to provide warranty service within a period specified by the director, the manufacturer, retailer, or installer must show good cause in writing as to why the manufacturer, retailer, or installer failed to

provide the service.

(b) If the manufacturer, retailer, or installer, as applicable, fails or refuses to provide warranty service in accordance with the department order under Section 1201.356, the director shall hold an informal meeting at which the manufacturer, retailer, or installer must show cause as to why the manufacturer's, retailer's, or installer's license should not be suspended or revoked and at which the consumer may express the person's views. Following the meeting, the director shall either resolve the matter by agreed order, dismiss the matter if no violation is found to have occurred, or institute an administrative action, which may include license suspension or revocation, the assessment of administrative penalties, or a combination of such actions.

(b-1) As authorized by Section 1201.6041, the director may order a manufacturer, retailer, or installer, as applicable, to pay a refund directly to a consumer as part of an agreed order described by Subsection (b) instead of or in addition to instituting an administrative action under this chapter.

(c) If the manufacturer, retailer, or installer is unable to provide warranty service in accordance with the department order under Section 1201.356 as a result of an action of the consumer, the manufacturer, retailer, or installer must make that allegation in the written statement required by Subsection (a). The department shall investigate the allegation, and if the department determines that the allegation is credible, the department shall issue a new order specifying the date and time of the proposed corrective action. The department shall send the order to the consumer and the manufacturer, retailer, or installer, as applicable, by certified mail, return receipt requested. If the consumer refuses to comply with the department's new order, the manufacturer, retailer, or installer, as applicable:

(1) is discharged from the obligations imposed by the relevant department orders;

(2) has no liability to the consumer with regard to that warranty; and

(3) is not subject to an action by the department for failure to provide warranty service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 21, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 43, eff. January 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.13, eff. September 1, 2013.

Sec. 1201.358. FAILURE TO SHOW GOOD CAUSE; HEARING RESULTS.

(a) Failure by the manufacturer, retailer, or installer to show good cause under Section 1201.357(a) is a sufficient basis for suspension or revocation of the manufacturer's, retailer's, or installer's license.

(b) If the director determines that an order was incorrect regarding a warranty obligation, the director shall issue a final order stating the correct warranty obligation and the right of the manufacturer, retailer, or installer to indemnification from one of the other parties.

(c) The director may issue an order:

(1) directing a manufacturer, retailer, or installer whose license is not revoked, suspended, or subject to an administrative sanction under Section 1201.357(b) and who is not out of business to perform the warranty obligation of a manufacturer, retailer, or installer whose license is revoked, suspended, or subject to an administrative sanction under Section 1201.357(b) or who is out of business; and

(2) giving the manufacturer, retailer, or installer performing the obligation the right of indemnification against another party.

(d) A manufacturer, retailer, or installer entitled to indemnification under this section is a consumer for purposes of Subchapter I and may recover actual damages from the trust fund.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 43, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 13, eff. September 1, 2009.

Sec. 1201.359. APPLICATION OF WARRANTIES IF HUD-CODE MANUFACTURED HOME MOVED. (a) The manufacturer's and retailer's warranties do not apply to any defect or damage caused by moving a new HUD-code manufactured home from the initial installation site.

(b) Conspicuous notice of the warranty exception under Subsection (a) must be given to the consumer at the time of sale.

(c) The warrantor has the burden of proof to show that the defect or damage is caused by the move.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.360. WARRANTY FOR HUD-CODE MANUFACTURED HOME PERMANENTLY ATTACHED TO REAL PROPERTY. (a) The seller of real property to which a new HUD-code manufactured home is permanently attached may give the initial purchaser a written warranty that combines the manufacturer's warranty and the retailer's warranty required by this subchapter if:

(1) the statement of ownership and location reflects that the owner has elected to treat the home as real property;

(2) the home is actually located where the statement of ownership and location reflects that it is located; and

(3) a certified copy of the statement of ownership and location has been filed in the real property records for the county in which the home is located.

(b) If a combination warranty is given under this section, the manufacturer and retailer are not required to give separate written warranties, but the manufacturer and retailer are jointly liable with the seller of the real property to the purchaser for the performance of their respective warranty obligations.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 30, eff. June 18, 2003.

Sec. 1201.361. INSTALLER'S WARRANTY. (a) For all installations, the installer shall give the manufactured home owner a written warranty that the installation of the home was performed in accordance with all department standards, rules, orders, and requirements. The warranty for the installation of a new HUD-code

manufactured home is to be given by the retailer, who is responsible for installation. If the retailer subcontracts this function to a licensed installer, the retailer and installer are jointly and severally responsible for performance of the warranty.

(b) The warranty must conspicuously disclose the requirement that the consumer notify the installer of any claim in writing in accordance with the terms of the warranty. Unless the warranty provides for a longer period, the installer or retailer has no obligation or liability under the person's warranty for any defect described in a written notice received from the consumer more than two years after the later of the date of purchase or the date of installation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 22, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 44, eff. January 1, 2008.

Sec. 1201.362. INSPECTIONS NOT LIMITED; CORRECTIONS. (a) Nothing in this chapter shall limit the ability of the department to inspect a manufactured home at any time.

(b) Notwithstanding the limitations and terms of any warranty, the director may, whenever the department identifies any aspect of an installation that does not conform to applicable requirements, order the licensee who performed the installation to correct it, or, if that licensee is no longer licensed, reassign correction to a licensed installer and reimburse the person from the fund for the costs of correction.

Added by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 45, eff. January 1, 2008.

#### **SUBCHAPTER I. MANUFACTURED HOMEOWNERS' RECOVERY TRUST FUND**

Sec. 1201.401. MANUFACTURED HOMEOWNERS' RECOVERY TRUST FUND. The manufactured homeowners' recovery trust fund is an account in the general revenue fund.



Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.402. ADMINISTRATION OF TRUST FUND. (a) The director shall administer the trust fund.

(b) The director is not required to file a bond or other security to serve as administrator of the trust fund.

(c) The trust fund, fees collected for the trust fund, and income earned from investment of the trust fund may be used only for the protection programs prescribed by this subchapter.

(d) Money in the trust fund may be invested and reinvested in the same manner as the funds of the Employees Retirement System of Texas. An investment may not be made that would impair the liquidity necessary to fund the protection programs prescribed by this subchapter. Income from the trust fund shall be deposited to the credit of the fund.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 46, eff. January 1, 2008.

Sec. 1201.403. AMOUNT RESERVED IN TRUST FUND; PAYMENT OF COSTS. (a) One million dollars shall be reserved in the trust fund for payment of valid consumer claims.

(b) Unless the balance of the trust fund is less than \$1 million, the costs of the director and the department in administering the trust fund, keeping books and records, investigating consumer complaints, and conducting the informal dispute resolution process shall be paid from the trust fund.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.404. CONSUMER COMPENSATION. (a) Except as otherwise provided by Subchapter C, the trust fund shall be paid directly to a consumer or, at the director's option, to a third party on behalf of a consumer to compensate a consumer who sustains actual damages resulting from an unsatisfied claim against a licensed manufacturer, retailer, broker, or installer if the unsatisfied claim results from

a violation of:

- (1) this chapter;
- (2) a rule adopted by the director;
- (3) the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.);
- (4) a rule or regulation of the United States Department of Housing and Urban Development; or
- (5) Subchapter E, Chapter 17, Business & Commerce Code.

(b) The trust fund and the director are not liable to the consumer if the trust fund does not have the money necessary to pay the actual damages determined to be payable. The director shall record the date and time of receipt of each verified complaint and, as money becomes available, pay the consumer whose claim is the earliest by date and time to have been found to be verified and properly payable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 47, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 14, eff. September 1, 2009.

Sec. 1201.405. LIMITATIONS ON CLAIMS. (a) The payment of actual damages is limited to the lesser of:

(1) the amount of actual, reasonable costs, not including attorney's fees, that the consumer has incurred or will incur to resolve the act or omission found to be a violation under Section 1201.404; or

(2) \$35,000.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 77, Sec. 15(3), eff. September 1, 2009.

(c) The trust fund is not liable for and the director may not pay:

(1) punitive, exemplary, double, or treble damages; or

(2) damages for pain and suffering, mental anguish, emotional distress, or other analogous tort claims.

(d) Notwithstanding other provisions of this subchapter, this subchapter does not apply to, and a consumer may not recover against

the trust fund as a result of, a claim against a license holder that results from a cause of action directly related to the sale, lease-purchase, exchange, brokerage, or installation of a manufactured home before September 1, 1987.

(e) In determining the amount of actual damages under this section, the director shall make an independent inquiry as to the damages actually incurred, unless the damages have been previously established through a contested trial.

(f) The trust fund is not liable for and the director may not pay:

(1) actual damages to reimburse an affiliate or related person of a licensee, except when the director issues an order under Sections 1201.358(b) and (c);

(2) actual damages to correct matters that are solely cosmetic in nature;

(3) for attorney's fees; or

(4) actual damages to address other matters, unless the matters involve:

(A) a breach of warranty;

(B) a failure to return or apply as agreed money received from a consumer or money for which the consumer was obligated; or

(C) the breach of an agreement to provide goods or services necessary to the safe and habitable use of a manufactured home such as steps, air conditioning, access to utilities, or access to sewage and wastewater treatment.

(g) The board by rule may place reasonable limits on the costs that may be approved for payment from the trust fund, including the costs of reassigned warranty work, and require consumers making claims that may be subject to reimbursement from the trust fund to provide estimates establishing that the cost will be reasonable. Such rules may also specify such procedures and requirements as the board may deem necessary and advisable for the administration of the trust fund.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 23, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 48, eff.

January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 15(3), eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 530 (S.B. 499), Sec. 1, eff. September 1, 2013.

Sec. 1201.406. PROCEDURE FOR RECOVERY FROM TRUST FUND. (a) To recover from the trust fund, a consumer must file a written, sworn complaint in the form required by the director not later than the second anniversary of:

(1) the date of the alleged act or omission causing the actual damages; or

(2) the date the act or omission is discovered or should reasonably have been discovered.

(b) On receipt of a verified complaint, the department shall:

(1) notify each appropriate license holder and the issuer of any surety bond issued in connection with their licenses; and

(2) investigate the claim and issue a preliminary determination, giving the consumer, the licensee, and any surety an opportunity to resolve the matter by agreement or to dispute the preliminary determination.

(c) If the matter being investigated is not resolved by agreement or is disputed by written notice to the director before the 31st day after the date of the preliminary determination, the preliminary determination shall automatically become final and the director shall make demand on the surety or deduct any payable amount of the claim from the licensee's security.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 49, eff. January 1, 2008.

Sec. 1201.407. DISAGREEMENT OF PARTIES; INFORMAL DISPUTE RESOLUTION PROCESS. (a) If a preliminary determination is disputed, the department shall conduct an informal dispute resolution process, including a home inspection if appropriate, to resolve the dispute.

(b) For a preliminary determination that has been disputed to

become final and valid, the department shall make any changes the director determines to be appropriate and issue another written preliminary determination as to the responsibility and liability of the manufacturer, retailer, broker, and installer.

(c) Before making a final determination, the department shall allow a license holder 10 days to comment on this preliminary determination.

(d) After consideration of the comments, if any, the director shall issue a final determination.

(e) The final determination may be appealed to the board on or before the 10th day after the date of its issuance by giving written notice to the director, who shall place the matter before the board at the next meeting held on a date for which the matter could be publicly posted as required by Chapter 551, Government Code.

(f) Any license holder or surety, as applicable, is bound by the department's final determination of responsibility and liability.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 49, eff. January 1, 2008.

Sec. 1201.409. PAYMENT BY SURETY OR FROM OTHER SECURITY. (a) Except as otherwise provided by Subchapter C, the trust fund shall be reimbursed by the surety on a bond or from other security filed under Subchapter C for the amount of a claim that is paid out of the trust fund by the director to a consumer in accordance with this subchapter.

(b) Payment by the surety or from the other security must be made not later than the 30th day after the date of notice from the director that a consumer claim has been paid.

(c) If payment to the trust fund of a claim is not made by the surety or from the other security in a timely manner, the attorney general shall file suit for recovery of the amount due the trust fund. Venue for the suit is in Travis County.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 50, eff. January 1, 2008.

Sec. 1201.410. INFORMATION ON RECOVERY FROM TRUST FUND. The director shall prepare information for notifying consumers of their rights to recover from the trust fund, shall post the information on the department's website, and shall make printed copies available on request.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 51, eff. January 1, 2008.

#### **SUBCHAPTER J. USED OR SALVAGED MANUFACTURED HOMES**

Sec. 1201.451. TRANSFER OF GOOD AND MARKETABLE TITLE REQUIRED.

(a) Except as otherwise provided by this subchapter, a person may not sell, exchange, or lease-purchase a used manufactured home without the appropriate transfer of good and marketable title to the home.

(b) Not later than the 60th day after the effective date of the transfer of ownership or the date the seller or transferor obtains possession of the necessary and properly executed documents, the seller or transferor shall forward to the purchaser or transferee the necessary, executed documents. If the seller or transferor fails to forward the documents on a timely basis, the purchaser or transferee may apply directly for the documents. On receipt of the documents, the purchaser or transferee shall apply for the issuance of a statement of ownership and location.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 338, Sec. 31, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 24, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 52, eff. January 1, 2008.

Sec. 1201.452. SEAL OR LABEL REQUIRED. (a) Except as

otherwise provided by this subchapter, a person may not sell, exchange, or lease-purchase or negotiate for the sale, exchange, or lease-purchase of a used manufactured home to a consumer unless the appropriate seal or label is attached to the home.

(b) If the home does not have the appropriate seal or label, the person must:

- (1) apply to the department for a seal; and
- (2) pay the fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 25, eff. June 18, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 7, eff. September 1, 2011.

Sec. 1201.453. HABITABILITY. Manufactured housing is habitable only if:

- (1) there is no defect or deterioration in or damage to the home that creates a dangerous situation;
- (2) the plumbing, heating, and electrical systems are in safe working order;
- (3) the walls, floor, and roof are:
  - (A) free from a substantial opening that was not designed; and
  - (B) structurally sound; and
- (4) all exterior doors and windows are in place and operate properly.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 53, eff. January 1, 2008.

Sec. 1201.454. HABITABILITY: PROHIBITED ALTERATION OR REPLACEMENT. A manufacturer, retailer, broker, installer, or lienholder may not repair or otherwise alter a used manufactured home or replace a component or system of a used manufactured home in a way that makes the home not habitable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.455. WRITTEN DISCLOSURE AND WARRANTY OF HABITABILITY REQUIRED. (a) Except as otherwise provided by this subchapter, a person may not sell, exchange, or lease-purchase a used manufactured home to a consumer for use as a dwelling without providing:

(1) a written disclosure, on a form not to exceed two pages prescribed by the department, describing the condition of the home and of any appliances that are included in the home; and

(2) a written warranty that the home is and will remain habitable until the 60th day after the later of the installation date or the date of the purchase agreement.

(b) Unless, not later than the 65th day after the later of the installation date or the date of the sale, exchange, or lease-purchase agreement, the consumer notifies the seller in writing of a defect that makes the home not habitable, any obligation or liability of the seller under this subchapter is terminated. The warranty must conspicuously disclose that notice requirement to the consumer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 26, eff. June 18, 2005.

Sec. 1201.456. HABITABILITY: EXCEPTION TO WARRANTY REQUIREMENT. The warranty requirement imposed by Section 1201.455 does not apply to a sale, exchange, or lease-purchase of a used manufactured home from one consumer to another.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.457. HABITABILITY: CHANGE TO OR FROM BUSINESS USE OR SALVAGE. (a) If the sale, exchange, or lease-purchase of a used manufactured home is to a purchaser for the purchaser's business use, the home is not required to be habitable. The purchaser of the home shall file with the department an application for the issuance of a statement of ownership and location indicating that the home is reserved for business use.



(b) If a used manufactured home is reserved for business use or salvaged, a person may not knowingly allow any person to occupy or use the home as a dwelling unless the director issues a new statement of ownership and location indicating that the home is no longer reserved for business use or salvage. On the purchaser's application to the department for issuance of a new statement of ownership and location, the department shall inspect the home and, if the department determines that the home is habitable, issue a new statement of ownership and location.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 32, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 27, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 28, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 54, eff. January 1, 2008.

Sec. 1201.458. HABITABILITY: EXCEPTION FOR CERTAIN GOVERNMENTAL OR NONPROFIT ENTITIES. (a) Notwithstanding any other provision of this subchapter and on a written application by the purchaser or transferee, the director may give express written authorization to a licensed retailer to sell or exchange a used manufactured home that is not or may not be habitable to or with a governmental housing agency or authority or to a nonprofit organization that provides housing for the homeless.

(b) As a part of the application, the purchaser or transferee must certify to the receipt of a written notice that the home is not or may not be habitable. The consumer protection division of the attorney general's office shall prepare the form of the notice, which must be approved by the director.

(c) The purchaser or transferee may not occupy or allow occupation of the home as a dwelling until the completion of any repair necessary to make the home habitable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.459. COMPLIANCE NOT REQUIRED FOR SALE FOR COLLECTION OF DELINQUENT TAXES. (a) In selling a manufactured home to collect delinquent taxes, a tax assessor-collector is not required to comply with this subchapter or another provision of this chapter relating to the sale of a used manufactured home.

(b) If a home does not have a serial number, seal, or label, the tax appraiser or tax assessor-collector may apply to the department for a seal if the tax appraiser or assessor-collector assumes full responsibility for the affixation of a seal to the home and the seal is actually affixed on the home.

(c) A seal issued to a tax appraiser or tax assessor-collector is for identification purposes only and does not imply that:

(1) the home is habitable; or

(2) a purchaser of the home at a tax sale may obtain a new statement of ownership and location from the department without an inspection for habitability.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 338, Sec. 33, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 55, eff. January 1, 2008.

Sec. 1201.460. COMPLIANCE NOT REQUIRED FOR LIENHOLDER. (a) A holder of a lien recorded on the statement of ownership and location of a manufactured home that has not been converted to real property who sells, exchanges, or lease-purchases a repossessed manufactured home covered by that statement of ownership and location is not required to comply with this chapter if the sale, exchange, or lease-purchase is:

(1) to or through a licensed retailer; or

(2) to a purchaser for the purchaser's business use.

(b) If the sale, exchange, or lease-purchase of the repossessed manufactured home is to or through a licensed retailer, the retailer is responsible and liable for compliance with this chapter and department rules. The lienholder may not be joined as a party in any litigation relating to the sale, exchange, or lease-purchase of the home.

(c) If the sale, exchange, or lease-purchase of the repossessed manufactured home is to a purchaser for the purchaser's business use, the lienholder shall apply to the department for the issuance of a new statement of ownership and location indicating that the home is reserved for business use.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 34, eff. June 18, 2003.

Sec. 1201.461. SALVAGED MANUFACTURED HOME; CRIMINAL PENALTY.

(a) For the purposes of this chapter, a manufactured home is salvaged if the home is scrapped, dismantled, or destroyed or if an insurance company pays the full insured value of the home. The reasonableness of the insurer's judgment that the cost of repairing the home would exceed the full insured value of the home does not affect whether the home is salvaged.

(b) A person who owns a used manufactured home that is salvaged shall apply to the director for the issuance of a new statement of ownership and location that indicates that the home is salvaged.

(c) If a new manufactured home is salvaged, the retailer shall remove the label and surrender the label and the manufacturer's certificate under Section 1201.204 to the director for issuance of a statement of ownership and location that indicates that the home is salvaged.

(d) A person may not sell, convey, or otherwise transfer to a consumer in this state a manufactured home that is salvaged. A salvaged manufactured home may be sold only to a licensed retailer.

(e) A person may not repair, rebuild, or otherwise alter a salvaged manufactured home unless the person complies with the rules of the director relating to rebuilding a salvaged manufactured home.

(f) If a salvaged manufactured home is rebuilt in accordance with this chapter and the rules of the director, the director shall, on application, issue a new statement of ownership and location that indicates that the home is no longer salvaged.

(g) A county or other unit of local government that identifies a manufactured home within its jurisdiction that has been declared salvage may impose on that home such inspection, correction, and other requirements as it could apply if the home were not a

manufactured home.

(h) A licensee may not participate in the sale, exchange, lease-purchase, or installation for use as a dwelling of a manufactured home that is salvage and that has not been repaired in accordance with this chapter and the department's rules. An act that is prohibited by this subsection is deemed to be a practice that constitutes an imminent threat to health or safety and is subject to the imposition of penalties and other sanctions provided for by this chapter. A violation of this subsection is a Class B misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 35, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 56, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 57, eff. January 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.14, eff. September 1, 2013.

#### **SUBCHAPTER K. PROHIBITED PRACTICES**

Sec. 1201.501. PROHIBITED CONSTRUCTION BY MANUFACTURER. A manufacturer may not construct a HUD-code manufactured home in this state for sale or resale unless the manufacturer:

- (1) supplies the department with proof of acceptance by a design approval primary inspection agency authorized by the United States Department of Housing and Urban Development;
- (2) purchases the required labels; and
- (3) has the home inspected by an in-plant inspection agency authorized by the United States Department of Housing and Urban Development.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.502. PROHIBITED SHIPPING BY MANUFACTURER. A manufacturer may not ship a HUD-code manufactured home into this state for sale or resale unless the manufacturer complies with:

- (1) all requirements of the National Manufactured Housing

Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.); and

(2) all standards, rules, and regulations of the United States Department of Housing and Urban Development.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.503. PROHIBITED ALTERATION. Before the sale to a consumer of a new manufactured home to which a label has been attached and before installation of the home, a manufacturer, retailer, broker, or installer may not alter the home or cause the home to be altered without obtaining prior written approval from a licensed engineer and providing evidence of such approval to the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 58, eff. January 1, 2008.

Sec. 1201.504. PROHIBITED SALE, EXCHANGE, OR LEASE-PURCHASE.

(a) A manufacturer may not sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase a manufactured home to a person in this state who is not a licensed retailer.

(b) A retailer may not sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase a new HUD-code manufactured home that was constructed by a manufacturer who was not licensed by the department at the time of construction.

(c) A retailer, broker, or salesperson may not sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase a manufactured home to a consumer in this state for use as a dwelling unless the appropriate seal or label is attached to the home.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.505. PROHIBITED PURCHASE. A retailer may not purchase for resale to a consumer a new HUD-code manufactured home that was constructed by a manufacturer who was not licensed by the

department at the time of construction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.506. CREDIT. (a) A retailer or broker:

(1) shall comply with Subtitles A and B, Title 4, Finance Code, and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.);

(2) may not advertise an interest rate or finance charge that is not expressed as an annual percentage rate; and

(3) shall comply with all applicable provisions of the Finance Code.

(b) A violation of this section does not create a cause of action or claim for damages for a consumer. The consumer may not recover more than the penalties provided by Subtitles A and B, Title 4, Finance Code, and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 59, eff. January 1, 2008.

Sec. 1201.507. FALSE OR MISLEADING INFORMATION. (a) A retailer or salesperson may not:

(1) assist a consumer in preparing or providing false or misleading information on a document related to the purchase or financing of a manufactured home; or

(2) submit to a credit underwriter or lending institution information known to be false or misleading.

(b) A salesperson may not submit to a retailer information known to be false or misleading.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.508. DOWN PAYMENT. (a) A retailer may not state payment of a down payment in a retail installment sales contract or other credit document unless the retailer has actually received the entire down payment at the time of execution of the document.

(b) If part of the down payment is consideration other than cash, including a loan or trade-in, the retailer must expressly state that fact in the retail installment sales contract or other credit document.

(c) A cash down payment may not be derived in any part from a rebate or other consideration received by, or to be given to, the consumer from the retailer or manufacturer.

(d) The retailer may not require a consumer to make a down payment on the acquisition of a manufactured home from the retailer's inventory until the time the installment contract is executed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 36, eff. June 18, 2003.

Sec. 1201.509. PROHIBITED RETENTION OF DEPOSIT. A retailer, salesperson, or agent of the retailer may not refuse to refund a consumer's deposit except as provided by Section 1201.151.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.510. PROHIBITED INSTALLATION OF AIR CONDITIONING EQUIPMENT. A retailer or an installer may not contract with a person for the installation of air conditioning equipment in connection with the installation of a manufactured home unless the person is licensed by the state as an air conditioning and refrigeration contractor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.511. PROHIBITED REAL ESTATE TRANSACTION. (a) This section applies to a transaction in which a manufactured home is sold as personal property.

(b) A retailer may not sell, represent for sale, or offer for sale real property in conjunction with the sale of a manufactured home except as authorized by the department consistent with Chapter 1101.

(c) A retailer, broker, or salesperson or a person acting on behalf of a retailer or broker may not receive or accept compensation

or consideration of any kind from the seller of the real property or a person acting on the seller's behalf. No part of the down payment on the purchase of the manufactured home or any fees, points, or other charges or "buy-downs" may be paid from money from the seller of the real property or a person acting on the seller's behalf.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 37, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.260(a), eff. Sept. 1, 2003.

Sec. 1201.512. PROHIBITED DELIVERY OR INSTALLATION OF MANUFACTURED HOME. (a) In this section, "homesite" means the land on which the foundation system for a manufactured home is or will be located.

(b) Unless the retailer, broker, or salesperson complies with the requirements of the National Flood Insurance Act of 1968 (42 U.S.C. Section 4001 et seq.), Subchapter I, Chapter 16, Water Code, and any other applicable local, state, or federal law, and ensures the consumer's compliance with applicable law by requiring the evidence described by Subsection (c), a retailer, broker, or salesperson who sells, exchanges, or lease-purchases a new or used manufactured home to a consumer for use as a permanent dwelling in this state may not:

(1) deliver or arrange for the delivery of the home to a homesite in a special flood hazard area designated by the director of the Federal Emergency Management Agency;

(2) install or arrange for the installation of the home at a homesite in that area; or

(3) assist the consumer in the delivery or installation of, or in making arrangements for the delivery or installation of, the home to or at a homesite in that area.

(c) Before closing on the acquisition of a new or used manufactured home for use as a permanent dwelling in this state, a consumer seeking to acquire the home must provide to the retailer, broker, or salesperson selling, exchanging, or lease-purchasing the home satisfactory evidence that the home will not be located, in a manner that violates local, state, or federal law, on a homesite in a special flood hazard area designated by the director of the Federal



Emergency Management Agency. A consumer may satisfy the evidentiary requirement of this subsection by providing the retailer, broker, or salesperson, as applicable, with a copy of any required permit to install a septic tank on the homesite.

(d) The following are exempt from the application of this section:

(1) a manufactured home that on August 31, 2003, was inhabited and located on real property zoned before September 1, 2003, by a local political subdivision for the purpose of developing homesites in a special flood hazard area designated by the director of the Federal Emergency Management Agency, if the home will remain on or be relocated to real property zoned as described by this subsection; and

(2) real property zoned before September 1, 2003, by a local political subdivision for the purpose of developing homesites in a special flood hazard area designated by the director of the Federal Emergency Management Agency.

Added by Acts 2003, 78th Leg., ch. 1016, Sec. 1, eff. June 20, 2003.

Sec. 1201.513. DISPOSITION OF TRADE-INS AND OCCUPANCY OF HOMES BEFORE CLOSING. (a) A retailer may not sell a trade-in manufactured home before the closing of the sale in connection with which the retailer receives the trade-in.

(b) A retailer may not knowingly permit a consumer to occupy a manufactured home that is the subject of a sale, exchange, or lease-purchase to that consumer before the closing of any required financing unless the consumer is first given a form adopted by the board disclosing that if for any reason the financing does not close, the consumer may be required to vacate the home.

Added by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 60, eff. January 1, 2008.

#### **SUBCHAPTER L. DISCIPLINARY PROCEDURES**

Sec. 1201.551. DENIAL OF LICENSE; DISCIPLINARY ACTION. (a) The director may deny, permanently revoke, or suspend for a definite period and specified sales location or geographic area a license if the director determines that the applicant or license holder:

(1) knowingly and wilfully violated this chapter or a rule adopted or order issued under this chapter;

(2) unlawfully retained or converted money, property, or any other thing of value from a consumer in the form of a down payment, sales or use tax, deposit, or insurance premium;

(3) failed repeatedly to file with the department a completed application for a statement of ownership and location before the 61st day after the date of the sale of a manufactured home as required by Section 1201.206 or the date of the installation, whichever occurred later;

(4) failed to give or breached a manufactured home warranty required by this chapter or by the Federal Trade Commission;

(5) engaged in a false, misleading, or deceptive act or practice as described by Subchapter E, Chapter 17, Business & Commerce Code;

(6) failed to provide or file a report required by the department for the administration or enforcement of this chapter;

(7) provided false information on an application, report, or other document filed with the department;

(8) acquired a criminal record during the five-year period preceding the application date that, in the opinion of the director, makes the applicant unfit for licensing;

(9) failed to file a bond or other security for each location as required by Subchapter C; or

(10) has had another license issued by this state revoked or suspended.

(b) The director may suspend or revoke a license if, after receiving notice of a claim, the license holder or the license holder's surety fails or refuses to pay a final claim paid from the trust fund for which demand for reimbursement was made.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 38, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 61, eff. January 1, 2008.

Sec. 1201.552. LICENSE REVOCATION, SUSPENSION, OR DENIAL;

HEARING. The director may issue an order to revoke, suspend, or deny a new or renewal license. If, before the 31st day after an order revoking, suspending, or denying a license is issued, the person against whom the order is issued requests a hearing by giving written notice to the director, the director shall set a hearing before the State Office of Administrative Hearings. If the person does not request a hearing before the 31st day after the date the order is issued, the order becomes final. Any administrative proceedings relating to the revocation, suspension, or denial of a license under this subsection shall be a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 61, eff. January 1, 2008.

Sec. 1201.553. JUDICIAL REVIEW. Judicial review of any order, decision, or determination of the board is instituted by filing a petition with a district court in Travis County as provided by Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 61, eff. January 1, 2008.

Sec. 1201.554. PROBATION. The department may place on probation a person whose license is suspended. If a license suspension is probated, the department may require the person to:

- (1) report regularly to the department on matters that are the basis of the probation;
- (2) limit practice to the areas prescribed by the department; or
- (3) continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.254(b), eff. Sept. 1, 2003.

**SUBCHAPTER M. ENFORCEMENT PROVISIONS AND PENALTIES**

Sec. 1201.601. ACTION AGAINST RETAILER OR MANUFACTURER: HOLDER OF DEBT INSTRUMENT. (a) If a consumer files a cause of action against a retailer or manufacturer, a claim based on an act of the retailer or manufacturer that the consumer could assert against the holder of the manufactured home debt instrument must be asserted against the holder in the primary suit against the retailer or manufacturer.

(b) A judgment obtained in the primary suit against the retailer or manufacturer is conclusive proof as to the holder of the debt instrument and admissible in an action by the consumer against the holder only if the consumer joins the holder in the primary suit.

(c) The holder of the debt instrument is entitled to full indemnity from the retailer or manufacturer for a claim based on an act or omission of the retailer or manufacturer.

(d) If the consumer asserts against the holder of the debt instrument a claim or defense that arises from a claim or defense of the consumer against the retailer, the consumer's relief against the holder arising from claims and defenses of the consumer against the retailer is limited to recovery of an amount not to exceed the total amount paid by the consumer to the holder and to cancellation of the balance remaining on the instrument. If the balance remaining on the instrument is canceled, the manufactured home shall be returned to the holder.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.602. ACTION AGAINST MANUFACTURER, INSTALLER, OR RETAILER: ABATEMENT OR BAR. (a) Notwithstanding any other law, a suit alleging that a manufacturer, installer, or retailer failed to perform warranty service or failed to comply with a written or implied warranty is abated if:

- (1) a plea in abatement is filed with the court not later than the 45th day after the movant's answer date; and
- (2) the manufacturer, installer, or retailer requests a

consumer complaint home inspection under Section 1201.355.

(b) The abatement continues until the earlier of:

(1) the date on which the department performs a consumer complaint home inspection and the manufacturer, installer, or retailer is given an opportunity to comply with the inspection report, determinations, and orders of the director; or

(2) the expiration of a period not to exceed 150 days.

(c) A consumer's refusal to allow the manufacturer, installer, or retailer to perform warranty service in accordance with the inspection report, determinations, and orders of the director bars a cause of action relating to an alleged failure to:

(1) comply with a written or implied warranty; or

(2) perform warranty service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.603. DECEPTIVE TRADE PRACTICES. (a) A person's violation of this chapter or the failure by a manufacturer, installer, or retailer to comply with an implied warranty is a deceptive trade practice actionable under Subchapter E, Chapter 17, Business & Commerce Code.

(b) The venue provisions of Subchapter E, Chapter 17, Business & Commerce Code, apply to a claim under Subsection (a). The remedies available under Subchapter E, Chapter 17, Business & Commerce Code, are cumulative of the remedies under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.604. CONSUMER RECOVERY FOR PROHIBITED RETENTION OF DEPOSIT. In addition to any other remedy, a consumer may recover from a retailer, salesperson, or agent of the retailer who violates Section 1201.151:

(1) three times the amount of the deposit; and

(2) reasonable attorney's fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.6041. DIRECT CONSUMER COMPENSATION. (a) Instead of

requiring a consumer to apply for compensation from the trust fund under Subchapter I, the director may order a manufacturer, retailer, broker, or installer, as applicable, to pay a refund directly to a consumer who sustains actual damages resulting from an unsatisfied claim against a licensed manufacturer, retailer, broker, or installer if the unsatisfied claim results from a violation of:

- (1) this chapter;
- (2) a rule adopted by the director;
- (3) the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.);
- (4) a rule or regulation of the United States Department of Housing and Urban Development; or
- (5) Subchapter E, Chapter 17, Business & Commerce Code.

(b) For purposes of this section, the refund of a consumer's actual damages is determined according to Section 1201.405.

(c) The director shall prepare information for notifying consumers of the director's option to order a direct refund under this section, shall post the information on the department's Internet website, and shall make printed copies available on request.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. [3361](#)), Sec. 3.15, eff. September 1, 2013.

Sec. 1201.605. ADMINISTRATIVE PENALTY. (a) The director may assess against a person who fails to comply with this chapter, the rules adopted under this chapter, or any final order of the department an administrative penalty in an amount not to exceed \$10,000 for each violation of this chapter and:

- (1) reasonable attorney's fees;
- (2) administrative costs;
- (3) witness fees;
- (4) investigative costs; and
- (5) deposition expenses.

(b) The director may assess against a licensee who fails to provide information to a consumer as required by this chapter an administrative penalty in an amount not to exceed:

- (1) \$1,000 for the first violation;
- (2) \$2,000 for the second violation; and
- (3) \$4,000 for each subsequent violation.

(c) In determining the amount of an administrative penalty assessed under this section, the director shall consider:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts made to correct the violation; and
- (5) any other matters that justice may require.

(d) The director may impose an administrative penalty in accordance with this section. If, before the 31st day after the date a person receives notice of the imposition of an administrative penalty, the person requests a hearing by giving written notice to the director, the director shall set a hearing before the State Office of Administrative Hearings. If the person does not request a hearing before the 31st day after the date the person receives notice of the imposition of the administrative penalty, the penalty becomes final. Any administrative proceedings relating to the imposition of an administrative penalty under this subsection shall be a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 39, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 62, eff. January 1, 2008.

Sec. 1201.606. CRIMINAL PENALTY. (a) A person or a director, officer, or agent of a corporation commits an offense if the person, director, officer, or agent knowingly and wilfully violates this chapter or a rule adopted or order issued by the department in a manner that threatens consumer health or safety.

(b) An offense under this section is a Class A misdemeanor punishable by:

- (1) a fine of not more than \$4,000;
- (2) confinement in county jail for a term of not more than one year; or
- (3) both the fine and confinement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.261(a), eff. Sept. 1, 2003.

Sec. 1201.607. ISSUANCE OF ORDERS AND REQUESTS FOR HEARINGS. Any order issued by the director under this chapter, if not appealed before the 31st day after the date the order was issued, shall automatically become a final order. If the person made the subject of the order files a written request for a hearing with the director, the order shall be deemed to have been appealed and shall be a contested case under Chapter 2001, Government Code. The director shall set any appealed order for a hearing before the State Office of Administrative Hearings, and the board shall issue a final order after receiving and reviewing the proposal for decision issued pursuant to such hearing.

Added by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 63, eff. January 1, 2008.

Sec. 1201.608. INSPECTION OF LICENSEE RECORDS. (a) The department may inspect a licensee's records during normal business hours without advance notice if the director believes that such inspection is necessary to prevent a violation of this chapter, to protect a consumer or another licensee, or to assist another state or federal agency in an investigation.

(b) The director may request or issue subpoenas for a licensee's records.

(c) The department may carry out "sting" or undercover investigations in accordance with board-adopted rules if the director believes such action to be appropriate in order to detect and address suspected violations of this chapter.

(d) While an investigation is pending, information obtained by the department in connection with that investigation is confidential unless disclosure of the information is specifically permitted or required by other law.

Added by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 63, eff. January 1, 2008.



Sec. 1201.609. ACTING WITHOUT LICENSE; CRIMINAL PENALTY. A person who is not exempt under this chapter and who, without first obtaining a license required under this chapter, performs an act that requires a license under this chapter commits an offense. An offense under this section is a Class B misdemeanor. A second or subsequent conviction for an offense under this section is a Class A misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 63, eff. January 1, 2008.

Sec. 1201.610. CEASE AND DESIST. (a) The director may issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter if the director has reasonable cause to believe that a person has violated or is about to violate any provision of this chapter or a rule adopted under this chapter.

(b) The director may issue an order to any person to cease and desist from violating any law, rule, or written agreement or to take corrective action with respect to any such violations if the violations in any way are related to the sale, financing, or installation of a manufactured home or the providing of goods or services in connection with the sale, financing, or installation of a manufactured home unless the matter that is the basis of such violation is expressly subject to inspection and regulation by another state agency; provided, however, that if any matter involves a law that is subject to any other administration or interpretation by another agency, the director shall consult with the person in charge of the day-to-day administration of that agency before issuing an order.

(c) An order issued under Subsection (a) or (b) must contain a reasonably detailed statement of the facts on which the order is based. If a person against whom the order is issued requests a hearing before the 31st day after the date the order is issued, the director shall set and give notice of a hearing. The hearing shall be governed by Chapter 2001, Government Code. Based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the board by order may find that a violation has occurred or

has not occurred.

(d) If a hearing is not requested under Subsection (c) before the 31st day after the date an order is issued, the order is considered final and not appealable.

(e) The director, after giving notice, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed \$1,000 for each day of the violation. In addition to any other remedy provided by law, the director may institute in district court a suit for injunctive relief and for the collection of the administrative penalty. A bond is not required of the director with respect to injunctive relief granted under this subsection.

(f) If a person licensed under this chapter fails to pay an administrative penalty that has become final or fails to comply with an order of the director that has become final, in addition to any other remedy provided by law, the director, after not less than 10 days' notice to the person, may without a prior hearing suspend the person's license. The suspension shall continue until the person has complied with the cease and desist order or paid the administrative penalty. During the period of suspension, the person may not perform any act requiring a license under this chapter, and all compensation received by the person during the period of suspension is subject to forfeiture to the person from whom it was received.

(g) An order of suspension under Subsection (f) may be appealed. An appeal is a contested case governed by Chapter 2001, Government Code. A hearing of an appeal of an order of suspension issued under Subsection (f) shall be held not later than the 15th day after the date of receipt of the notice of appeal. The appellant shall be provided at least three days' notice of the time and place of the hearing.

(h) An order revoking the license of a retailer, broker, installer, or salesperson may provide that the person is prohibited, without obtaining prior written consent of the director, from being a related person of a licensee.

Added by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 63, eff. January 1, 2008.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.16, eff. September 1, 2013.

Sec. 1201.611. SANCTIONS AND PENALTIES. (a) The board shall adopt rules relating to the administrative sanctions that may be enforced against a person regulated by the department.

(b) If a person charged with the violation accepts the determination of the director, the director shall issue an order approving the determination and ordering that the person pay the recommended penalty.

(c) Not later than the 30th day after the date on which the decision is final, the person charged shall:

(1) pay the penalty in full; or

(2) if the person files a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both the fact of the violation and the amount of the penalty:

(A) forward the amount assessed to the department for deposit in an escrow account;

(B) in lieu of payment into escrow, post with the department a supersedeas bond for the amount of the penalty, in a form approved by the director and effective until judicial review of the decision is final; or

(C) without paying the amount of the penalty or posting the supersedeas bond, pursue judicial review.

(d) A person charged with a penalty who is financially unable to comply with Subsection (c)(2) is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(e) If the person charged does not pay the penalty and does not pursue judicial review, the department or the attorney general may bring an action for the collection of the penalty.

(f) Judicial review of the order of the director assessing the penalty is subject to the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County.

(g) If, after judicial review, the penalty is reduced or not assessed, the director shall remit to the person charged the appropriate amount, plus accrued interest if the penalty has been paid, or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the

director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the assessed penalty is paid to the director and ending on the date the penalty is remitted.

(h) A penalty collected under this section shall be deposited in the trust fund.

(i) All proceedings conducted under this section and any review or appeal of those proceedings are subject to Chapter 2001, Government Code.

(j) If it appears that a person is in violation of, or is threatening to violate, any provision of this chapter or a rule or order related to the administration and enforcement of the manufactured housing program, the attorney general, on behalf of the director, may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties not to exceed \$1,000 for each violation and not exceeding \$250,000 in the aggregate. A civil action filed under this subsection shall be filed in district court in Travis County. The attorney general and the director may recover reasonable expenses incurred in obtaining injunctive relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Added by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 63, eff. January 1, 2008.

## **CHAPTER 1202. INDUSTRIALIZED HOUSING AND BUILDINGS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1202.001. GENERAL DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Construction site building" means a commercial structure that is:

(A) not open to the public; and

(B) used for any purpose at a commercial site by a person constructing a building, road, bridge, utility, or other infrastructure or improvement to real property.

(3) "Council" means the Texas Industrialized Building Code

Council.

(4) "Department" means the Texas Department of Licensing and Regulation.

(4-a) "Executive director" means the executive director of the department.

(5) "Modular component" means a structural part of housing or a building constructed at a location other than the building site in a manner that prevents the construction from being adequately inspected for code compliance at the building site without:

(A) damage; or

(B) removal and reconstruction of a part of the housing or building.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.263(b), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 714 (S.B. 443), Sec. 1, eff. September 1, 2005.

Sec. 1202.002. DEFINITION OF INDUSTRIALIZED HOUSING. (a) Industrialized housing is a residential structure that is:

(1) designed for the occupancy of one or more families;

(2) constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent site; and

(3) designed to be used as a permanent residential structure when the module or the modular component is transported to the permanent site and erected or installed on a permanent foundation system.

(b) Industrialized housing includes the structure's plumbing, heating, air conditioning, and electrical systems.

(c) Industrialized housing does not include:

(1) a residential structure that exceeds three stories or 49 feet in height;

(2) housing constructed of a sectional or panelized system that does not use a modular component; or

(3) a ready-built home constructed in a manner in which the

entire living area is contained in a single unit or section at a temporary location for the purpose of selling and moving the home to another location.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 698 (H.B. 2763), Sec. 1, eff. September 1, 2009.

Sec. 1202.003. DEFINITION OF INDUSTRIALIZED BUILDING. (a) An industrialized building is a commercial structure that is:

(1) constructed in one or more modules or constructed using one or more modular components built at a location other than the commercial site; and

(2) designed to be used as a commercial building when the module or the modular component is transported to the commercial site and erected or installed.

(b) An industrialized building includes the structure's plumbing, heating, air conditioning, and electrical systems.

(c) Repealed by Acts 2005, 79th Leg., Ch. 714, Sec. 5, eff. September 1, 2005.

(d) An industrialized building includes a permanent commercial structure and a commercial structure designed to be transported from one commercial site to another commercial site but does not include:

(1) a commercial structure that exceeds three stories or 49 feet in height; or

(2) a commercial building or structure that is:

(A) installed in a manner other than on a permanent foundation; and

(B) either:

(i) not open to the public; or

(ii) less than 1,500 square feet in total area and used other than as a school or a place of religious worship.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.002, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 714 (S.B. 443), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 714 (S.B. 443), Sec. 5, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 698 (H.B. 2763), Sec. 2, eff. September 1, 2009.

Sec. 1202.004. RELOCATABLE EDUCATIONAL FACILITIES. (a) In this section, "relocatable educational facility" means a portable, modular building capable of being relocated, regardless of whether the facility is built at the installation site, that is used primarily as an educational facility for teaching the curriculum required under Section 28.002, Education Code.

(b) A relocatable educational facility that is purchased or leased on or after January 1, 2010, must comply with all provisions applicable to industrialized buildings under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 698 (H.B. 2763), Sec. 3, eff. September 1, 2009.

#### **SUBCHAPTER B. TEXAS INDUSTRIALIZED BUILDING CODE COUNCIL**

Sec. 1202.051. COUNCIL MEMBERSHIP. The Texas Industrialized Building Code Council consists of 12 members appointed by the governor as follows:

(1) three members who represent the industrialized housing and building industries;

(2) three members who represent municipal building officials from municipalities with a population of more than 25,000;

(3) three members who represent general contractors who construct housing or buildings on-site;

(4) one member who is an engineer licensed in this state who acts as a structural engineer;

(5) one member who is an engineer licensed in this state who acts as an electrical engineer; and

(6) one member who is an architect registered in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.052. MEMBERSHIP RESTRICTIONS. An engineer or

architect member of the council may not:

(1) be designated as, be employed by, or have an ownership interest in, an entity that is a third-party inspector or design review agency;

(2) have an ownership interest in a business that manufactures or builds industrialized housing or buildings;

(3) in a capacity relating to a matter subject to council review, be employed by or be a paid consultant to a manufacturer or builder of industrialized housing or buildings; or

(4) be an officer, employee, or paid consultant of a trade association that represents the industrialized housing or building industry.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.053. TERMS. Council members serve staggered two-year terms, with the terms of half of the members expiring on February 1 of each even-numbered year and the terms of the other half of the members expiring on February 1 of each odd-numbered year.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.054. PRESIDING OFFICER. The council shall annually elect one of its members as the council's presiding officer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.055. SECRETARY; PERSONNEL. The executive director shall:

(1) act as secretary of the council; and

(2) provide personnel from the department necessary to perform staff functions for the council.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.026, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.264, eff. Sept. 1, 2003.



Sec. 1202.056. REIMBURSEMENT. (a) A council member may be reimbursed for actual costs of travel to attend meetings but may not receive a per diem allowance for food or lodging.

(b) The travel costs shall be paid out of fees collected by the department under Section 1202.104.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.057. QUORUM. The vote of at least seven members present at a meeting or the written approval of at least seven members is required for the council to take an action or make a decision.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### **SUBCHAPTER C. COUNCIL AND COMMISSION POWERS AND DUTIES**

Sec. 1202.101. RULES; ORDERS. (a) The commission shall adopt rules and issue orders as necessary to:

(1) ensure compliance with the purposes of this chapter;  
and

(2) provide for uniform enforcement of this chapter.

(b) The commission shall adopt rules as appropriate to implement the council's actions, decisions, interpretations, and instructions.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.003, eff. Sept. 1, 2003.

Sec. 1202.102. RULES PROVIDING FOR REGISTRATION AND REGULATION. The commission by rule shall provide for registration and regulation of manufacturers or builders of industrialized housing or buildings.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.004, eff. Sept. 1, 2003.

Sec. 1202.104. FEES. (a) The commission shall set fees, in amounts sufficient to cover the costs of the inspections described by this chapter and the administration of this chapter, for:

(1) the registration of manufacturers or builders of industrialized housing or buildings;

(2) the inspection of industrialized housing or buildings; and

(3) the issuance of decals or insignia required under Section 1202.204.

(b) The fees shall be paid to the comptroller and placed in the general revenue fund, except that a fee for an inspection may be paid directly to an approved third-party inspector who performs the inspection.

(c) The building and permit fees charged by a municipality for an inspection of industrialized housing or buildings to be located in the municipality may not exceed the fees charged for the equivalent inspection of a building constructed on-site.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.005, eff. Sept. 1, 2003.

Sec. 1202.105. APPROVAL OF THIRD-PARTY INSPECTORS AND DESIGN REVIEW AGENCIES. (a) The council shall establish criteria for the approval of, and approve accordingly, all third-party inspectors and design review agencies.

(b) The executive director shall recommend qualified third-party inspectors and design review agencies to the council.

(c) The executive director shall publish a list of all approved inspectors and design review agencies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.027, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.266, eff. Sept. 1, 2003.

Sec. 1202.106. APPLICABILITY OF OTHER LAW. Sections 51.401 and 51.404 do not apply to this chapter.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 10.006, eff. Sept. 1, 2003.

Sec. 1202.107. LIMITATION ON CERTAIN ACTIONS. (a)

Notwithstanding any other law, the commission, executive director, or department may not perform an inspection or investigation, open a complaint, or initiate an administrative or enforcement action against a manufacturer, builder, or third-party inspector of industrialized housing after the second anniversary of the date of the final on-site inspection of the industrialized housing conducted under Section 1202.203.

(b) The commission or executive director may impose a penalty or sanction in an enforcement action against a manufacturer, builder, or third-party inspector of industrialized housing only if the commission, executive director, or department initiates the enforcement action during the period prescribed by Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 27 (S.B. 672), Sec. 1, eff. September 1, 2013.

**SUBCHAPTER D. REQUIREMENTS AND STANDARDS FOR INDUSTRIALIZED HOUSING AND BUILDINGS**

Sec. 1202.151. BUILDING CODES. (a) In addition to complying with Subsection (b) or (c), as applicable, industrialized housing and buildings must be constructed to meet or exceed the requirements and standards of the National Electrical Code, published by the National Fire Protection Association, as that code existed on January 1, 1985.

(b) Industrialized housing and buildings erected or installed in a municipality must be constructed to meet or exceed the requirements and standards of whichever of the following two groups of codes is used by the municipality:

(1) the Uniform Building Code, Uniform Plumbing Code, and Uniform Mechanical Code, published by the International Conference of Building Officials, as those codes existed on January 1, 1985; or

(2) the Standard Building Code, Standard Mechanical Code, Standard Plumbing Code, and Standard Gas Code, published by the Southern Building Code Congress International, Inc., as those codes existed on January 1, 1985.

(c) Industrialized housing and buildings erected or installed outside a municipality or in a municipality that does not use a building code group described by Subsection (b)(1) or (2) must be constructed to meet or exceed the requirements and standards of whichever of those building code groups is selected by the manufacturer of the housing or buildings.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.152. BUILDING CODE AMENDMENT. If a code described by Section 1202.151 is amended after January 1, 1985, the requirements and standards of the amended code shall be used in place of the January 1, 1985, edition if the council determines that use of the amended code is:

- (1) in the public interest; and
- (2) consistent with the purposes of this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.153. BUILDING CODE AMENDMENT: MUNICIPALITY OR OTHER POLITICAL SUBDIVISION. (a) A municipality or other political subdivision may not require or enforce, as a prerequisite for granting or approving a building or construction permit or certificate of occupancy, an amendment to a code described by Section 1202.151.

(b) On the petition of a local building official and after a hearing, the council may require a reasonable amendment to a building code group described by Section 1202.151(b)(1) or (2) that the council determines to be essential for public health and safety. The amendment shall be applied uniformly on a statewide basis.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.1535. EFFECT OF BUILDING CODE AMENDMENT. (a) An industrialized building that bears an approved decal or insignia indicating that the building complies with the mandatory building codes and that has not been modified or altered is considered to be in compliance with a new mandatory building code adopted by the

council or an amendment to a code approved by the council under Section 1202.152 or 1202.153.

(b) The owner of an industrialized building designed to be transported from one commercial site to another that bears an approved decal or insignia indicating the building complies with the mandatory building codes and that is modified or altered after the date the council adopts a new mandatory building code or the council approves a building code amendment must ensure that the modified or altered building complies with the requirements and standards of the new building code or amendment to the extent required by the most recent edition of the International Existing Building Code adopted by the council.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 10.007, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 698 (H.B. 2763), Sec. 4, eff. September 1, 2009.

Sec. 1202.154. DESIGN REVIEW. To ensure compliance with the mandatory building codes, the department or approved design review agency shall review all designs, plans, and specifications of industrialized housing and buildings in accordance with council interpretations and instructions.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.008, eff. Sept. 1, 2003.

Sec. 1202.155. COUNCIL STAMP OF APPROVAL. (a) The department or approved design review agency shall place the council's stamp of approval on each page of the designs, plans, and specifications of industrialized housing and buildings that:

- (1) meet or exceed the code standards and requirements under council interpretations and instructions; and
- (2) are approved by the department or design review agency.

(b) Each page of the designs, plans, and specifications must bear the council's stamp of approval if the designs, plans, and specifications satisfy the requirements of Subsection (a)(1) and are

approved in accordance with Subsection (a)(2).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.156. COUNCIL DETERMINATION OF CERTAIN QUESTIONS RELATED TO INDUSTRIALIZED HOUSING AND BUILDINGS. (a) The council shall determine all questions raised by a municipality in connection with the review of designs, plans, and specifications of industrialized housing and buildings, as authorized by Section 1202.252.

(b) With reference to the standards and requirements of the mandatory building codes, the council shall determine, from an engineering performance standpoint, all questions concerning:

- (1) code equivalency; or
- (2) alternative materials or methods of construction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.009, eff. Sept. 1, 2003.

Sec. 1202.157. COUNCIL DECISIONS BINDING. The decisions, actions, and interpretations of the council are binding on the department, third-party inspectors, design review agencies, and municipalities and other political subdivisions.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### **SUBCHAPTER E. INSPECTIONS**

Sec. 1202.201. INSPECTION PROCEDURES. The council may issue instructions to establish procedures for inspecting the construction and installation of industrialized housing and buildings to ensure compliance with approved designs, plans, and specifications.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.202. DEPARTMENT INSPECTIONS. (a) To ensure compliance with the mandatory building codes or approved designs,

plans, and specifications, the department shall inspect the construction of industrialized housing and buildings. The executive director may designate approved third-party inspectors to perform the inspections subject to the rules of the commission.

(b) Local building officials may witness department inspections to enable the local officials to make recommendations on inspection procedures to the council.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.010, eff. Sept. 1, 2003.

Sec. 1202.203. ON-SITE INSPECTIONS. (a) A municipal building official shall inspect all construction involving industrialized housing and buildings to be located in the municipality to ensure compliance with designs, plans, and specifications, including inspection of:

(1) the construction of the foundation system; and

(2) the erection and installation of the modules or modular components on the foundation.

(b) An approved third-party inspector shall perform on-site inspections of industrialized housing to be located outside the municipality.

(c) An inspection under Subsection (a) shall be conducted:

(1) at the permanent site, if the inspection is of industrialized housing; and

(2) at the commercial site, if the inspection is of industrialized buildings.

(d) If required by commission rule, an approved third-party inspector shall perform on-site inspections of industrialized buildings to be located outside the municipality.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.011, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 714 (S.B. 443), Sec. 3, eff. September 1, 2005.

Sec. 1202.204. RULES PROVIDING FOR DECALS OR INSIGNIA. (a) The commission by rule shall provide for the placement of decals or insignia on each transportable modular section or modular component to indicate compliance with the mandatory building codes.

(b) The commission by rule shall exempt a construction site building from the requirements of this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.012, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 714 (S.B. 443), Sec. 4, eff. September 1, 2005.

Sec. 1202.205. RECIPROCITY. (a) The commission by rule may authorize an inspection of industrialized housing or buildings constructed in another state to be performed by an inspector of the equivalent regulatory agency of the other state.

(b) The commission by rule may authorize an inspection of industrialized housing or buildings constructed in this state for use in another state.

(c) The commission shall enter into a reciprocity agreement with the equivalent regulatory agency of the other state as necessary to implement this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.013, eff. Sept. 1, 2003.

#### **SUBCHAPTER F. MUNICIPAL AUTHORITY**

Sec. 1202.251. RESERVATION OF MUNICIPAL AUTHORITY. (a) Municipal authority is specifically and entirely reserved to a municipality, including, as applicable:

- (1) land use and zoning requirements;
- (2) building setback requirements;
- (3) side and rear yard requirements;
- (4) site planning and development and property line requirements;
- (5) subdivision control; and



(6) landscape architectural requirements.

(b) Except as provided by Section 1202.253, requirements and regulations not in conflict with this chapter or with other state law relating to transportation, erection, installation, or use of industrialized housing or buildings must be reasonably and uniformly applied and enforced without distinctions as to whether the housing or buildings are manufactured or are constructed on-site.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 363, Sec. 1, eff. June 18, 2003;  
Acts 2003, 78th Leg., ch. 816, Sec. 10.014, eff. Sept. 1, 2003.

Sec. 1202.252. MUNICIPAL REGULATION OF INDUSTRIALIZED HOUSING AND BUILDINGS. (a) A municipality that regulates the on-site construction or installation of industrialized housing and buildings may:

(1) require and review, for compliance with mandatory building codes, a complete set of designs, plans, and specifications bearing the council's stamp of approval for each installation of industrialized housing or buildings in the municipality;

(2) require that all applicable local permits and licenses be obtained before construction begins on a building site;

(3) require, in accordance with commission rules, that all modules or modular components bear an approved decal or insignia indicating inspection by the department; and

(4) establish procedures for the inspection of:

(A) the erection and installation of industrialized housing or buildings to be located in the municipality, to ensure compliance with mandatory building codes and commission rules; and

(B) all foundation and other on-site construction, to ensure compliance with approved designs, plans, and specifications.

(b) Procedures described by Subsection (a)(4) may require:

(1) before occupancy, a final inspection or test in accordance with mandatory building codes; and

(2) correction of any deficiency identified by the test or discovered in the final inspection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.015, eff. Sept. 1, 2003.

Sec. 1202.253. MUNICIPAL REGULATION OF SINGLE-FAMILY AND DUPLEX INDUSTRIALIZED HOUSING. (a) Single-family or duplex industrialized housing must have all local permits and licenses that are applicable to other single-family or duplex dwellings.

(b) For purposes of this section, single-family or duplex industrialized housing is real property.

(c) A municipality may adopt regulations that require single-family or duplex industrialized housing to:

(1) have a value equal to or greater than the median taxable value for each single-family dwelling located within 500 feet of the lot on which the industrialized housing is proposed to be located, as determined by the most recent certified tax appraisal roll for each county in which the properties are located;

Text of subsec. (c)(2) as added by Acts 2003, 78th Leg., ch. 816,  
Sec. 10.016

(2) have exterior siding, roofing, roofing pitch, foundation fascia, and fenestration compatible with the single-family dwellings located within 500 feet of the lot on which the industrialized housing is proposed to be located;

Text of subsec. (c)(2) as added by Acts 2003, 78th Leg., ch. 363,  
Sec. 2

(2) have exterior siding, roofing, roof pitch, foundation fascia, and fenestration compatible with the single-family dwellings located within 500 feet of the lot on which the industrialized housing is proposed to be located;

(3) comply with municipal aesthetic standards, building setbacks, side and rear yard offsets, subdivision control, architectural landscaping, square footage, and other site requirements applicable to single-family dwellings; or

(4) be securely fixed to a permanent foundation.

(d) For purposes of Subsection (c), "value" means the taxable value of the industrialized housing and the lot after installation of the housing.

(e) Except as provided by Subsection (c), a municipality may not adopt a regulation under this section that is more restrictive for industrialized housing than that required for a new single-family or duplex dwelling constructed on-site.

(f) This section does not:

- (1) limit the authority of a municipality to adopt regulations to protect historic properties or historic districts; or
- (2) affect deed restrictions.

Added by Acts 2003, 78th Leg., ch. 363, Sec. 2, eff. June 18, 2003;  
Acts 2003, 78th Leg., ch. 816, Sec. 10.016, eff. Sept. 1, 2003.

#### **SUBCHAPTER G. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES**

Sec. 1202.301. PROHIBITED PRACTICES. (a) In this section, "person" means an individual, partnership, company, corporation, association, or other group, however organized.

(b) A person may not construct, sell or offer to sell, lease or offer to lease, or transport over a street or highway of this state any industrialized housing or building, or modular section or component of a modular section, in violation of this chapter or a rule of the commission or order of the commission or executive director.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.017, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.270, eff. Sept. 1, 2003.

Sec. 1202.302. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. In addition to imposing sanctions allowed under Section 51.353, the commission may deny, permanently revoke, or suspend for a definite period and specified location or geographic area a certificate of registration if the commission finds that the applicant or registrant:

- (1) provided false information on an application or other document filed with the department;
- (2) failed to pay a fee or file a report required by the department for the administration or enforcement of this chapter;
- (3) engaged in a false, misleading, or deceptive act or practice as described by Subchapter E, Chapter 17, Business & Commerce Code; or
- (4) violated:
  - (A) this chapter;

- (B) a rule adopted by the commission or order issued by the commission or the executive director under this chapter; or
- (C) a decision, action, or interpretation of the council.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.018, eff. Sept. 1, 2003.

## TITLE 8. REGULATION OF ENVIRONMENTAL AND INDUSTRIAL TRADES

### CHAPTER 1301. PLUMBERS

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1301.001. SHORT TITLE. This chapter may be cited as the Plumbing License Law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Plumbing Examiners.

(1-a) "Executive director" means the executive director of the Texas State Board of Plumbing Examiners.

(2) "Drain cleaner" means a person who:

(A) has completed at least 4,000 hours working under the supervision of a master plumber as a drain cleaner-restricted registrant;

(B) has fulfilled the requirements of and is registered with the board; and

(C) installs cleanouts and removes and resets p-traps to eliminate obstructions in building drains and sewers under the supervision of a responsible master plumber.

(3) "Drain cleaner-restricted registrant" means a person who:

(A) has worked as a plumber's apprentice under the supervision of a master plumber;

(B) has fulfilled the requirements of and is registered with the board; and

(C) clears obstructions in sewer and drain lines through any code-approved existing opening under the supervision of a

responsible master plumber.

(4) "Journeyman plumber" means a person licensed under this chapter who:

(A) has met the qualifications for registration as a plumber's apprentice or for licensing as a tradesman plumber-limited license holder;

(B) has completed at least 8,000 hours working under the supervision of a master plumber;

(C) installs, changes, repairs, services, or renovates plumbing or supervises any of those activities under the supervision of a responsible master plumber;

(D) has passed the required examination; and

(E) has fulfilled the other requirements of the board.

(5) "Master plumber" means a person licensed under this chapter who:

(A) is skilled in the design, planning, and superintending of plumbing and in the practical installation, repair, and servicing of plumbing;

(B) has worked as a journeyman plumber:

(i) for at least four years; or

(ii) for at least one year and has successfully completed a training program approved by the United States Department of Labor Office of Apprenticeship or another nationally recognized apprentice training program accepted by the board;

(C) performs or supervises plumbing work;

(D) has passed the required examination; and

(E) has fulfilled the other requirements of the board.

(5-a) "Multipurpose residential fire protection sprinkler specialist" means a person who holds an endorsement issued under Section 1301.3565.

(6) "Plumber's apprentice" means a person other than a master plumber, journeyman plumber, or tradesman plumber-limited license holder who, as the person's principal occupation, learns about and assists in the installation of plumbing, has fulfilled the requirements of and is registered by the board, and works under the supervision of a responsible master plumber and the direct supervision of a licensed plumber.

(7) "Plumbing" means:

(A) a fixture, appurtenance, appliance, or piping, including a disposal system, used to:

(i) supply, distribute, circulate, or recirculate water, other liquid, or gas; or

(ii) eliminate sewage for a personal or domestic purpose;

(B) a fixture, appurtenance, appliance, or piping used outside a building to connect the building to:

(i) a supply of water, other liquid, medical gases and vacuum, or other gas on the premises; or

(ii) the main in the street or alley or at the curb;

(C) a fixture, appurtenance, appliance, or piping, including a drain or waste pipe, used to carry wastewater or sewage from or within a building to:

(i) a sewer service lateral at the curb or in the street or alley; or

(ii) a disposal or septic terminal that holds private or domestic sewage; or

(D) the installation, repair, service, or maintenance of a fixture, appurtenance, appliance, or piping described by Paragraph (A), (B), or (C).

(8) "Plumbing inspector" means a person who:

(A) is employed by a political subdivision or state agency, or contracts as an independent contractor with a political subdivision or state agency, to inspect plumbing in connection with health and safety laws, including ordinances, and plumbing and gas codes;

(B) has passed the required examination; and

(C) has fulfilled the other requirements of the board.

(9) "Residential utilities installer" means a person who:

(A) has completed at least 2,000 hours working under the supervision of a master plumber as a plumber's apprentice;

(B) has fulfilled the requirements of and is registered with the board; and

(C) constructs and installs yard water service piping for one-family or two-family dwellings and building sewers under the supervision of a responsible master plumber.

(9-a) "Responsible master plumber" means a person licensed as a master plumber under this chapter who:

(A) allows the person's master plumber license to be used by one plumbing company for the purpose of offering and

performing plumbing work under the person's master plumber license;

(B) is authorized to obtain permits for plumbing work;

(C) assumes responsibility for plumbing work performed under the person's license;

(D) has submitted a certificate of insurance as required by Section 1301.3576; and

(E) has completed a training program required by Section 1301.3576.

(10) "Tradesman plumber-limited license holder" means a person who:

(A) has completed at least 4,000 hours working under the direct supervision of a journeyman or master plumber as a plumber's apprentice;

(B) has passed the required examination;

(C) constructs and installs plumbing for one-family or two-family dwellings under the supervision of a responsible master plumber; and

(D) has fulfilled the other requirements of the board.

(11) "Water supply protection specialist" means a person who holds an endorsement issued by the board to engage in:

(A) customer service inspections, as defined by rule of the Texas Commission on Environmental Quality; and

(B) the installation, service, and repair of plumbing associated with the treatment, use, and distribution use of rainwater to supply a plumbing fixture or appliance.

(12) "Water treatment" means a business conducted under contract that requires ability, experience, and skill in analyzing water to determine how to treat influent and effluent water to change or purify the water or to add or remove minerals, chemicals, or bacteria. The term does not include treatment of rainwater or the repair of systems for rainwater harvesting. The term includes:

(A) installing and servicing fixed or portable water treatment equipment in a public or private water treatment system; or

(B) making connections necessary to install a water treatment system.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 1(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.301(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. [1410](#)), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. [1354](#)), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. [1303](#)), Sec. 18.002, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. [1303](#)), Sec. 18.003, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 526 (H.B. [2376](#)), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 981 (H.B. [2062](#)), Sec. 1, eff. September 1, 2013.

Sec. 1301.003. APPLICATION OF SUNSET ACT. The Texas State Board of Plumbing Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2019.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 819, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. [652](#)), Sec. 4.09, eff. June 17, 2011.

Sec. 1301.004. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. Except as otherwise provided by this section, Chapter 601, Business & Commerce Code, does not apply to a good or service provided by a license holder under this chapter if the transaction involving the good or service is initiated by the consumer. Chapter 601, Business & Commerce Code, does apply to a transaction that involves a breach of express warranty or a negligent installation in violation of a building code applicable to the good or service sold to the consumer.

Added by Acts 2009, 81st Leg., R.S., Ch. 937 (H.B. [3129](#)), Sec. 1, eff. June 19, 2009.



**SUBCHAPTER B. EXEMPTIONS**

Sec. 1301.051. PLUMBING BY PROPERTY OWNER IN HOMESTEAD. A property owner is not required to be licensed under this chapter to perform plumbing in the property owner's homestead.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.052. WORK INSIDE COUNTIES OR INSIDE OR OUTSIDE MUNICIPALITIES. A person is not required to be licensed under this chapter to perform plumbing, other than plumbing performed in conjunction with new construction, repair, or remodeling, on a property that is:

(1) located in a subdivision or on a tract of land that is not required to be platted under Section 232.0015, Local Government Code;

(2) not connected to a public water system and is located outside a municipality;

(3) located outside a municipality and connected to a public water system that does not require a license to perform plumbing; or

(4) located inside a municipality that is within a county that has fewer than 50,000 inhabitants and that:

(A) has fewer than 5,000 inhabitants; and

(B) by municipal ordinance has authorized a person who is not licensed under this chapter to perform plumbing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 819, Sec. 3(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. [1354](#)), Sec. 2, eff. September 1, 2009.

Sec. 1301.053. WORK INCIDENTAL TO OTHER PROFESSIONS. (a) A person is not required to be licensed under this chapter to perform:

(1) plumbing incidental to and in connection with the business in which the person is employed or engaged if the person:

(A) is regularly employed as or acting as a maintenance person or maintenance engineer; and

(B) does not engage in plumbing for the public;

(2) construction, installation, or maintenance on the premises or equipment of a railroad if the person is an employee of the railroad who does not engage in plumbing for the public;

(3) plumbing if the person is engaged by a public service company to:

(A) lay, maintain, or operate its service mains or lines to the point of measurement; and

(B) install, change, adjust, repair, remove, or renovate appurtenances, equipment, or appliances;

(4) appliance installation and service work, other than installation and service work on water heaters, that involves connecting appliances to existing openings with a code-approved appliance connector if the person performs the work as an appliance dealer or an employee of an appliance dealer; or

(5) water treatment installations, exchanges, services, or repairs, other than the treatment of rainwater to supply a plumbing fixture or appliance.

(b) Work described by this section is subject to inspection and approval as provided by applicable state law or municipal ordinance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.303(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. [1354](#)), Sec. 3, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 981 (H.B. [2062](#)), Sec. 2, eff. September 1, 2013.

Sec. 1301.054. IRRIGATORS AND WATER WELL PUMP INSTALLERS. A person is not required to be licensed under this chapter to perform plumbing if the person holds a:

(1) certificate of registration as an irrigator issued under Chapter 1903; or

(2) license as a water well pump installer issued under Chapter 1902.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.055. LP GAS INSTALLERS. A person is not required to be licensed under this chapter to perform LPG system installation if the person performs the LPG system installation as an LP gas installer licensed under Subchapter D, Chapter 113, Natural Resources Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.303(a), eff. Sept. 1, 2003.

Sec. 1301.056. LAWN IRRIGATION SYSTEMS. A person licensed by the board is not required to be licensed by another board or agency to install or work on a lawn irrigation system.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.057. SELF-HELP PROJECT. (a) A person is not required to be licensed under this chapter to perform plumbing, limited to the provision of a residential potable water supply or residential sanitary sewer connection, for a project that:

(1) is in a county a part of which is within 50 miles of an international border; and

(2) is performed by an organization that:

(A) is certified by the Texas Natural Resource Conservation Commission to provide self-help project assistance; and

(B) provides the board with the following information before the 30th day before the date the project begins:

(i) the exact location of the project;

(ii) the intended duration of the project; and

(iii) other information the board requires.

(b) The board may require under Subsection (a)(2)(B)(iii) that the organization provide a post-construction report signed by a plumbing inspector stating that the plumbing is safe.

(c) The board may provide training to an organization that provides self-help project assistance under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.058. TESTING OF MEDICAL GAS AND VACUUM PIPING. A person is not required to be licensed under this chapter to verify medical gas and vacuum piping integrity and content.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.303(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER C. TEXAS STATE BOARD OF PLUMBING EXAMINERS**

Sec. 1301.151. TEXAS STATE BOARD OF PLUMBING EXAMINERS MEMBERSHIP. (a) The Texas State Board of Plumbing Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

- (1) one member who has at least 10 years' practical experience and is licensed as a master plumber;
- (2) one member who has at least five years' practical experience and is licensed as a journeyman plumber;
- (3) one member who has at least five years' practical experience and is licensed as a plumbing inspector;
- (4) one member who is a plumbing contractor with at least five years' experience;
- (5) one member who is a licensed engineer;
- (6) two members who are building contractors with at least five years' contracting experience, one of whom is principally engaged in home building and one of whom is principally engaged in commercial building; and
- (7) two members who represent the public.

(b) Each member of the board must be a United States citizen.

(c) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 4, eff. Sept. 1, 2003;  
Acts 2003, 78th Leg., ch. 1276, Sec. 14A.304(a), eff. Sept. 1, 2003.

Sec. 1301.152. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

- (1) is licensed by an occupational regulatory agency in the

building construction industry;

(2) is employed by or participates in the management of an agency or business entity related to the building construction industry; or

(3) has, other than as a consumer, a financial interest in a business entity related to the building construction industry.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.153. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of building construction; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of building construction.

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 819, Sec. 5, eff. Sept. 1, 2003.

Sec. 1301.154. TERMS. Board members serve staggered six-year terms.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.155. ISSUANCE OF COMMISSION. On presentation of the constitutional oath of office and a certificate of appointment, the secretary of state shall issue a commission to a board member as evidence of the person's authority to act as a board member.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.156. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

- (1) does not have at the time of taking office the qualifications required by Section 1301.151 or 1301.152;
- (2) does not maintain during service on the board the qualifications required by Section 1301.151 or 1301.152;
- (3) is ineligible for membership under Section 1301.153;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 819, Sec. 6, eff. Sept. 1, 2003.

Sec. 1301.157. OFFICERS. (a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(b) The board shall elect a secretary from its membership.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 819, Sec. 7, eff. Sept. 1, 2003.

Sec. 1301.158. PER DIEM; REIMBURSEMENT. (a) A board member may not receive a fixed salary for service on the board.

(b) A board member is entitled to receive a per diem as set by the General Appropriations Act for each day the member engages in the business of the board.

(c) A board member may not receive reimbursement for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to reimbursement for transportation expenses as provided by the General Appropriations Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.159. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

- (1) this chapter;
- (2) the programs operated by the agency;
- (3) the role and functions of the agency;
- (4) the rules of the agency, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the agency;
- (6) the results of the most recent formal audit of the agency;

(7) the requirements of:

- (A) the open meetings law, Chapter 551, Government

Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the agency or the Texas Ethics Commission.

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

Added by Acts 2003, 78th Leg., ch. 819, Sec. 8, eff. Sept. 1, 2003.

#### **SUBCHAPTER D. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL**

Sec. 1301.201. EXECUTIVE DIRECTOR AND STAFF. (a) The board shall employ an executive director as the executive head of the agency.

(b) The board may employ personnel as necessary to administer this chapter. The board may determine the compensation and duties of its employees and the terms of their employment.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 10, eff. Sept. 1, 2003.

Sec. 1301.202. PLUMBING EXAMINER. (a) The board shall employ one or more plumbing examiners. A plumbing examiner serves at the will of the board.

(b) A plumbing examiner shall:

(1) examine the fitness and qualifications of a person applying to the board for a license as a master plumber, journeyman plumber, tradesman plumber-limited license holder, or plumbing inspector; and

(2) promptly certify the result of the examination to the board.



Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.305(a), eff.  
Sept. 1, 2003.

Sec. 1301.203. FIELD REPRESENTATIVE; INSPECTIONS. (a) The board may employ a field representative to assist the board in enforcing this chapter and rules adopted under this chapter. A field representative must:

- (1) hold a license as a plumber under this chapter;
- (2) be knowledgeable of this chapter and municipal ordinances relating to plumbing; and
- (3) be qualified by experience and training in plumbing practice.

(b) A field representative may:

- (1) conduct on-site license checks to determine compliance with this chapter;
- (2) investigate consumer complaints filed under Section 1301.303;
- (3) assist municipal plumbing inspectors in enforcing this chapter;
- (4) issue citations as provided by Section 1301.502; and
- (5) in the performance of the field representative's other duties under this chapter, check the license, registration, or endorsement of a person regulated by the Texas Department of Licensing and Regulation in accordance with the memorandum of understanding adopted under Section 1301.259 and report any noncompliance to that agency.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 11, eff. Sept. 1,  
2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. [1354](#)), Sec. 4, eff.  
September 1, 2009.

Sec. 1301.204. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The presiding officer of the board or the presiding officer's designee shall develop an intra-agency career ladder program. The

program must require intra-agency posting of each nonentry level position at least 10 days before the date of any public posting.

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.205. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the agency to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the agency's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 12, eff. Sept. 1, 2003.

Sec. 1301.207. STANDARDS OF CONDUCT. The executive director or the executive director's designee shall provide to members of the board and to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state

officers or employees.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 12, eff. Sept. 1, 2003.

Sec. 1301.208. SEPARATION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the agency.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 12, eff. Sept. 1, 2003.

#### **SUBCHAPTER E. BOARD POWERS AND DUTIES**

Sec. 1301.251. GENERAL DUTIES OF BOARD. The board shall:

- (1) administer this chapter;
- (2) adopt and enforce rules necessary to administer this chapter; and
- (3) keep a record of each proceeding conducted before and action taken by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.252. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt a rule restricting advertising or competitive bidding by a person licensed under this chapter except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices a rule that:

- (1) restricts the person's use of any medium for advertising;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.253. FEES. The board shall set fees in amounts that are reasonable and necessary to cover the cost of administering this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.254. SEAL. The board shall have an official seal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.255. ADOPTION OF PLUMBING CODES. (a) The board shall adopt the following plumbing codes, as those codes existed on May 31, 2001:

- (1) the Uniform Plumbing Code, as published by the International Association of Plumbing and Mechanical Officials; and
- (2) the International Plumbing Code, as published by the International Code Council.

(b) The board by rule may adopt later editions of the plumbing codes listed in Subsection (a).

(c) Plumbing installed in an area not otherwise subject to regulation under this chapter by a person licensed under this chapter must be installed in accordance with a plumbing code adopted by the board under Subsection (a) or (b).

(d) In adopting a code for the design, installation, and maintenance of a plumbing system under this section, a municipality or an owner of a public water system may amend any provisions of the code to conform to local concerns that do not substantially vary from board rules or other rules of this state.

(e) Plumbing installed in compliance with a code adopted under Subsection (a), (b), or (d) must be inspected by a plumbing inspector. To perform the inspection, the political subdivision may contract with any plumbing inspector or qualified plumbing inspection business, as determined by the political subdivision, that is paid directly by the political subdivision.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.306(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1212 (H.B. 1850), Sec. 1, eff. September 1, 2007.

Sec. 1301.256. SUBPOENA. (a) The board may request and, if necessary, compel by subpoena:

(1) the attendance of a witness for examination under oath; and

(2) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) The board, acting through the attorney general, may bring an action to enforce a subpoena issued under Subsection (a) against a person who fails to comply with the subpoena.

(c) Venue for an action brought under Subsection (b) is in a district court in:

(1) Travis County; or

(2) any county in which the board may hold a hearing.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Text of section as added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.305(b)

For text of section as added by Acts 2003, 78th Leg., ch. 819, Sec. 13, see Sec. 1301.258, ante.

Sec. 1301.258. ADVISORY COMMITTEES. The board may appoint advisory committees as it considers necessary. An advisory committee shall serve without compensation or reimbursement and is subject to Section 2110.008, Government Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.305(b), eff. Sept. 1, 2003.

Text of section as added by Acts 2003, 78th Leg., ch. 819, Sec. 13  
 For text of section as added by Acts 2003, 78th Leg., ch. 1276, Sec.  
 14A.305(b), see Sec. 1301.258, post.

Sec. 1301.258. BOARD COMMITTEES. (a) The board may create committees to assist the board in exercising its powers and duties.

(b) The presiding officer of the board shall appoint the members of the committees. Except as provided by Subsection (c), each committee member must be a member of the board.

(c) The presiding officer may appoint only members of the agency staff to an enforcement committee that reviews complaints and license registration and reviews endorsement applications submitted by applicants who have a criminal conviction history affected by Chapter 53.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 13, eff. Sept. 1, 2003.

Sec. 1301.259. MEMORANDUM OF UNDERSTANDING. (a) The board and the Texas Department of Licensing and Regulation shall enter into a memorandum of understanding to improve services and coordinate the functions of each agency.

(b) The memorandum of understanding must:

(1) require each agency to share:

(A) information technology to support the regulation and enforcement of occupational licenses; and

(B) information on regulatory practices for licensed occupations, including policy issues that affect the regulation of licensed occupations, standardization of complaint and enforcement techniques, and model licensing techniques;

(2) authorize enforcement officers from each agency to check licenses, registrations, or endorsements held by persons practicing occupations regulated by the other agency and report noncompliance to that agency; and

(3) state the circumstances when a joint investigation between the board and the Texas Department of Licensing and Regulation is appropriate.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 13, eff. Sept. 1, 2003.

Sec. 1301.260. POLICY ON TECHNOLOGICAL SOLUTIONS. The board shall develop and implement a policy requiring the executive director and agency employees to research and propose appropriate technological solutions to improve the agency's ability to perform its functions. The technological solutions must:

- (1) ensure that the public is able to easily find information about the agency on the Internet;
- (2) ensure that persons who want to use the agency's services are able to:
  - (A) interact with the agency through the Internet; and
  - (B) access any service that can be provided effectively through the Internet; and
- (3) be cost-effective and developed through the agency's planning processes.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 13, eff. Sept. 1, 2003.

Sec. 1301.261. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

- (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of agency rules; and
- (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the agency's jurisdiction.

(b) The agency's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

- (1) coordinate the implementation of the policy adopted under Subsection (a);
- (2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and
- (3) collect data concerning the effectiveness of those procedures, as implemented by the agency.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 13, eff. Sept. 1, 2003.

Sec. 1301.262. PLUMBING INSPECTOR CODE OF CONDUCT. The board by rule shall establish a code of conduct for licensed plumbing inspectors. The code of conduct shall require a plumbing inspector to enforce this chapter and board rules in a consistent manner across job sites.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 13, eff. Sept. 1, 2003.

#### **SUBCHAPTER F. CONSUMER INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 1301.301. CONSUMER INTEREST INFORMATION. (a) The board shall prepare information of consumer interest describing the regulatory functions of the board and the procedures by which consumer complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.3015. PUBLIC PARTICIPATION. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the agency.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 14, eff. Sept. 1, 2003.

Sec. 1301.302. CONTRACT INFORMATION; REQUIRED DOCUMENTS. A written proposal, invoice, or contract relating to plumbing services performed by or under the direction of a plumber licensed under this chapter must contain the name and license number of the responsible master plumber and the name, mailing address, and telephone number of the board. The person who performed the services shall give the customer an invoice or completed contract document on completion of the job, regardless of whether the person charged a fee for performing the services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.308(a), eff. Sept. 1, 2003.



Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 2, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 981 (H.B. 2062), Sec. 3, eff. September 1, 2013.

Sec. 1301.303. COMPLAINTS. (a) The board may investigate an alleged violation of this chapter by a person who:

- (1) is licensed under this chapter;
- (2) is the owner of a plumbing company subject to this chapter; or
- (3) performs plumbing without holding a license under this chapter.

(b) The board shall maintain a file on each written complaint filed with the board. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the agency;
- (3) the subject matter of the complaint;
- (4) the name of any municipality and the county in which the conduct that is the subject of the complaint occurred;
- (5) the name of each person contacted in relation to the complaint;
- (6) a summary of the results of the review or investigation of the complaint; and
- (7) an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint.

(c) The agency shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the agency's policies and procedures relating to complaint investigation and resolution.

(d) The board, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

(e) The board by rule shall assign priorities and prescribe investigative procedures for investigations of complaints based on:

- (1) the severity of the conduct alleged in the complaint;

and

(2) the degree of harm to public health, safety, or property.

(f) The board shall maintain information about complaints, including source, type, and geographical area, to identify and address regulatory problem areas and focus enforcement in those areas.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 15, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 981 (H.B. 2062), Sec. 4, eff. September 1, 2013.

Sec. 1301.304. INVESTIGATION OF COMPLAINTS. (a) The enforcement committee or an employee designated by the enforcement committee may investigate an alleged violation of this chapter or a board rule that is reported to the board.

(b) The enforcement committee shall determine whether a person has committed the violation and shall recommend appropriate sanctions to the board or, if the enforcement committee determines that the complaint is without merit, dismissal of the complaint.

(c) The board shall conduct joint investigations with the Texas Department of Licensing and Regulation as circumstances require.

(d) Unless a threat to health or safety exists, the board may choose to not investigate a complaint in which the person filing the complaint and the person who is the subject of the complaint are engaged in litigation related to the subject matter of the complaint until the outcome of the litigation is finally determined if the board determines the complaint process is being abused.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 16, eff. Sept. 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 526 (H.B. 2376), Sec. 2, eff. September 1, 2011.

#### **SUBCHAPTER G. LICENSE, ENDORSEMENT, AND REGISTRATION REQUIREMENTS**

Sec. 1301.351. LICENSE, ENDORSEMENT, OR REGISTRATION REQUIRED.

(a) A person, other than a responsible master plumber, may not engage in plumbing unless:

(1) the person holds the proper license, registration, or endorsement required by this chapter; and

(2) the person's work is supervised and controlled by a person licensed under this chapter.

(a-1) A person may not act as a responsible master plumber unless the person holds the appropriate license and meets the requirements for a responsible master plumber under this chapter.

(a-2) A person that advertises or otherwise offers to perform or provide plumbing must secure the services of a responsible master plumber.

(b) A person may not serve as a plumbing inspector unless the person is licensed under this chapter as a plumbing inspector.

(c) A license holder who is supervising and controlling under Subsection (a)(2) the work of a person engaged in the business of plumbing in the construction of a new one-family or two-family dwelling in an unincorporated area of the state must have training and management responsibility for, and shall review and inspect, the person's work. The license holder is not required to provide continuous or uninterrupted on-the-job oversight of the person's work.

(d) A person who holds a license or registration issued under this chapter shall carry the license or registration on his or her person while engaged in plumbing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 17, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.309(b), (c), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 3, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 981 (H.B. 2062), Sec. 5, eff. September 1, 2013.

Sec. 1301.352. EXAMINATION REQUIRED. The board shall issue a license or endorsement as a master plumber, journeyman plumber, plumbing inspector, tradesman plumber-limited license holder, medical

gas piping installation endorsement holder, water supply protection specialist, or multipurpose residential fire protection sprinkler specialist to a person who demonstrates the fitness, competence, and qualifications to receive the license or endorsement by passing a uniform, reasonable examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.310(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 4, eff. September 1, 2009.

Sec. 1301.3521. EXAMINATION FEE REFUND. (a) The board shall refund the examination fee paid by an applicant who:

(1) provides advance notice of the applicant's inability to take the examination; or

(2) is unable to take the examination because of an emergency.

(b) The board shall adopt rules that establish the required notification period and the emergency situations that warrant a refund.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 18, eff. Sept. 1, 2003.

Sec. 1301.3522. EXAMINATION REVIEW COURSE. (a) The board shall develop a review course in English and Spanish to assist license applicants in preparation for each license examination offered by the board. If the board provides the review course, the board may charge a fee to an applicant who applies to take the review course.

(b) The board may provide the review course training materials to private course providers for a fee determined by the board.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 18, eff. Sept. 1, 2003.

Sec. 1301.353. INSPECTOR CONFLICTS PROHIBITED. The board may not issue a plumbing inspector license to a person who has a

financial or advisory interest in a plumbing company.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.354. PLUMBER'S APPRENTICE. (a) A person who desires to learn the trade of plumbing must register as a plumber's apprentice before assisting a person licensed under this chapter in the trade of plumbing.

(b) A person who has worked as a plumber's apprentice for a period established by law or board rule may apply to take an examination for a license as a journeyman plumber or tradesman plumber-limited license holder. Before the applicant may take the examination, the applicant must complete classroom training provided by a board-approved instructor in a board-approved training program in the areas of health and safety, applicable plumbing codes, and water conservation for at least:

(1) 24 hours if the applicant is applying to take a tradesman plumber-limited license holder examination; or

(2) 48 hours if the applicant is applying to take a journeyman plumber examination.

(b-1) At the applicant's request, the board may credit an applicant under Subsection (b) with a number of hours determined by board rule against the number of hours of work experience required to take an examination if the applicant has received an associate of applied science degree from a plumbing technology program that:

(1) includes a combination of classroom and on-the-job training; and

(2) is approved by the board and the Texas Higher Education Coordinating Board.

(c) At the applicant's request, the board may credit an applicant under Subsection (b) with up to 500 hours of the work experience required before taking an examination if the applicant has completed the classroom portion of a training program:

(1) approved by the United States Department of Labor, Office of Apprenticeship; or

(2) provided by a person approved by the board and based on course materials approved by the board.

(d) Notwithstanding the classroom training required by Subsection (b), a plumber's apprentice may apply for and take an

examination for a license as a journeyman plumber or tradesman plumber-limited license holder if the apprentice has received an associate of applied science degree from a plumbing technology program that:

(1) includes a combination of classroom and on-the-job training; and

(2) is approved by the board and the Texas Higher Education Coordinating Board.

(e) Notwithstanding Subsection (b), a plumber's apprentice who is enrolled in good standing in a training program approved by the United States Department of Labor, Office of Apprenticeship, may take an examination without completing the classroom training required by Subsection (b)(1) or (2).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.311(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 181 (H.B. 1758), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. 1354), Sec. 5, eff. September 1, 2009.

Sec. 1301.3541. APPRENTICE REGISTRATION REQUIREMENTS. The board by rule may adopt registration requirements for plumber's apprentices, including training and education requirements.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 19, eff. Sept. 1, 2003.

Sec. 1301.355. EXAMINATION RESULTS. (a) The board shall notify each examinee of the results of an examination not later than the 30th day after the date the examination is administered.

(b) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.356. ENDORSEMENT: MEDICAL GAS PIPING INSTALLATION.

(a) A person may not install pipe used solely to transport gas for medical purposes or a vacuum used for medical purposes unless the person:

(1) is licensed under this chapter as a master plumber or journeyman plumber; and

(2) holds an endorsement issued under this section.

(b) A person is eligible to receive a medical gas piping installation endorsement if the person performs satisfactorily on a separate examination related to the endorsement.

(c) An endorsement under this section is valid for three years and may be renewed as provided by board rule.

(d) An endorsement under this section coincides with rules adopted by the Texas Department of Health.

(e) A plumbing inspector who meets the requirements of the board may hold a medical gas endorsement and inspect medical gas piping installations.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.312(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 5, eff. September 1, 2009.

Sec. 1301.3565. ENDORSEMENT: MULTIPURPOSE RESIDENTIAL FIRE PROTECTION SPRINKLER SPECIALIST. (a) A person may not engage in the installation of a multipurpose residential fire protection sprinkler system that uses a single piping system to provide potable water for fire protection sprinklers and for domestic plumbing fixtures and appliances unless the person:

(1) is licensed under this chapter as a master plumber or journeyman plumber; and

(2) holds an endorsement issued under this section.

(a-1) A person may not design a multipurpose residential fire protection sprinkler system for installation under this section unless the person:

(1) is licensed under this chapter as a master plumber; and

(2) holds an endorsement issued under this section.

(b) The board shall issue an endorsement as a multipurpose residential fire protection sprinkler specialist to a person who:

- (1) holds the license described by Subsection (a);
- (2) applies to the board on a form prescribed by the board;
- (3) pays a fee set by the board;
- (4) presents evidence satisfactory to the board of

successful completion of a training program approved by the board that provides the training necessary for the proper design and installation of a multipurpose residential fire protection sprinkler system as required by the applicable codes and standards recognized by the state; and

- (5) passes an examination required by the board.

(c) An endorsement issued under this section is valid until the third anniversary of the date of issuance and may be renewed on compliance with any requirements prescribed by board rule.

(d) A person who holds an endorsement under this section may represent to the public that the person is a multipurpose residential fire protection sprinkler specialist.

(e) Notwithstanding any other law, a person who holds an endorsement under this section is not required to hold a license or registration issued by another state agency in order to install a multipurpose residential fire protection sprinkler system.

(e-1) Notwithstanding any other law, a master plumber who holds an endorsement under this section is not required to hold a license or registration issued by another state agency in order to design a multipurpose residential fire protection sprinkler system for installation under this section.

(f) A plumbing inspector who meets the requirements of the board may inspect a multipurpose residential fire protection sprinkler installation.

Added by Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 6, eff. September 1, 2009; Subsec. (a) eff. June 1, 2010.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 526 (H.B. 2376), Sec. 3, eff. September 1, 2011.

Sec. 1301.357. ENDORSEMENT: WATER SUPPLY PROTECTION SPECIALIST. (a) A person licensed under this chapter may not act as



a water supply protection specialist unless the person holds an endorsement issued under this section.

(b) The board shall issue an endorsement as a water supply protection specialist to a person who:

- (1) is licensed under this chapter as a master plumber or journeyman plumber;
- (2) applies to the board on a form prescribed by the board;
- (3) pays a fee set by the board;
- (4) presents evidence satisfactory to the board of successful completion of a certification program approved by the board for water supply protection specialists; and
- (5) passes an examination required by the board.

(c) An endorsement issued under this section is valid until the third anniversary of the date of issuance and may be renewed on compliance with any requirements prescribed by board rule.

(d) A person who holds an endorsement under this section may represent to the public that the person is a water supply protection specialist.

(e) A person is not required to hold a water supply protection specialist endorsement if the person is employed by:

- (1) a political subdivision; or
- (2) an electric utility as defined by Section 31.002, Utilities Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 981 (H.B. 2062), Sec. 6, eff. September 1, 2013.

Sec. 1301.3575. REGISTRATION OF CERTAIN PERSONS. The board shall register a person who complies with this chapter as a drain cleaner, drain cleaner-restricted registrant, residential utilities installer, or plumber's apprentice.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.305(c), eff. Sept. 1, 2003.

Sec. 1301.3576. CERTIFICATE OF INSURANCE AND TRAINING FOR RESPONSIBLE MASTER PLUMBER. Before a master plumber works as a

responsible master plumber, the master plumber must:

- (1) provide the board with a certificate of insurance that meets the requirements of Section 1301.552; and
- (2) present evidence satisfactory to the board of successful completion of a training program approved or administered by the board regarding the laws and rules applicable to the operation of a plumbing business in this state.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.315(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 7, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 526 (H.B. 2376), Sec. 4, eff. September 1, 2011.

Sec. 1301.358. OUT-OF-STATE APPLICANTS; PROVISIONAL LICENSE.

(a) The board may waive any prerequisite to obtaining a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(b) The board may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

- (1) has been licensed in good standing as a plumber for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this chapter;

- (2) has passed a national or other examination recognized by the board relating to the practice of plumbing; and

- (3) is sponsored by a person licensed by the board under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(c) The board may waive the requirement of Subsection (b)(3) for an applicant if the board determines that compliance with that subdivision would be a hardship to the applicant.

(d) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a

license. The board shall issue a license under this chapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Subsection (a); or

(2) the provisional license holder passes the part of the examination under Section 1301.352 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of plumbing in this state and:

(A) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this chapter; and

(B) the provisional license holder satisfies any other licensing requirements under this chapter.

(e) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(f) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 20, eff. Sept. 1, 2003.

Sec. 1301.3585. LICENSE ELIGIBILITY REQUIREMENTS FOR APPLICANTS WITH MILITARY EXPERIENCE. (a) Notwithstanding any other law, the board shall credit verified military service, training, or education toward the licensing requirements, other than examination requirements, for a license issued under this chapter by the board.

(b) The board shall expedite the issuance of a provisional license or a license by endorsement or reciprocity under this chapter to an applicant who:

(1) has verified military experience; and

(2) holds a current license issued by another jurisdiction that has license requirements that are substantially equivalent to the license requirements of this state.

(c) The board shall adopt rules necessary to implement this

section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 976 (H.B. 2028), Sec. 1, eff. June 14, 2013.

Sec. 1301.359. STATEWIDE VALIDITY OF LICENSE, ENDORSEMENT, OR REGISTRATION; NONTRANSFERABILITY. (a) A license, endorsement, or registration issued under this chapter is valid throughout this state.

(b) A license, endorsement, or registration issued under this chapter is not assignable or transferable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.307(a), eff. Sept. 1, 2003.

**SUBCHAPTER H. LICENSE, ENDORSEMENT, AND REGISTRATION EXPIRATION AND RENEWAL**

Sec. 1301.401. ANNUAL RENEWAL REQUIRED. (a) A license or registration under this chapter is valid for one year. On payment of the required fee, a license may be renewed annually.

(b) The board by rule may adopt a system under which licenses, endorsements, and registrations expire on various dates during the year.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.307(c), eff. Sept. 1, 2003.

Sec. 1301.402. NOTICE OF LICENSE, ENDORSEMENT, OR REGISTRATION EXPIRATION. (a) Not later than the 31st day before the expiration date of a person's license, endorsement, or registration, the board shall send written notice of the impending expiration to the person at the person's last known address according to board records.

(b) The person shall notify the board not later than the 30th day after the date of receipt of the written notice of any change of name or address.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.307(c), eff.  
Sept. 1, 2003.

Sec. 1301.403. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license, endorsement, or registration may renew an unexpired license, endorsement, or registration by paying the required renewal fee to the agency before the expiration date of the license, endorsement, or registration. A person whose license, endorsement, or registration has expired may not engage in activities that require a license, endorsement, or registration until the license, endorsement, or registration has been renewed.

(b) A person whose license or endorsement has been expired for 90 days or less may renew the license or endorsement by paying to the agency a renewal fee that is equal to 1-1/2 times the normally required renewal fee. A person whose registration has been expired for 90 days or less may renew the registration by paying to the board a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license or endorsement has been expired for more than 90 days but less than two years may renew the license or endorsement by paying to the agency a renewal fee that is equal to two times the normally required renewal fee. A person whose registration has been expired for more than 90 days but less than two years may renew the registration by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license, endorsement, or registration has been expired for two years or more may not renew the license, endorsement, or registration. The person may obtain a new license, endorsement, or registration by complying with the requirements and procedures, including the examination requirements, for obtaining an original license, endorsement, or registration.

(e) A person who held a license, endorsement, or registration in this state, moved to another state, and is currently holding a license, endorsement, or registration and has been in practice in the other state for the two years preceding the date of application may obtain a new license, endorsement, or registration without reexamination. The person must pay to the agency a fee that is equal to two times the normally required renewal fee for the license,

endorsement, or registration.

(f) Not later than the 30th day before the date a person's license, endorsement, or registration is scheduled to expire, the agency shall send written notice of the impending expiration to the person at the person's last known address according to the records of the agency.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 21(a), eff. Sept. 1, 2003.

Sec. 1301.404. MANDATORY CONTINUING PROFESSIONAL EDUCATION.

(a) The board shall recognize, approve, and administer continuing education programs for persons who hold licenses or endorsements under this chapter.

(b) A person who holds a license or endorsement under this chapter must complete at least six hours of continuing professional education each year the person holds the license or endorsement to renew the person's license or endorsement. Three of the six hours must be in the subjects of health protection, energy conservation, and water conservation.

(c) The board by rule shall adopt the criteria for the continuing professional education.

(d) A person may receive credit for participating in a continuing professional education program or course only if the program or course is provided:

(1) by an individual, business, or association approved by the board; and

(2) according to criteria adopted by the board.

(e) A person may complete the continuing professional education requirement of this section through a correspondence course as approved by the board.

(f) The board by rule may exempt certain persons from the requirements of this section if the board determines that the exemption is in the public interest.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.305(d), eff. Sept. 1, 2003.

Sec. 1301.405. MANDATORY TRAINING FOR DRAIN CLEANER, DRAIN CLEANER-RESTRICTED REGISTRANT, AND RESIDENTIAL UTILITIES INSTALLER.

(a) To renew the certificate of registration, a person who holds a certificate of registration under this chapter as a drain cleaner, drain cleaner-restricted registrant, or residential utilities installer must annually complete at least six hours of approved training that includes training in health and safety requirements, board-approved plumbing codes, and water conservation.

(b) A person may receive credit for participating in a training program only if the program is provided:

- (1) by a person approved by the board; and
- (2) according to criteria adopted by the board.

(c) The board by rule may exempt certain persons from the requirements of this section if the board determines that the exemption is in the public interest.

Added by Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. 1354), Sec. 6, eff. September 1, 2009.

#### **SUBCHAPTER I. DISCIPLINARY PROCEDURES**

Sec. 1301.451. DISCIPLINARY POWERS OF BOARD. (a) The board shall revoke, suspend, deny, or refuse to renew a license, endorsement, or registration or shall reprimand a holder of a license, endorsement, or registration for a violation of this chapter, an order issued by the board, or a rule of the board.

(b) A person whose license, endorsement, or registration has been revoked may not apply for a new license, endorsement, or registration before the first anniversary of the date of revocation.

(c) The board may place on probation a person whose license, endorsement, or registration is suspended. If a license, endorsement, or registration suspension is probated, the board may require the person:

- (1) to report regularly to the agency on matters that are the basis of the probation;
  - (2) to limit practice to the areas prescribed by the board;
- or
- (3) to continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(d) The board by rule shall:

(1) adopt written guidelines to ensure that probation is administered consistently; and

(2) develop a system to track compliance with the probation requirements.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 22(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 8, eff. September 1, 2009.

Sec. 1301.452. GROUNDS FOR DISCIPLINARY ACTION. (a) A person is subject to disciplinary action under Section 1301.451 if the person violates this chapter, an order issued by the board, or a board rule. A violation of this chapter includes:

(1) obtaining a license, endorsement, or registration through error or fraud;

(2) wilfully, negligently, or arbitrarily violating a municipal rule or ordinance that regulates sanitation, drainage, or plumbing;

(3) making a misrepresentation of services provided or to be provided;

(4) making a false promise with the intent to induce a person to contract for a service; or

(5) employing a person who does not hold a license or endorsement or who is not registered to engage in an activity for which a license, endorsement, or registration is required under this chapter.

(b) Retesting procedures may be used to determine whether grounds exist for suspension or revocation of a license, endorsement, or registration due to incompetence or a wilful violation by a person licensed under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.313(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 9, eff.



September 1, 2009.

Sec. 1301.4521. CONSEQUENCES OF CRIMINAL CONVICTION. (a) The board shall adopt rules in compliance with the guidelines authorized by Chapter 53 relating to criminal convictions.

(b) The board shall adopt a method to review the agency's compliance with Chapter 53 and the rules adopted under this section.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 23, eff. Sept. 1, 2003.

Sec. 1301.4522. REVIEW OF APPLICATION. (a) The enforcement committee may approve, without board approval, the application for a license, endorsement, or registration of a person who has a criminal conviction if the enforcement committee finds that the criminal conviction does not directly relate to the duties and responsibilities of the business of plumbing in accordance with the rules adopted by the board under Section 1301.4521.

(b) If the enforcement committee determines that a person is ineligible for a license, endorsement, or registration based on the person's criminal conviction, the person may request a hearing before an administrative law judge of the State Office of Administrative Hearings to review the enforcement committee's determination.

(c) After receipt of the administrative law judge's proposed findings of fact and conclusions of law, the board shall determine the applicant's eligibility. The board shall provide an applicant who is denied a license a written statement containing the reasons for the board's action.

(d) An applicant who has a criminal conviction may appear before the board or the enforcement committee to present information relating to the applicant's criminal conviction.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 23, eff. Sept. 1, 2003.

Sec. 1301.453. HEARING. A person is entitled to a hearing before the board if the board proposes to:

(1) deny the person's application for a license, endorsement, or registration; or

(2) suspend or revoke the person's license, endorsement, or

registration.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.313(a), eff.  
Sept. 1, 2003.

Sec. 1301.454. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is a contested case for purposes of Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

#### **SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 1301.501. BACKFLOW PREVENTION. (a) A person may not sell, donate, or transfer a water closet plumbing fixture or other equipment that uses water if the fixture or equipment:

(1) does not comply with a state-approved plumbing code;  
and

(2) may permit the backflow of a nonpotable substance into a potable water supply.

(b) The board shall adopt rules under this section that include a list describing the types of plumbing to which this section applies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.502. CITATION. (a) A field representative, water district plumbing inspector, or, within the jurisdiction of the municipality, municipal plumbing inspector may issue a citation to a person who engages in conduct described by Section 1301.508.

(b) The board shall adopt guidelines relating to the circumstances when a field representative may issue a citation. The guidelines must encourage the use of other enforcement measures, including imposition of administrative penalties, before the issuance of a citation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 24, eff. Sept. 1,

2003.

Sec. 1301.503. ENFORCEMENT BY PLUMBING INSPECTOR. Each plumbing inspector shall enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.314(a), eff. Sept. 1, 2003.

Sec. 1301.504. INJUNCTION. (a) In addition to any other action authorized by law, the board may bring an action in the board's name to enjoin a person from violating this chapter or a board rule.

(b) To sustain an action under this section, the board is not required to allege or prove that:

(1) an adequate remedy at law does not exist; or

(2) substantial or irreparable damage would result from the continued violation.

(c) Any party to an action under this section may appeal.

(d) Venue for an action brought under this section is in a district court in Travis County.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 10, eff. September 1, 2009.

Sec. 1301.5045. CEASE AND DESIST ORDER. (a) The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter N.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 25, eff. Sept. 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 11, eff.

September 1, 2009.

Sec. 1301.505. REPRESENTATION BY ATTORNEY GENERAL. The attorney general shall represent the board in an action to enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.506. APPEAL BOND NOT REQUIRED. The board is not required to post an appeal bond in an action arising under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.507. CIVIL PENALTY. A person who violates this chapter or a rule, permit, or order of the board is subject to a civil penalty of not less than \$50 or more than \$1,000 for each act of violation and for each day of violation after notice is provided to the person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.5071. INFORMAL SETTLEMENT CONFERENCE; RESTITUTION.  
(a) The board by rule shall establish procedures under which an informal settlement conference is conducted to resolve a complaint against a person licensed under this chapter.

(b) Subject to Subsection (c), the board may order a person licensed under this chapter to pay restitution to a person as provided in an agreement resulting from an informal settlement conference instead of or in addition to assessing an administrative penalty under Subchapter N.

(c) The amount of restitution ordered as provided by an agreement resulting from an informal settlement conference may not exceed the amount the person paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a restitution order.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 25, eff. Sept. 1, 2003.

Sec. 1301.508. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) violates this chapter or a rule adopted under this chapter;

(2) does not hold a license or endorsement or is not registered under this chapter and engages in an activity for which a license, endorsement, or registration is required; or

(3) employs a person who does not hold a license or endorsement or who is not registered to engage in an activity for which a license, endorsement, or registration is required under this chapter.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.313(b), eff. Sept. 1, 2003.

#### **SUBCHAPTER K. REGULATION BY CERTAIN POLITICAL SUBDIVISIONS**

Sec. 1301.551. MUNICIPAL PLUMBING ORDINANCES AND PERMITS. (a) A municipality with more than 5,000 inhabitants shall regulate by ordinance or bylaw the material, construction, alteration, and inspection of any pipe, faucet, tank, valve, water heater, or other fixture by or through which a supply of water, gas, or sewage is used or carried.

(b) Any other municipality may regulate by ordinance or bylaw the matters described by Subsection (a).

(c) A municipality that adopts an ordinance or bylaw under this section shall provide by ordinance or bylaw that a person must obtain a permit before the person performs plumbing, other than the repairing of leaks, the replacement of lavatory or kitchen faucets, the replacement of ballcocks or water control valves, the replacement of garbage disposals, or the replacement of water closets. The municipality may prescribe the terms on which the permit is issued.

(d) A plumbing inspection in a municipality that adopts an ordinance or bylaw under this section must be performed by a plumbing inspector.

(e) A municipality or other political subdivision in this state that requires a plumbing contractor to obtain a permit before the person performs plumbing shall by telephone, fax, or e-mail:

- (1) accept permit applications;
- (2) collect required fees; and
- (3) issue the required permits.

(f) If drawings of proposed plumbing work are required by the municipality or other political subdivision, the municipality or political subdivision shall specify how permit drawings are to be submitted.

(g) A responsible master plumber, plumbing contractor, or other person who is required to obtain a permit under this section is not required to pay a plumbing registration fee or administrative fee in a municipality or any other political subdivision.

(h) A plumbing contractor must register, electronically or in person, with a municipality or other political subdivision that requires registration before performing plumbing regulated by the municipality or other political subdivision.

(i) Notwithstanding any other provision of state law, after January 1, 2009, a municipality may not enact an ordinance, bylaw, order, building code, or rule requiring the installation of a multipurpose residential fire protection sprinkler system or any other fire sprinkler protection system in a new or existing one- or two-family dwelling. A municipality may adopt an ordinance, bylaw, order, or rule allowing a multipurpose residential fire protection sprinkler specialist or other contractor to offer, for a fee, the installation of a fire sprinkler protection system in a new one- or two-family dwelling.

(j) A multipurpose residential fire protection sprinkler specialist may install a multipurpose residential fire protection sprinkler system in a new or existing one- or two-family dwelling in a municipality described by Subsection (a) or (b).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.315(b), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. [1410](#)), Sec. 12, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. [1354](#)), Sec. 7, eff.

September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(46), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 981 (H.B. 2062), Sec. 7, eff. September 1, 2013.

Sec. 1301.552. CERTIFICATE OF INSURANCE FOR PLUMBING PERMIT IN POLITICAL SUBDIVISION. A political subdivision that requires a responsible master plumber or an agent of a responsible master plumber to obtain a permit before performing plumbing in the political subdivision shall verify through the board's Internet website, or by contacting the board by telephone, that the responsible master plumber has on file with the board a certificate of insurance. The certificate of insurance must:

(1) be written by an insurer authorized to engage in the business of insurance in this state or an eligible surplus lines insurer, as defined by Section 981.002, Insurance Code;

(2) provide for commercial general liability insurance for the responsible master plumber for a claim for property damage or bodily injury, regardless of whether the claim arises from negligence or on a contract; and

(3) provide coverage of not less than \$300,000 for all claims arising in a one-year period.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. 1354), Sec. 8, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 526 (H.B. 2376), Sec. 5, eff. September 1, 2011.

Sec. 1301.553. PLUMBING INSPECTIONS IN MUNICIPALITY THAT OVERLAPS ANOTHER POLITICAL SUBDIVISION. If the boundaries of a municipality and another political subdivision overlap, only the affected municipality may perform a plumbing inspection and collect a permit fee.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.315(c), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. [1354](#)), Sec. 8, eff. September 1, 2009.

**SUBCHAPTER M. INTERAGENCY COOPERATION AND REGULATION**

Sec. 1301.651. DEFINITION. In this subchapter, "local workforce development board" means a board created under Subchapter F, Chapter 2308, Government Code.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.652. PUBLIC EDUCATION EFFORT. (a) The board and the Texas Workforce Commission shall, through the local workforce development boards, coordinate efforts to educate the public about the plumbing profession and the resources available to employers for the recruitment and training of plumbers, including providing:

(1) each local workforce development board with:

(A) information about the licensing requirements for the plumbing profession; and

(B) available statistical data regarding plumbing; and

(2) a link to each agency's Internet site and to the Internet sites of other local workforce development boards.

(b) The board may, during public and industry awareness seminars, raise awareness of the career ladder in the plumbing industry and the opportunities that plumbing apprenticeships offer.

(c) This section applies to the extent that the plumbing profession is designated as an occupation in demand by a local workforce development board.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

**SUBCHAPTER N. ADMINISTRATIVE PENALTY**

Sec. 1301.701. IMPOSITION OF PENALTY. The board may impose an administrative penalty on a person who violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.



Sec. 1301.702. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstance, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts made to correct the violation; and

(6) any other matter that justice may require.

(c) The board by rule or through procedures adopted by the board and published in the Texas Register shall develop a standardized penalty schedule based on the criteria listed in Subsection (b).

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.703. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the enforcement committee determines that a violation occurred, the enforcement committee may issue to the board a report stating:

(1) the facts on which the determination is based; and

(2) the committee's recommendation on the imposition of the penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the enforcement committee shall give written notice of the report to the person.

(c) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.704. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended penalty of the enforcement committee; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the enforcement committee, the board by order shall approve the determination and impose the recommended penalty.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.705. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the enforcement committee shall set a hearing and give written notice of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.706. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may:

(1) find that a violation occurred and impose a penalty;  
or

(2) find that a violation did not occur.

(b) The notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.707. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a)

Not later than the 30th day after the date the board's order becomes final, the person shall:

- (1) pay the penalty; or
- (2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Failure by the person to pay the penalty is grounds for the board to refuse to renew the person's license or registration and to refuse to issue a new license or registration to the person.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 13, eff. September 1, 2009.

Sec. 1301.708. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 1301.707, a person who files a petition for judicial review may:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account; or
  - (B) giving the court a supersedeas bond approved by the court that:
    - (i) is for the amount of the penalty; and
    - (ii) is effective until all judicial review of the board's order is final; or
- (2) request the court to stay enforcement of the penalty by:

- (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and
- (B) sending a copy of the affidavit to the enforcement committee by certified mail.

(b) If the enforcement committee receives a copy of an affidavit under Subsection (a)(2), the executive director may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit.

(c) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person

who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.709. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.710. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.711. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.712. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.713. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

**CHAPTER 1302. AIR CONDITIONING AND REFRIGERATION CONTRACTORS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1302.001. SHORT TITLE. This chapter may be cited as the Air Conditioning and Refrigeration Contractor License Law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the air conditioning and refrigeration contractors advisory board.

(2) "Air conditioning and refrigeration contracting" means performing or offering to perform the design, installation, construction, repair, maintenance, service, or modification of equipment or a product in an environmental air conditioning system, a commercial refrigeration system, or a process cooling or heating system. Notwithstanding any other provision of this chapter, the term does not include the performance of or an offer to perform the installation, repair, replacement, or modification of a thermostat or other temperature control interface by a person licensed or registered under Chapter 1702.

(3) "Air conditioning and refrigeration contracting company" means a person who or business entity that engages in air conditioning and refrigeration contracting for the public.

(4) "Air conditioning and refrigeration contractor" means a person who engages in air conditioning and refrigeration contracting.

(5) "Air conditioning and refrigeration maintenance work" means all work, including repair work, required for the continued normal performance of an environmental air conditioning system, a process cooling or heating system, a commercial refrigeration system, or commercial refrigeration equipment. The term does not include:

(A) the total replacement of a system; or

(B) the installation or repair of a boiler or pressure vessel that must be installed in accordance with rules adopted by the commission under Chapter 755, Health and Safety Code.

(5-a) "Air conditioning and refrigeration technician" means a person who assists a licensed air conditioning and refrigeration contractor in performing air conditioning and refrigeration maintenance work.

(5-b) "Apprenticeship program" means an air conditioning and refrigeration training program that is:

(A) recognized by the Texas Workforce Commission or the Texas Higher Education Coordinating Board;

(B) registered with the United States Department of Labor; or

(C) a competency-based standardized craft training program that meets the standards of the United States Department of Labor Office of Apprenticeship.

(5-c) "Certified technician" means a registered technician who has completed a certification examination.

(6) "Commercial refrigeration" means the use of mechanical or absorption equipment to control temperature or humidity to satisfy the intended use of a specific space.

(7) "Commission" means the Texas Commission of Licensing and Regulation.

(8) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 2.012(1) and Acts 2003, 78th Leg., ch. 1276, Sec. 14A.318(b).

(9) "Cooling capacity" means the nominal tonnage of compression equipment based on 40 degrees Fahrenheit suction temperature and 105 degrees Fahrenheit condensing temperature.

(10) "Department" means the Texas Department of Licensing and Regulation.

(11) "Environmental air conditioning" means treating air to control temperature, humidity, cleanliness, ventilation, and circulation to meet human comfort requirements.

(11-a) "Executive director" means the executive director of

the department.

(12) "Mechanical integrity" means the condition of a product, a system, or equipment installed in accordance with its intended purpose and according to:

(A) standards at least as strict as the standards provided by:

- (i) the Uniform Mechanical Code; and
- (ii) the International Mechanical Code;

(B) all other applicable codes; and

(C) the manufacturer's specifications.

(13) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 415, Sec. 3(1), eff. June 14, 2013.

(14) "Person" means an individual.

(15) "Process cooling or heating" includes controlling temperature, humidity, or cleanliness solely for production requirements or the proper operation of equipment.

(16) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 415, Sec. 3(1), eff. June 14, 2013.

(17) "Registered technician" means an air conditioning and refrigeration technician who is registered with the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 2.001, 2.012(1), 26.028, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.318(b), (c), (d), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 5, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 415 (S.B. 383), Sec. 3(1), eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 997 (H.B. 2294), Sec. 1, eff. September 1, 2013.

Sec. 1302.003. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. Except as otherwise provided by this section, Chapter 601, Business & Commerce Code, does not apply to a good or service provided by a license holder under this chapter if

the transaction involving the good or service is initiated by the consumer. Chapter 601, Business & Commerce Code, does apply to a transaction that involves a breach of express warranty or a negligent installation in violation of a building code applicable to the good or service sold to the consumer.

Added by Acts 2009, 81st Leg., R.S., Ch. 937 (H.B. 3129), Sec. 2, eff. June 19, 2009.

#### **SUBCHAPTER B. EXEMPTIONS**

Sec. 1302.052. APPLICATION OF MUNICIPAL ORDINANCES. Work performed by a person who is exempt from this chapter is subject to any permit, inspection, or approval required by a municipal ordinance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.053. HOMEOWNERS. This chapter does not apply to a person who engages in air conditioning and refrigeration contracting in a building owned solely by the person as the person's home.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.054. CERTAIN MAINTENANCE PERSONNEL. This chapter does not apply to a person who performs air conditioning and refrigeration maintenance work if:

- (1) the person is a maintenance person or maintenance engineer and is a regular employee of the owner, lessee, or management company of the property where the work is being performed;
- (2) the person performs the work in connection with the business in which the person is employed; and
- (3) the person and the person's employer do not engage in air conditioning and refrigeration contracting for the public.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.055. CERTAIN UTILITIES PERSONNEL. This chapter does



not apply to a person who engages in air conditioning and refrigeration contracting and is regularly employed by a regulated electric or gas utility.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.056. ENGINEERS. This chapter does not apply to a person who is licensed as an engineer under Chapter 1001 and engages in air conditioning and refrigeration contracting work in connection with the business in which the person is employed but does not engage in that work for the public.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.057. INDUSTRIAL OPERATION PERSONNEL. This chapter does not apply to a person who is employed by an industrial operation, including a chemical plant, petrochemical plant, refinery, natural gas plant, or natural gas treating plant, and performs process cooling or heating work for the operation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.058. CERTAIN PRODUCTS OR EQUIPMENT. This chapter does not apply to a person who engages in air conditioning and refrigeration contracting on:

- (1) a portable or self-contained ductless air conditioning product that has a cooling capacity of three tons or less;
- (2) a portable or self-contained heating product that does not require the forced movement of air outside the heating unit;
- (3) environmental air conditioning equipment that is intended for temporary use and is not fixed in place; or
- (4) a residential refrigerator, freezer, or ice machine.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.059. MOTOR VEHICLES. This chapter does not apply to a person who engages in or employs a person who engages in air

conditioning services only on a motor vehicle or an MVAC-like appliance as defined by 40 C.F.R. Section 82.152.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 415 (S.B. 383), Sec. 1, eff. June 14, 2013.

Sec. 1302.060. VENT HOODS. This chapter does not apply to a person who installs, repairs, or removes a vent hood of the type commonly used in residential or commercial kitchens.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.061. MANUFACTURED HOMES. This chapter does not apply to a person or entity licensed as a manufacturer, retailer, or installer under Chapter 1201 and engaged exclusively in air conditioning and refrigeration contracting for manufactured homes if the installation of air conditioning components at the site where the home will be occupied is performed by a person licensed under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.17, eff. September 1, 2013.

Sec. 1302.063. NO EXEMPTION FOR CERTAIN PERSONS LICENSED UNDER OTHER LAW. A person who is licensed and engaged in business in this state as a plumber or who is regulated under Chapter 113, Natural Resources Code, may not engage or offer or attempt to engage in air conditioning and refrigeration contracting without a license under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.064. TECHNOLOGY INTEGRATION. This chapter does not

apply to a person licensed under Chapter 1702 of this code or Chapter 6002, Insurance Code, who sells, designs, or offers to sell or design a product or technology, including a burglar alarm or fire alarm, that is integrated with an air conditioning or refrigeration system if the sale, design, or offer does not include the installation of any part of an air conditioning or refrigeration system by that person.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 15, eff. June 14, 2013.

**SUBCHAPTER C. EXECUTIVE DIRECTOR AND DEPARTMENT POWERS AND DUTIES**

Sec. 1302.101. GENERAL POWERS AND DUTIES. (a) The commission shall adopt rules for the practice of air conditioning and refrigeration contracting that are at least as strict as the standards provided by:

- (1) the Uniform Mechanical Code; and
- (2) the International Mechanical Code.

(b) The executive director shall prescribe the design of an original and a renewal license.

(c) The commission shall maintain a record of the commission's proceedings under this chapter.

(d) The executive director may authorize disbursements necessary to implement this chapter, including disbursements for office expenses, equipment costs, and other necessary facilities.

(e) The department may examine any criminal conviction, guilty plea, or deferred adjudication of an applicant for issuance or renewal of a license, including by obtaining any criminal history record information permitted by law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 2.003, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 2, eff. September 1, 2007.

Sec. 1302.1011. RULES. The commission shall adopt rules:

- (1) providing for the licensing and registration of persons

under this chapter, including requirements for the issuance and renewal of a contractor license and a technician registration;

(2) establishing fees necessary for the administration of this chapter, including fees for issuance and renewal of a contractor license and a technician registration; and

(3) implementing the requirements of this chapter as applicable to persons, entities, and activities regulated under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 6, eff. June 17, 2011.

Sec. 1302.102. INSURANCE REQUIREMENTS. (a) The commission by rule shall set insurance requirements for a license holder under this chapter.

(b) The executive director may waive the insurance requirements for a license holder who does not engage in air conditioning and refrigeration contracting for the public.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.029, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.321, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 7, eff. June 17, 2011.

Sec. 1302.103. RULES REGARDING USE AND DISPLAY OF LICENSE. The commission, with the advice of the advisory board, shall adopt rules relating to the use, display, and advertisement of a license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 2.004, eff. Sept. 1, 2003.

Sec. 1302.104. CONTRACTS FOR ENFORCEMENT. The department may contract with another state agency or a political subdivision of the state to enforce this chapter and rules adopted under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.105. PERSONNEL. The department may employ personnel necessary to administer this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 8, eff. June 17, 2011.

#### **SUBCHAPTER D. CONSUMER INTEREST INFORMATION AND COMPLAINTS**

Sec. 1302.151. CONSUMER INTEREST INFORMATION. (a) The executive director shall prepare information of consumer interest describing:

(1) the functions performed by the executive director under this chapter; and

(2) the rights of a consumer affected by this chapter.

(b) The information must describe the procedure by which a consumer complaint is filed with and resolved by the executive director.

(c) The executive director shall make the information available to the public.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.030, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.323, eff. Sept. 1, 2003.

#### **SUBCHAPTER E. AIR CONDITIONING AND REFRIGERATION CONTRACTORS ADVISORY BOARD**

Sec. 1302.201. ADVISORY BOARD MEMBERSHIP. The air conditioning and refrigeration contractors advisory board consists of nine members appointed by the presiding officer of the commission, with the commission's approval, and two ex officio nonvoting members. One member of the advisory board must be a public member.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 2.005, eff. Sept. 1,

2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 457 (H.B. 2548), Sec. 3, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 926 (H.B. 1503), Sec. 1, eff. June 14, 2013.

Sec. 1302.202. APPOINTED MEMBERS. (a) Except for the public member and the building contractor member, each appointed advisory board member must be experienced in the design, installation, construction, maintenance, service, repair, or modification of equipment used for environmental air conditioning, commercial refrigeration, or process cooling or heating. Other than the public member, of the appointed members:

(1) one must be an official of a municipality with a population of more than 250,000;

(2) one must be an official of a municipality with a population of not more than 250,000;

(3) five must be full-time licensed air conditioning and refrigeration contractors, as follows:

(A) one member who holds a Class A license and practices in a municipality with a population of more than 250,000;

(B) one member who holds a Class B license and practices in a municipality with a population of more than 250,000;

(C) one member who holds a Class A license and practices in a municipality with a population of more than 25,000 but not more than 250,000;

(D) one member who holds a Class B license and practices in a municipality with a population of not more than 25,000; and

(E) one member who holds a license of any classification under this chapter, is principally engaged in air conditioning and refrigeration contracting, and practices in a municipality; and

(4) one must be a building contractor who is principally engaged in home construction and is a member of a statewide building trade association.

(b) At least one advisory board member appointed under Subsection (a)(3) must be an air conditioning and refrigeration

contractor who employs organized labor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 9, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 926 (H.B. 1503), Sec. 2, eff. June 14, 2013.

Sec. 1302.203. EX OFFICIO MEMBERS. The executive director and the chief administrator of this chapter serve as ex officio, nonvoting members of the advisory board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.031, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.323, eff. Sept. 1, 2003.

Sec. 1302.204. ADVISORY BOARD DUTIES. (a) The advisory board shall advise the commission in adopting rules and in administering and enforcing this chapter.

(b) The advisory board shall advise the commission in setting fees under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 2.006, eff. Sept. 1, 2003.

Sec. 1302.205. TERMS; VACANCY. (a) Appointed advisory board members serve staggered six-year terms. The terms of two appointed members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during an appointed member's term, the presiding officer of the commission, with the commission's approval, shall fill the vacancy for the remainder of the unexpired term with a person who represents the same interests as the predecessor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 2.007, eff. Sept. 1,

2003.

Sec. 1302.206. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, shall designate one member of the advisory board to serve as presiding officer of the board for two years.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 2.008, eff. Sept. 1, 2003.

Sec. 1302.207. COMPENSATION; REIMBURSEMENT. An appointed advisory board member serves without compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as an advisory board member, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.208. MEETINGS. (a) The advisory board shall meet at least every six months and may meet at other times at the call of the presiding officer.

(b) The advisory board shall meet in this state at a place designated by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

#### **SUBCHAPTER F. AIR CONDITIONING AND REFRIGERATION CONTRACTORS**

Sec. 1302.251. LICENSE REQUIRED. (a) A person may not engage in air conditioning and refrigeration contracting unless the person holds an air conditioning and refrigeration contractor license under this subchapter or Subchapter G.

(b) An air conditioning and refrigeration contractor license issued under this subchapter is valid throughout the state. A person who holds a license issued under this subchapter is not required to hold a municipal license under Subchapter G to engage in air



conditioning and refrigeration contracting in any municipality in this state.

(c) A person holding an air conditioning and refrigeration contractor license may assign that license to only one permanent office of one air conditioning and refrigeration contracting company.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 11, eff. June 17, 2011.

Sec. 1302.252. REQUIREMENT FOR AIR CONDITIONING AND REFRIGERATION CONTRACTING COMPANY. (a) An air conditioning and refrigeration contracting company must employ full-time in each permanent office a license holder who holds an appropriate license assigned to that company.

(b) A company that does not employ a license holder as required by Subsection (a) at the time a contract for air conditioning and refrigeration contracting services is signed and at the time the services are performed may not collect a fee or otherwise enforce the contract.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.253. LICENSE CLASSIFICATIONS. (a) The executive director shall issue a Class A or Class B air conditioning and refrigeration contractor license.

(b) A Class A license entitles the license holder to engage in each type of air conditioning and refrigeration contracting that is endorsed on the license in relation to a system, a product, or equipment of any size or capacity.

(c) A Class B license entitles the license holder to engage in each type of air conditioning and refrigeration contracting that is endorsed on the license in relation to a system, a product, or equipment of not more than:

- (1) 25 tons cooling capacity; or
- (2) 1.5 million British thermal units per hour output heating capacity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.032, eff. Sept. 1,  
2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.325, eff. Sept. 1,  
2003.

Sec. 1302.254. LICENSE ENDORSEMENTS. (a) An air conditioning and refrigeration contractor license must be endorsed with one or both of the following endorsements:

(1) an environmental air conditioning endorsement; or  
(2) a commercial refrigeration and process cooling or heating endorsement.

(b) An environmental air conditioning endorsement entitles the license holder to engage in air conditioning and refrigeration contracting for environmental air conditioning within the class of license held.

(c) A commercial refrigeration and process cooling or heating endorsement entitles the license holder to engage in air conditioning and refrigeration contracting for commercial refrigeration and process cooling or heating within the class of license held.

(d) A license holder may not engage in a type of air conditioning and refrigeration contracting for which the person's license is not endorsed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.255. ELIGIBILITY REQUIREMENTS. (a) An applicant for a license under this subchapter must:

(1) be at least 18 years old; and  
(2) have at least 48 months of practical experience in air conditioning and refrigeration-related work under the supervision of a licensed air conditioning and refrigeration contractor in the preceding 72 months.

(a-1) An applicant who has equivalent experience in another state or who held an equivalent license in another state may receive credit for the experience as determined by the executive director.

(b) Notwithstanding the requirements of Subsection (a)(2), an applicant may satisfy a portion of the practical experience requirement as provided by Subsection (c).

(c) An applicant who obtains a degree or diploma or completes a certification program from an institution of higher education that holds a certificate of authority issued by the Texas Higher Education Coordinating Board, or an equivalent governing body in another state as approved by the executive director, may satisfy a portion of the practical experience requirement as follows:

(1) completing a four-year degree or diploma in air conditioning engineering or technology, refrigeration engineering or technology, or mechanical engineering is equivalent to 24 months of practical experience;

(2) completing a two-year associate's degree, a two-year diploma, or a two-year certification program primarily focused on air conditioning and refrigeration-related work is equivalent to 12 months of practical experience;

(3) completing a one-year certification program, or a program of at least two semesters, in air conditioning and refrigeration-related work is equivalent to six months of practical experience; and

(4) completing a program resulting in another applicable degree, diploma, or certification shall be equivalent to the amount of practical experience determined by the department under commission rule.

(d) Every 2,000 hours of on-the-job training in an apprenticeship program is equivalent to 12 months of practical experience under Subsection (a)(2).

(e) Notwithstanding the requirements of Subsection (a)(2), each of the following qualifies as practical experience for purposes of satisfying the 48-month requirement:

(1) verified military service in which the person was trained in or performed air conditioning and refrigeration-related work as part of the person's military occupational specialty; and

(2) experience performing air conditioning and refrigeration-related work as described by Section 1302.055, 1302.056, or 1302.057 or while employed by a governmental entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. [2643](#)), Sec. 12, eff. June 17, 2011.

Sec. 1302.256. APPLICATION; FEE. (a) An applicant for an air conditioning and refrigeration contractor license must submit a verified application on a form prescribed by the executive director.

(b) The application must specify the class of license and each endorsement for which the applicant is applying.

(c) The application must be accompanied by:

(1) a statement containing evidence satisfactory to the executive director of the applicant's practical experience required by Section 1302.255; and

(2) the required fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.033, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.326, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 13, eff. June 17, 2011.

Sec. 1302.257. EXAMINATIONS. (a) The executive director shall prescribe:

(1) a separate examination for each class of license; and

(2) within each class of license, a separate examination

for:

(A) an environmental air conditioning endorsement; and

(B) a commercial refrigeration and process cooling or heating endorsement.

(b) The executive director shall prescribe the method and content of an examination administered under this subchapter and shall set compliance requirements for the examination. To obtain an endorsement, an applicant must pass the examination for the endorsement.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1017, Sec. 23(4), eff. June 17, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1017, Sec. 23(4), eff. June 17, 2011.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.034, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.327, eff. Sept. 1,

2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 14, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 23(4), eff. June 17, 2011.

Sec. 1302.260. ISSUANCE AND TERM OF LICENSE. (a) The department shall issue an air conditioning and refrigeration contractor license to an applicant who:

- (1) submits a verified application;
- (2) passes the applicable examination;
- (3) meets the requirements of this chapter and rules adopted under this chapter;
- (4) pays the required fees; and
- (5) provides evidence of insurance coverage required by rule in accordance with this chapter.

(b) A license issued under this chapter expires on the first anniversary of the date of issuance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.035, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.330, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 15, eff. June 17, 2011.

Sec. 1302.261. TEMPORARY LICENSE. The commission by rule may provide for the issuance of a temporary air conditioning and refrigeration contracting license to an applicant who:

- (1) submits to the executive director an application on a form prescribed by the executive director; and
- (2) pays the required fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 2.009, eff. Sept. 1, 2003.

Sec. 1302.262. NOTICE TO MUNICIPALITIES. (a) A person who obtains a license under this subchapter shall provide a notice to the municipal authority that enforces air conditioning and refrigeration contracting regulations in the municipality in which the person engages in air conditioning and refrigeration contracting.

(b) The notice must inform the municipality that the person has obtained a license under this subchapter and must be in the form required by the municipality.

(c) A municipality may charge a fee to a person who provides the notice required by this section. The municipality shall set the fee in an amount reasonable and necessary to administer this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.263. LIMITATION ON LICENSE HOLDER. A person licensed as a contractor under this chapter may not:

(1) perform or offer or attempt to perform an act, service, or function that is:

(A) defined as the practice of engineering under Chapter 1001, unless the person holds a license under that chapter;

(B) regulated under Chapter 113, Natural Resources Code, unless the person holds a license or is exempt by rule under that chapter; or

(C) defined as plumbing under Chapter 1301, unless the person holds a license under that chapter; or

(2) use the services of a person who is not a registered technician or a licensed air conditioning and refrigeration contractor to assist in the performance of air conditioning and refrigeration maintenance work.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 3, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 16, eff. June 17, 2011.

#### **SUBCHAPTER G. MUNICIPAL LICENSING AND REGULATION**

Sec. 1302.301. MUNICIPAL LICENSE. An air conditioning and

refrigeration contractor license issued by a municipality of this state and that complies with the requirements of this subchapter is valid under the terms of the license within the municipality.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

**Sec. 1302.302. MUNICIPAL LICENSE: ELIGIBILITY REQUIREMENTS.**

An applicant for a municipal license must:

(1) pass an examination that covers the same subjects as the examination required under Subchapter F for a license of the class that entitles the holder of the license to perform the work the applicant proposes to perform; and

(2) meet experience requirements that are at least as strict as the requirements under Section 1302.255(a)(2).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

**Sec. 1302.303. MUNICIPAL AIR CONDITIONING AND REFRIGERATION STANDARDS.** (a) A municipality may by ordinance adopt and enforce standards for air conditioning and refrigeration contractors that are consistent with the standards established under this chapter.

(b) The municipality shall report a violation of the ordinance to the executive director not later than the 10th day after the date the municipality acts to enforce the ordinance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.036, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.332, eff. Sept. 1, 2003.

**SUBCHAPTER I. DISCIPLINARY ACTION AND PROCEDURES**

**Sec. 1302.401. DISCIPLINARY ACTION.** (a) A person is subject to the denial of an application, imposition of an administrative penalty under Subchapter F, Chapter 51, or disciplinary action under Section 51.353 if the person:

(1) violates this chapter or a rule adopted under this chapter; or

(2) violates a municipal ordinance adopted under Section

1302.303.

(b) A violation of this chapter includes:

(1) failing to provide proper installation, service, or mechanical integrity;

(2) intentionally or knowingly misrepresenting a necessary service, service to be provided, or service that has been provided; or

(3) making a fraudulent promise to induce a person to contract for services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 4, eff. September 1, 2007.

Sec. 1302.402. ADMINISTRATIVE PROCEDURES. A proceeding for the denial of a license or registration application or disciplinary action and an appeal from that proceeding are governed by Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 5, eff. September 1, 2007.

#### **SUBCHAPTER J. PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 1302.451. EMERGENCY AND CEASE AND DESIST ORDERS. (a) The executive director may issue an emergency order as necessary to enforce this chapter if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety.

(b) The executive director may issue the emergency order without notice and hearing or with any notice and hearing the executive director considers practicable under the circumstances. The executive director shall set the time and place for a hearing to affirm, modify, or set aside an emergency order that was issued without a hearing.

(c) The executive director may issue a cease and desist order.



Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.037, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.335, eff. Sept. 1, 2003.

Sec. 1302.452. CITATIONS FOR CERTAIN VIOLATIONS. (a) A municipal or county official may issue a citation to an air conditioning and refrigeration contracting company that engages in air conditioning and refrigeration contracting without complying with Section 1302.252.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 415, Sec. 3(3), eff. June 14, 2013.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 415 (S.B. 383), Sec. 3(3), eff. June 14, 2013.

Sec. 1302.453. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) knowingly engages in air conditioning and refrigeration contracting without holding a license issued under this chapter; or

(2) knowingly engages in air conditioning and refrigeration maintenance work without holding a contractor license or technician registration issued under this chapter.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 415, Sec. 3(4), eff. June 14, 2013.

(c) An offense under this section is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 365 (S.B. 1290), Sec. 1, eff. June 17, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 17, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 415 (S.B. 383), Sec. 2, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 415 (S.B. 383), Sec. 3(4), eff. June 14, 2013.

**SUBCHAPTER K. AIR CONDITIONING AND REFRIGERATION TECHNICIANS**

Sec. 1302.501. REGISTRATION REQUIRED. (a) A person may not act or offer to act as an air conditioning and refrigeration technician unless the person is registered under this subchapter.

(b) An air conditioning and refrigeration technician registration is valid throughout the state.

(c) A person is not required to obtain an air conditioning and refrigeration technician registration if the person only assists a licensed contractor in performing:

(1) the total replacement of a system; or

(2) the installation or repair of a boiler or pressure vessel that must be installed in accordance with rules adopted under Chapter 755, Health and Safety Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 6, eff. June 30, 2008.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 18, eff. June 17, 2011.

Sec. 1302.503. SUPERVISION REQUIREMENTS FOR REGISTRANTS. An air conditioning and refrigeration technician must be supervised by an air conditioning and refrigeration contractor licensed under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 6, eff. June 30, 2008.

Sec. 1302.5035. ELIGIBILITY REQUIREMENTS. (a) An applicant for a technician registration under this subchapter must be at least 18 years old.

(b) An applicant for a technician registration is not required to have practical experience or to take an examination to obtain the registration.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 19, eff. June 17, 2011.

Sec. 1302.504. APPLICATION; FEE. (a) An applicant for an air conditioning and refrigeration technician registration must submit a verified application on a form prescribed by the executive director.

(b) The completed application must be accompanied by the required fees.

Added by Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 6, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 20, eff. June 17, 2011.

Sec. 1302.505. ISSUANCE AND TERM OF REGISTRATION. (a) The department shall issue an air conditioning and refrigeration technician registration to an applicant who:

(1) submits a verified application;

(2) meets the requirements of this chapter and rules adopted under this chapter; and

(3) pays the required fees.

(b) A registration issued under this subchapter is valid for one year from the date of issuance.

Added by Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 6, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 21, eff. June 17, 2011.

Sec. 1302.506. TEMPORARY REGISTRATION. (a) An applicant for registration may request a temporary registration. The executive director shall issue a temporary registration that expires on the 21st day after the date of issuance to an applicant who meets the qualifications for temporary registration.

(b) The commission shall adopt rules providing for the issuance of a temporary registration under this section, including the qualifications and fee required for the registration.

Added by Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 6, eff. September 1, 2007.

Sec. 1302.508. CERTIFIED TECHNICIAN. A registered technician may be certified by the department and use the designation "certified technician" if the registered technician:

- (1) completes an application for certification on a form prescribed by the executive director;
- (2) pays the application fee; and
- (3) provides the department with proof that the registered technician successfully completed a nationally recognized and administered certification examination or another examination of equal or greater difficulty approved by the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 6, eff. September 1, 2007.

Sec. 1302.509. LIMITATIONS ON REGISTRANT. A person registered under this subchapter may not:

- (1) perform, offer to perform, or attempt to perform an act that is:
  - (A) defined as the practice of engineering under Chapter 1001, unless the person holds a license under that chapter;
  - (B) regulated under Chapter 113, Natural Resources Code, unless the person holds a license under that chapter or is exempt by a rule adopted under that chapter; or
  - (C) defined as plumbing under Chapter 1301, unless the person holds a license under that chapter; or
- (2) assist a person who is not a licensed air conditioning and refrigeration contractor in the performance of air conditioning and refrigeration maintenance work.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 22, eff. June 17, 2011.

## **CHAPTER 1303. RESIDENTIAL SERVICE COMPANIES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1303.001. SHORT TITLE. This chapter may be cited as the

Residential Service Company Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Real Estate Commission.

(2) "Contract holder" means a person who is entitled to receive services from a residential service company under a residential service contract.

(3) "Person" means an individual, partnership, corporation, association, or other organization.

(4) "Residential service company" means a person who:

(A) issues a residential service contract; and

(B) performs or arranges to perform services under the contract.

(5) "Residential service contract" means an agreement under which, in exchange for a fee, a person undertakes for a specified period to maintain, repair, or replace all or any part of a structural component, an appliance, or an electrical, plumbing, heating, cooling, or air-conditioning system of a residential property. The term does not include a service or maintenance agreement sold, offered for sale, or issued by a manufacturer or merchant under which the manufacturer or merchant undertakes to maintain, repair, or replace a product or part of a product, including a structural component, an appliance, or an electrical, plumbing, heating, cooling, or air-conditioning system of a residential property, that is:

(A) manufactured or sold by the manufacturer or merchant; or

(B) installed by the merchant in a building or residence.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.003. APPLICABILITY OF INSURANCE LAWS. (a) Except as otherwise provided by this chapter, the insurance laws of this state do not apply to a residential service company. This subsection does not apply to an insurance company licensed and regulated under the insurance laws of this state.

(b) This chapter does not exempt a warranty or service contract other than a residential service contract from the Insurance Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.0035. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. The sale of a residential service contract governed by this chapter is not a good or service governed by Chapter 601, Business & Commerce Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.336(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.28, eff. April 1, 2009.

Sec. 1303.004. NONAPPLICABILITY TO CERTAIN PERSONS. (a) This chapter does not apply to a person who:

(1) manufactures or sells a product or part of a product;  
and

(2) sells, offers to sell, or issues a service or maintenance agreement that provides for the maintenance, repair, replacement, or performance of the product or part of the product.

(b) A person described by Subsection (a) or an employee or agent of a person described by Subsection (a) is not required to be licensed or regulated under this chapter.

(c) This chapter does not apply to a person who engages in the business of structural pest control in compliance with Chapter 1951.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.005. APPLICABILITY TO CERTAIN AGREEMENTS. This chapter does not apply to:

- (1) a performance guarantee given by:
  - (A) the builder of a residential property; or
  - (B) the manufacturer or seller of an appliance or other system or component of a residential property;
- (2) a residential service contract executed before August

28, 1979;

(3) a service contract, guarantee, or warranty that is:

(A) designed to guarantee or warrant the repair or service of an appliance, system, or component of a residential property; and

(B) issued by a person who:

(i) does not engage in the business of a residential service company; and

(ii) sells, services, repairs, or replaces the appliance, system, or component at the time or before the contract, guarantee, or warranty is issued;

(4) a service or maintenance agreement or a warranty that:

(A) is sold, offered for sale, or issued by a manufacturer or merchant who manufactures or sells a product or part of a product, including a structural component, an appliance, or an electrical, plumbing, heating, cooling, or air-conditioning system of a building or residence; and

(B) provides for, warrants, or guarantees the maintenance, repair, replacement, or performance of the product or part of the product; or

(5) home warranty insurance as defined by Section 2, Article 5.53-A, Insurance Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.006. LIABILITY FOR CERTAIN ACTIONS BY AGENT. This chapter does not exempt a residential service company from common law or statutory liability for an action taken by the company's agent or representative that is relevant to the conduct of the company's business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

#### **SUBCHAPTER B. COMMISSION POWERS AND DUTIES**

Sec. 1303.051. GENERAL POWERS AND DUTIES OF COMMISSION; DELEGATION. (a) The commission shall administer this chapter and may adopt and enforce rules necessary to implement this chapter.

(b) The commission may delegate a power, right, or duty under this chapter to the administrator or assistant administrator of the

commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.052. FEES. (a) A residential service company must pay to the commission a fee for filing an application for a license or an amendment to the application.

(b) A residential service company shall pay to the commission a fee for:

- (1) filing an annual report under Section 1303.202; and
- (2) any other filing required by this chapter.

(c) A residential service company shall pay to the commission a fee for the cost of an examination conducted under Section 1303.053.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 56, eff. September 1, 2007.

Sec. 1303.053. EXAMINATION OF RESIDENTIAL SERVICE COMPANY. (a) The commission may examine the affairs of a residential service company as necessary. For the purpose of an examination, the commission may administer an oath to and examine an officer or agent of the residential service company.

(b) A residential service company shall:

- (1) make available for the examination its books and records relating to its operation; and
- (2) facilitate the examination in every way.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

#### **SUBCHAPTER C. LICENSE REQUIREMENTS**

Sec. 1303.101. LICENSE REQUIRED. (a) A person may not issue a residential service contract or perform or arrange to perform services under a residential service contract unless the person is licensed as a residential service company under this chapter or is the authorized representative of a person licensed as a residential service company under this chapter.



(b) A person may not sell, offer to sell, arrange or solicit the sale of, or receive an application for a residential service contract unless:

(1) the person is:

(A) employed by a residential service company licensed under this chapter; or

(B) licensed as a real estate salesperson, real estate broker, mobile home dealer, or insurance agent in this state; and

(2) the contract is issued by a residential service company licensed under this chapter.

(c) A person may not use the phrase "residential service company" in the course of engaging in business unless the person:

(1) is licensed by the commission as provided by this chapter; and

(2) complies with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.102. ELIGIBILITY. (a) Notwithstanding any other law of this state, any person may apply to the commission for and obtain a license to issue residential service contracts in compliance with this chapter.

(b) A foreign corporation may qualify under this chapter if the corporation:

(1) registers to engage in business in this state as a foreign corporation under the Texas Business Corporation Act; and

(2) complies with this chapter and other applicable statutes of this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.103. LICENSE APPLICATION. (a) An application for a license under this chapter must be:

(1) on a form prescribed by commission rule; and

(2) verified by the applicant or an officer or other authorized representative of the applicant.

(b) Each application for a license must contain or be accompanied by:

(1) a copy of the articles of incorporation, articles of

association, partnership agreement, trust agreement, or any other basic organizational document of the applicant;

(2) a copy of any amendment to the applicant's basic organizational document;

(3) a copy of any bylaws, rules, or other similar document that regulates the conduct of the applicant's internal affairs;

(4) the name, address, and official position of each person who will be responsible for the conduct of the applicant's affairs, including:

(A) each member of the board of directors, board of trustees, executive committee, or other governing body or committee of the applicant;

(B) the applicant's principal officer, if the applicant is a corporation; and

(C) each partner or member of the applicant, if the applicant is a partnership or association;

(5) a copy of the residential service contract made or to be made between the applicant and another person;

(6) a general description of the residential service contract or the contract's coverage or plan;

(7) a financial statement that:

(A) is prepared by an independent certified public accountant within six months preceding the date the application is submitted; and

(B) shows the applicant's assets, liabilities, and sources of financial support;

(8) a description of the applicant's proposed method of marketing a residential service contract;

(9) a statement regarding the applicant's sources of working capital and any other funding sources;

(10) if the applicant is not domiciled in this state, a power of attorney appointing the administrator and the administrator's successors in office, or the administrator's authorized deputy, as the applicant's agent for service of process in this state in a legal action arising in this state against the applicant or the applicant's agents; and

(11) any other information the commission requires to make a determination required by this chapter.

(c) For the proper administration of this chapter, the commission may require additional or more recent financial

information than the financial information required under Subsection (b)(7).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.104. APPROVAL OF APPLICATION MATERIALS. (a) The commission shall approve or disapprove the application materials in writing as soon as reasonably possible after the date the application materials are submitted. Except as provided by Subsection (b), the application materials are considered approved unless disapproved not later than the 30th day after the date the application materials are submitted.

(b) The commission by official order may postpone approval or disapproval of the application materials for a period necessary for proper consideration, not to exceed 30 days.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.105. ISSUANCE OR DENIAL OF LICENSE. (a) On receipt of an approved application as provided by Section 1303.104, the commission shall determine whether the applicant has demonstrated the potential ability to ensure that the services will be provided in a timely and responsible manner. The commission shall issue a license to an applicant if the commission determines that:

(1) the applicant has demonstrated the potential ability to ensure that the services will be provided in a timely and responsible manner;

(2) the person responsible for the conduct of the applicant's affairs is competent and trustworthy and possesses a good reputation;

(3) the applicant may reasonably be expected to meet its obligations under its residential service contract; and

(4) the applicant has complied with or will comply with this chapter.

(b) In making the determination under Subsection (a)(3), the commission shall consider:

(1) the applicant's financial soundness;

(2) any agreement between the applicant and another party to provide the services required in the residential service contract;

and

(3) any other matter the commission considers relevant.

(c) Not later than the 75th day after the date the commission receives an approved application, the commission shall, in writing, issue or deny a license to the applicant.

(d) If the commission denies a license, the commission shall notify the applicant in writing of the denial not later than the fifth day after the date of denial.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.106. LICENSE DENIAL: APPEAL TO COMMISSION. (a) To appeal the denial of a license as provided by Section 1303.354, a license applicant must file not later than the 10th day after the date of the notice of denial a written appeal requesting a hearing before the commission. If an applicant fails to request a hearing as provided by this subsection, the commission's decision is final and not subject to judicial review.

(b) The commission shall:

(1) set a time and place for the hearing not later than the 30th day after the date the commission receives the appeal; and

(2) notify the applicant in writing of the scheduled hearing not later than the 10th day before the date of the scheduled hearing.

(c) The hearing may be continued with the applicant's consent. After the hearing, the commission shall enter an appropriate order.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.107. TERM OF LICENSE. A license continues in effect as long as the license holder meets the requirements of this chapter or until the license is:

(1) suspended or revoked by the commission; or

(2) terminated at the request of the license holder.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

#### **SUBCHAPTER D. FINANCIAL REQUIREMENTS**

Sec. 1303.151. RESERVE REQUIRED. A residential service company shall maintain a funded reserve against its liability to provide repair and replacement services under its outstanding residential service contracts written in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.152. AMOUNT OF RESERVE. (a) The amount of the reserve required by Section 1303.151 is based on the amount of liability remaining under outstanding residential service contracts written in this state by the residential service company, as determined by multiplying the total number of months remaining on all of those contracts by the pro rata monthly contract charge.

(b) The amount of the reserve must be equal to the lesser of:

(1) an amount equal to the amount of remaining liability multiplied by the ratio of direct losses incurred by the residential service company to contract fees earned by the company during the preceding calendar year; or

(2) an amount equal to 50 percent of the amount of remaining liability.

(c) For purposes of this chapter, the reserve is not required to include a contract fee on a residential service contract to the extent that provision is made for reinsurance of the outstanding risk on the contract by:

(1) a residential service company licensed in this state;

(2) an admitted insurer; or

(3) a surplus line insurer or a surplus line bonding company if the insurer or bonding company:

(A) is rated A+ or better by a rating service recognized by the commission; and

(B) submits to the commission for its approval evidence, in the form of a certified audit and other pertinent information the commission may require, of the insurer's or bonding company's ability to meet its contractual obligations.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.153. SECURITY REQUIRED. (a) As a guarantee that a residential service company will meet its obligations to its contract

holders, the company shall maintain with the commission a bond or other security accepted by the commission.

(b) A bond posted as security must:

(1) be issued by a carrier admitted in this state;

(2) be continuous;

(3) be cancellable by the surety only after not less than 90 days' notice to the commission; and

(4) recognize that the obligation continues for the terms of the residential service contracts written by the residential service company while the bond is in force.

(c) Any security provided under this section in a form other than a bond must be convertible to cash by the commission for the benefit of contract holders in this state, without resort to the courts, if the commission determines that the residential service company is in default of its financial obligations to the contract holders. Any amount remaining after all contract holders' claims are paid must be returned to the residential service company not later than the 120th day after the date the last outstanding residential service contract expires.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.154. AMOUNT OF SECURITY. (a) An applicant for a new license must provide security in the amount of \$25,000. The amount of the security may not be reduced before the residential service company files a second report under Section 1303.202.

(b) After a residential service company files the second report, the company must maintain security in one of the following minimum amounts based on the amount of claims paid in this state during the preceding calendar year:

(1) \$10,000, if the amount of claims paid is less than \$50,000;

(2) \$25,000, if the amount of claims paid is \$50,000 or more but less than \$200,000;

(3) \$50,000, if the amount of claims paid is \$200,000 or more but less than \$500,000; and

(4) \$100,000, if the amount of claims paid is \$500,000 or more.

(c) A revision to the amount of security must be based on the

figures a residential service company provides in its report under Section 1303.202. The company shall revise the amount of security as required by the commission not later than the 30th day after the date the company is notified by the commission of the revised amount.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

**SUBCHAPTER E. GENERAL POWERS AND DUTIES OF LICENSE HOLDER**

Sec. 1303.201. NOTICE OF MODIFICATION. A residential service company shall file notice with the commission before the company modifies an operation or document described in Section 1303.103.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.202. ANNUAL REPORT. (a) Not later than April 1 of each year, each residential service company shall file with the commission a report covering the preceding calendar year.

(b) The report must:

(1) be on a form prescribed by the commission;  
 (2) be verified by at least two of the residential service company's principal officers; and

(3) include:

(A) a financial statement of the residential service company, including its balance sheet and receipts and disbursements for the preceding year, certified by an independent public accountant;

(B) any material change to the information submitted under Section 1303.103;

(C) the number of residential service contracts entered into during the year, the number of contract holders as of the end of the year, and the number of contracts terminating during the year; and

(D) any other information that:

(i) relates to the performance and solvency of the residential service company; and

(ii) is necessary for the commission to perform its duties under this chapter.

(c) Information provided by a residential service company under Subsection (b)(3)(D) is:

- (1) confidential; and
- (2) for the exclusive use of the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

#### **SUBCHAPTER F. RESIDENTIAL SERVICE CONTRACTS**

Sec. 1303.251. EVIDENCE OF COVERAGE. (a) Each contract holder residing in this state is entitled to evidence of coverage under a residential service contract. The residential service company that issued the contract shall issue evidence of coverage under the contract.

(b) A residential service company may not issue or deliver evidence of coverage under a residential service contract, or an amendment to that evidence, to a person in this state until a copy of the evidence or amendment is filed with and approved by the commission.

(c) The commission may require a residential service company to submit relevant information the commission considers necessary to determine whether to approve or disapprove the company's evidence of coverage.

(d) The commission shall approve a residential service company's evidence of coverage if the requirements of this section and Section 1303.252 are met.

(e) If the commission disapproves a residential service company's evidence of coverage, the commission shall notify the company of the disapproval and in the notice shall specify in detail the reason for the disapproval.

(f) A residential service company whose evidence of coverage is disapproved by the commission may request a hearing on the commission's decision. If a hearing is requested, the commission shall set a hearing on the decision as soon as reasonably possible. Not later than the 60th day after the date of the hearing, the commission by written order shall approve or disapprove the evidence. If the evidence is disapproved, the commission shall state in the order the grounds for the disapproval.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.252. CONTENTS OF EVIDENCE OF COVERAGE. (a) Evidence



of coverage under a residential service contract must contain a clear and complete statement, if the evidence is a contract, or a reasonably complete facsimile, if the evidence is a certificate, of:

(1) the services or benefits to which the contract holder is entitled;

(2) any limitation on the services, kinds of services, or benefits to be provided, including a deductible or co-payment provision;

(3) where and in what manner information is available on how to obtain services;

(4) the period during which the coverage is in effect;

(5) the residential service company's agreement to perform services on the contract holder's telephone request to the company, without a requirement that a claim form or application be filed before the services are performed;

(6) the company's agreement that, under normal circumstances, the company will initiate the performance of services within 48 hours after the contract holder requests the services; and

(7) any service fee to be charged for a service call.

(b) Evidence of coverage may not contain a provision that encourages misrepresentation or that is unjust, unfair, inequitable, misleading, deceptive, or false.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.253. SCHEDULE OF CHARGES. (a) A residential service company may not use in conjunction with a residential service contract a schedule of charges for services covered under the contract or an amendment to that schedule until a copy of the schedule or amendment is filed with and approved by the commission.

(b) The commission shall approve a schedule of charges if the commission determines that the schedule is reasonably related to the amount, term, and conditions of the contract.

(c) If the commission determines that the schedule of charges is not reasonably related to the contract as described by Subsection (b), the commission may reject the schedule. If the commission rejects the schedule, the commission shall notify the company of the rejection and shall specify in detail the reason for the rejection.

(d) A residential service company whose schedule of charges is

rejected by the commission may request a hearing on the commission's decision to be held as soon as reasonably possible. Not later than the 60th day after the date of the hearing, the commission by written order shall approve or reject the schedule. If the schedule is rejected, the commission shall state in the order the grounds for the rejection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.254. REMEDIES NOT WAIVED; NOTICE. (a) A contract holder does not waive under a residential service contract a remedy that the holder may have under another law against another person.

(b) A person may not sell or offer to sell a residential service contract unless the contract contains the following statement in at least 10-point bold type above or adjacent to the signature of the buyer:

NOTICE: YOU THE BUYER HAVE OTHER RIGHTS AND REMEDIES UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT WHICH ARE IN ADDITION TO ANY REMEDY WHICH MAY BE AVAILABLE UNDER THIS CONTRACT. FOR MORE INFORMATION CONCERNING YOUR RIGHTS, CONTACT THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE, YOUR LOCAL DISTRICT OR COUNTY ATTORNEY OR THE ATTORNEY OF YOUR CHOICE.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.255. CANCELLATION OF CONTRACT. A residential service company may not cancel a residential service contract during the initial term for which the contract is issued unless:

(1) the contract holder does not pay a fee or charge due under the terms of the contract;

(2) the contract holder engages in fraud or misrepresentation of facts material to the issuance of the contract; or

(3) an interest in the residential property covered under the contract is sold, and the contract is contingent on an interest in the property not being sold.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

**SUBCHAPTER G. PROHIBITED PRACTICES**

Sec. 1303.301. FALSE OR DECEPTIVE STATEMENTS PROHIBITED. (a)

A residential service company may not cause or permit the use of:

(1) a false or misleading advertisement or solicitation;

or

(2) any deceptive evidence of coverage.

(b) Unless a residential service company is licensed as an insurer, the company may not use in the company's name, contracts, or literature the word "insurance," "casualty," "surety," or "mutual" or another word that is:

(1) descriptive of the insurance, casualty, or surety business; or

(2) deceptively similar to the name or description of an insurance or surety corporation or another residential service company engaging in business in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.302. CERTAIN CONDITIONAL SALES OF PROPERTY

PROHIBITED. (a) A seller of a residential property or the buyer's or seller's agent may not condition the sale of the property on the buyer's purchase of a residential service contract.

(b) A seller of a residential property or the buyer's or seller's agent shall provide to the buyer a statement that clearly and conspicuously states that:

(1) the purchase of a residential service contract is optional; and

(2) the buyer may purchase similar coverage through another residential service company or insurance company authorized to engage in business in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 13, eff. September 1, 2007.

Sec. 1303.303. CERTAIN CHARGES WITHOUT CONSENT PROHIBITED.

Unless a homeowner, lessor, or renter consents in writing, a residential service company or the company's agent may not knowingly

charge the homeowner, lessor, or renter for duplication of coverage or duties required by:

- (1) state or federal law, including coverage under Subchapter H, Chapter 1201;
- (2) a warranty expressly issued by a manufacturer or seller of a product; or
- (3) an implied warranty enforceable against a lessor, seller, or manufacturer of a product.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.304. CERTAIN PAYMENTS BY RESIDENTIAL SERVICE COMPANY PROHIBITED. (a) A residential service company may not directly or indirectly pay, as an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract, a commission or other consideration to an agent, representative, attorney, or employee of an owner or prospective owner of a residential property for which a residential service contract has been or will be issued.

(b) Notwithstanding Subsection (a), a residential service company may pay a reasonable amount for the sale, advertising, inspection, or processing of a residential service contract.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

#### **SUBCHAPTER H. DISCIPLINARY ACTION AND OTHER PROCEDURES**

Sec. 1303.351. DISCIPLINARY POWERS OF COMMISSION. The commission may suspend or revoke a license issued to a residential service company under this chapter if the commission determines that a ground for discipline exists under Section 1303.352.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.352. GROUNDS FOR DISCIPLINARY ACTION. (a) The commission may discipline a residential service company under Section 1303.351 if the continued operation of the company would be hazardous to its contract holders or if the company:

- (1) operates in conflict with its basic organizational

document or in a manner that is contrary to that described in and reasonably inferred from information submitted under Section 1303.103, unless an amendment to the information has been filed with and approved by the commission;

(2) issues evidence of coverage that does not comply with Sections 1303.251 and 1303.252;

(3) uses a schedule of charges that does not comply with Section 1303.253;

(4) is not financially responsible and may be reasonably expected to be unable to meet the company's obligations to contract holders;

(5) did not comply with Subchapter D;

(6) advertised or marketed the company's services in a false, misrepresentative, misleading, deceptive, or unfair manner; or

(7) otherwise did not substantially comply with this chapter or a rule adopted under this chapter.

(b) Subsection (a)(6) applies to any advertising or marketing conducted on behalf of a residential service company by another person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.3525. HEARING. (a) The commission may authorize the State Office of Administrative Hearings to conduct a hearing and enter a final decision in a proceeding under Section 1303.351.

(b) All hearings conducted under Subsection (a) are governed by Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.336(b), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 23 (S.B. 862), Sec. 7, eff. May 12, 2009.

Sec. 1303.353. DUTIES AFTER LICENSE REVOCATION. (a) Immediately after the effective date of an order revoking a residential service company's license, the company:

(1) shall wind up its affairs;

(2) may not engage in further advertising or solicitation;  
and

(3) may not conduct further business except as may be essential to the orderly conclusion of the company's affairs.

(b) Notwithstanding Subsection (a), to provide contract holders with the greatest practical opportunity to obtain services for which they contracted, the commission by written order may permit further operation of the residential service company as the commission determines is in the best interests of the contract holders.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.354. JUDICIAL REVIEW. (a) A person who is adversely affected by a rule or decision of the commission may file in a district court in Travis County a petition stating the particular objection to the rule or decision. The commission is a defendant in the action.

(b) The petition must be filed not later than the 20th day after the date the commission enters an order.

(c) The district court may not enjoin or stay the commission's decision except on application to that court after notice to the commission.

(d) The substantial evidence rule applies to the proceedings in the district court.

(e) Each party to the action may appeal from the district court. The appeal takes precedence in the appellate court over all actions of a different character pending in that court. The commission is not required to give an appeal bond in an action arising under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.355. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty as provided by Subchapter O, Chapter 1101, on a person who violates this chapter or a rule adopted or order issued by the commission under this chapter.

(b) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of imposing a

penalty.

(c) In determining the amount of the penalty, the administrator shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

(d) The commission by rule shall adopt a schedule of administrative penalties based on the criteria listed in Subsection (c) for violations subject to an administrative penalty under this section to ensure that the amount of a penalty imposed is appropriate to the violation.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. [914](#)), Sec. 57, eff. September 1, 2007.

Sec. 1303.356. TEMPORARY SUSPENSION. (a) The presiding officer of the commission shall appoint a disciplinary panel consisting of three commission members to determine whether a person's license to practice under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person licensed to practice under this chapter would, by the person's continued practice, constitute a continuing threat to the public welfare, the panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

- (1) institution of proceedings for a hearing before the commission is initiated simultaneously with the temporary suspension; and
- (2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location

is inconvenient for any member of the panel.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 57, eff. September 1, 2007.

#### **SUBCHAPTER I. PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 1303.401. HAZARDOUS FINANCIAL CONDITION OF RESIDENTIAL SERVICE COMPANY. (a) If the financial condition of a residential service company indicates that its continued operation may be hazardous to its contract holders or creditors or to the public, the commission may, after notice of hearing, order the company to take reasonably necessary action to remedy the condition, including:

(1) reducing the total amount of present and potential liability for benefits by reinsurance or by obtaining an appropriate bond from an admitted carrier or a surplus line carrier;

(2) reducing the volume of new business being accepted;

(3) reducing expenses by specified methods;

(4) suspending or limiting the writing of new business for a period of time; or

(5) increasing the company's net worth by contribution.

(b) The commission by rule may establish:

(1) uniform standards and criteria for early warning that the continued operation of a residential service company may be hazardous to its contract holders or creditors or to the public; and

(2) standards for evaluating the financial condition of a residential service company that are consistent with the purposes described in Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.402. APPOINTMENT OF RECEIVER. (a) If in the commission's opinion the continued operation of a residential service company would be hazardous to its contract holders or the public, the commission may request a district court of Travis County to appoint a receiver.

(b) After adequate notice and a hearing, if the court determines that a receiver should be appointed to protect the rights of the contract holders or the public, the court shall issue an order appointing a receiver. The order must clearly state whether the



receiver has the power to:

- (1) manage and operate the residential service company's business generally; or
- (2) manage only the residential service company's finances.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.403. INJUNCTIVE RELIEF. (a) The commission may bring an action in the name of the state in a district court of Travis County for a restraining order, injunction, or other relief the court determines is appropriate if it appears to the commission that:

- (1) a residential service company is violating or has violated this chapter or a rule adopted under this chapter; and
- (2) bringing the action is in the public interest.

(b) The commission has exclusive authority to bring an action under this section.

(c) On application for injunctive relief and a finding that a residential service company is violating or has violated this chapter or a rule adopted under this chapter, the court shall grant the injunctive relief that the facts warrant. The court shall grant the relief without a bond.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.404. CIVIL PENALTY. (a) A person who violates this chapter is liable for a civil penalty in an amount not to exceed \$2,500 for each violation or \$50,000 in the aggregate for all violations of a similar nature.

(b) The commission may bring an action to collect a civil penalty under this section.

(c) For purposes of this section, violations are of a similar nature if the violations consist of the same or a similar course of conduct, action, or practice, regardless of the number of times the conduct, act, or practice occurred.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.405. DECEPTIVE TRADE PRACTICE. A violation of this chapter is actionable by a consumer as a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.406. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) wilfully violates this chapter or a rule adopted under this chapter; or

(2) knowingly makes a false statement with respect to a report or a statement required by this chapter.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.407. ADDITIONAL PENALTY. A residential service company that engages in business in violation of this chapter shall pay \$100 for each day the company continues to write new business while in violation of this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

**CHAPTER 1304. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1304.001. SHORT TITLE. This chapter may be cited as the Service Contract Regulatory Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1304.002. DEFINITIONS. In this chapter:

(1) "Administrator" means a person, other than the provider of the service contract or an employee of the provider, who is responsible for the third-party administration of a service contract.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) Repealed by Acts 2003, 78th Leg., ch. 816, Sec.

13.010(1); Acts 2003, 78th Leg., ch. 1276, Sec. 14A.337(a).

(4) "Consumer" means an individual who, for a purpose other than resale, buys tangible personal property that is:

(A) distributed in commerce; and

(B) normally used for personal, family, or household purposes and not for business or research purposes.

(5) "Department" means the Texas Department of Licensing and Regulation.

(5-a) "Executive director" means the executive director of the department.

(6) "Person" means an individual or an association, company, corporation, partnership, or other group.

(7) "Provider" means a person who is contractually obligated to a service contract holder under the terms of a service contract.

(8) "Reimbursement insurance policy" means a policy of insurance issued to a provider to:

(A) reimburse the provider under a service contract the provider issued or sold; or

(B) pay on behalf of the provider all covered contractual obligations that are incurred by the provider under a service contract the provider issued or sold and that the provider does not perform.

(8-a) "Seller" means a person, other than the provider or administrator of a service contract, who markets, sells, offers to sell, negotiates, or issues a service contract to a consumer on behalf of a provider, but who is not contractually obligated to a service contract holder under the terms of a service contract.

(9) "Service contract holder" means a person who purchases or otherwise holds a service contract.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 13.001, 13.010(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.337(a), (b), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 63 (H.B. [1286](#)), Sec. 2, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. [1169](#)), Sec. 1.01, eff. September 1, 2011.

Sec. 1304.003. SERVICE CONTRACT. (a) In this chapter:

(1) "Identity recovery" means a process, through a limited power of attorney and the assistance of an identity recovery expert, that returns the identity of an identity theft victim to pre-identity theft event status.

(2) "Service contract" means an agreement that is entered into for a separately stated consideration and for a specified term under which a provider agrees to:

(A) repair, replace, or maintain a product, or provide indemnification for the repair, replacement, or maintenance of a product, for operational or structural failure or damage caused by a defect in materials or workmanship or by normal wear; or

(B) provide identity recovery, if the service contract is financed under Chapter 348 or 353, Finance Code.

(b) A service contract described by Subsection (a)(2)(A) may also provide for:

(1) incidental payment or indemnity under limited circumstances, including towing, rental, and emergency road service;

(2) the repair or replacement of a product for damage resulting from a power surge or for accidental damage incurred in handling the product; or

(3) identity recovery, if the service contract is financed under Chapter 348 or 353, Finance Code.

(c) For purposes of Subsection (a), normal wear for a motor vehicle may include minor and reasonable wear and tear that a vehicle sustains in everyday ordinary operation including:

(1) small dents, dings, and creases repairable by the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels or sanding, bonding, or painting;

(2) small windshield chips and cracks repairable without replacement of the entire windshield;

(3) worn tire tread;

(4) worn interior fabric or carpet items; and

(5) tire and wheel damage resulting from ordinary road hazards such as potholes, rocks, wood debris, metal parts, glass, plastic, or composite scraps.

(d) Subsection (c)(5) does not apply to tire damage covered

under an agreement sold by a tire manufacturer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1059 (H.B. 2261), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 36 (S.B. 778), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 19, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1207 (S.B. 1388), Sec. 3, eff. September 1, 2013.

Sec. 1304.0035. CONTROLLING PERSON. (a) In this chapter, "controlling person" means an individual who:

(1) possesses direct or indirect control of at least 25 percent of the voting securities of a corporation;

(2) possesses the authority to set policy and direct the management of a business entity;

(3) is the president, the secretary, or a director of a corporation; or

(4) is a general partner of a partnership.

(b) An individual who is a controlling person of a corporation or other business entity that is the general partner of a limited partnership is a controlling person of the limited partnership.

Added by Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 3, eff. January 1, 2006.

Sec. 1304.004. EXEMPTIONS. (a) In this section:

(1) "Maintenance agreement" means an agreement that provides only for scheduled maintenance for a limited period.

(2) "Warranty" means an undertaking made solely by the manufacturer or importer of a product or the seller of a product or service that:

(A) guarantees indemnity for a defective part, mechanical or electrical breakdown, or labor cost or guarantees another remedial measure, including the repair or replacement of the product or the repetition of service;

(B) is made without payment of additional consideration;

(C) is not negotiated or separated from the sale of the product or service; and

(D) is incidental to the sale of the product or service.

(b) This chapter does not apply to:

(1) a warranty;

(2) a maintenance agreement;

(3) a service contract sold or offered for sale to a person who is not a consumer;

(4) a residential service contract sold by an entity licensed by the Texas Real Estate Commission under Chapter 1303;

(5) an agreement issued by an automobile service club that holds a certificate of authority under Chapter 722, Transportation Code;

(6) a service contract sold by a motor vehicle dealer on a motor vehicle sold by that dealer, if the dealer:

(A) is the provider;

(B) is licensed as a motor vehicle dealer under Chapter 2301; and

(C) covers its obligations under the service contract with a reimbursement insurance policy; or

(7) a contract offered by a local exchange telephone company that provides for the repair of inside telephone wiring, if:

(A) the contract term does not exceed one month; and

(B) the consumer can terminate the contract before a new contract term begins without liability except for payment of charges for the term that has begun.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1304.005. EXEMPTIONS FROM CERTAIN OTHER LAWS. Marketing, selling, offering for sale, issuing, making, proposing to make, and administering a service contract are exempt from:

(1) Chapter 1303;

(2) Chapter 722, Transportation Code; and

(3) the Insurance Code and other laws of this state regulating the business of insurance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

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

Sec. 1304.052. RULES. The commission shall adopt rules necessary to implement and administer this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.02, eff. September 1, 2011.

Sec. 1304.051. GENERAL INVESTIGATIVE POWER OF EXECUTIVE DIRECTOR. (a) The executive director may investigate a provider, administrator, seller, or other person as necessary to enforce this chapter and protect service contract holders in this state.

(b) On request of the executive director, a provider shall make the records required by Section 1304.155 available to the executive director as necessary to enable the executive director to reasonably determine compliance with this chapter.

Transferred, redesignated and amended from Occupations Code, Section 1304.007 by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.03, eff. September 1, 2011.

**SUBCHAPTER C. REGISTRATION REQUIREMENTS**

Sec. 1304.101. REGISTRATION REQUIRED; EXEMPTION FROM OTHER LICENSING REQUIREMENTS. (a) A person may not operate as a provider or administrator of service contracts sold or issued in this state unless the person is registered with the department.

(b) Except for the registration requirement of this chapter, a provider, seller, administrator, or other person who markets, sells, issues, or offers to sell service contracts is exempt from any licensing requirement of this state that relates to an activity regulated under this chapter.

(c) A provider or administrator may not contract with or use the services of a person to perform an activity that requires registration with the department as a provider or administrator unless that person is appropriately registered.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 4, eff. March 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.04, eff. September 1, 2011.

Sec. 1304.102. APPLICATION FOR REGISTRATION OR RENEWAL; GENERAL REQUIREMENTS. (a) An applicant for registration or registration renewal must submit an application to the executive director.

(b) The application must:

(1) be in the form prescribed by the executive director;

and

(2) include evidence satisfactory to the executive director of compliance with the applicable financial security requirements prescribed by Section 1304.151, if the application is for a provider registration or renewal.

(c) The department may refuse to issue or renew a registration, suspend or revoke a registration, or take any other disciplinary action under Subchapter E if the applicant or a controlling person of the applicant:

(1) has violated this chapter or a rule adopted or order issued by the commission or executive director under this chapter;

(2) has made a material misrepresentation or false statement in an application or in any document accompanying an application;

(3) has had a license issued under Title 13, Insurance Code, revoked as provided by that code; or

(4) has had a license or registration as a provider, administrator, or seller revoked in this state or another state.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1081, Sec. 1.20(a)(2), eff. September 1, 2011.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.039, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.341, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 5, eff. January 1,



2006.

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.05, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.20(a)(2), eff. September 1, 2011.

Sec. 1304.1025. ADDITIONAL REGISTRATION AND RENEWAL REQUIREMENTS FOR PROVIDERS. (a) In addition to the requirements of Section 1304.102, an applicant for issuance or renewal of a provider registration must file with the application:

(1) the reimbursement insurance policy, if the provider is using a reimbursement insurance policy to meet the financial security requirements of Section 1304.151;

(2) the financial security deposit and the documentation required by the department demonstrating adequate funding of the reserve account, if the provider is using a funded reserve account and financial security deposit to meet the financial security requirements of Section 1304.151;

(3) the proof necessary to demonstrate the applicant or its parent company maintains at least \$100 million net worth, if the applicant is using net worth to meet the financial security requirements of Section 1304.151; and

(4) information about each controlling person of the applicant in a form prescribed by the executive director.

(b) The executive director may not issue or renew a registration to a provider unless the provider provides evidence to the executive director that:

(1) each controlling person of the provider is trustworthy and can competently manage the affairs of the provider in compliance with this chapter; and

(2) the provider can meet the provider's obligations under service contracts and this chapter.

(c) Not later than the 30th day after the date of a provider's initial registration, the provider must provide to the department a list of any Internet website address through which a consumer may purchase the provider's service contracts and the name, assumed name, street address, and telephone number of:

(1) any administrator appointed by the provider under Section 1304.153; and

(2) any seller of the provider's service contracts, other than a seller that is:

(A) an employee of the provider; or

(B) a business with a physical location in this state at which a consumer may purchase a service contract.

(d) The provider shall update the list required by Subsection (c) with each renewal.

Added by Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 6, eff. January 1, 2006.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.06, eff. September 1, 2011.

Sec. 1304.103. REGISTRATION AND RENEWAL FEES. (a) The executive director shall develop a tiered schedule of registration and renewal fees under which a provider's fee is based on the number of service contracts the provider sold or issued in this state during the preceding 12-month period.

(b) The commission shall set fees to cover the costs of administering this chapter, including registration and renewal fees for administrators.

(c) To register or renew a registration, a provider or administrator must pay the appropriate fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 13.006, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.342, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 7, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.07, eff. September 1, 2011.

Sec. 1304.1035. IDENTITY RECOVERY SERVICE CONTRACT REPORT; FEE. Not later than the 30th day after the date each calendar quarter ends, a provider must report to the department the number of service contracts described by Section 1304.003(a)(2)(B) that were sold or

issued to consumers in this state during the most recent calendar quarter and must submit a fee of \$1 for each of those service contracts to the department. The report and fee are required only for a service contract that provides only for identity recovery services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1207 (S.B. 1388), Sec. 4, eff. September 1, 2013.

Sec. 1304.104. INFORMATION CONCERNING NUMBER OF SERVICE CONTRACTS SOLD OR ISSUED. Information concerning the number of service contracts sold or issued by a provider that is submitted under Section 1304.103 or 1304.1035 is a trade secret to which Section 552.110, Government Code, applies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.040, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.343, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.08, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1207 (S.B. 1388), Sec. 5, eff. September 1, 2013.

Sec. 1304.105. RENEWAL. The commission shall adopt rules regarding the renewal of a registration issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 13.007, eff. Sept. 1, 2003.

**SUBCHAPTER D. PRACTICE BY SERVICE CONTRACT PROVIDERS,  
ADMINISTRATORS, AND SELLERS**

Sec. 1304.151. FINANCIAL SECURITY REQUIREMENTS; DISTRIBUTION OF FUNDS HELD IN TRUST. (a) To ensure the faithful performance of a provider's obligations to its service contract holders, each provider must:

- (1) insure the provider's service contracts under a

reimbursement insurance policy issued by an insurer authorized to transact insurance in this state or by a surplus lines insurer eligible to place coverage in this state under Chapter 981, Insurance Code;

(2) maintain a funded reserve account covering the provider's obligations under its service contracts that are issued and outstanding in this state and place in trust with the executive director a financial security deposit consisting of:

(A) a statutory deposit of cash;

(B) a letter of credit issued by a qualified financial institution; or

(C) a certificate of deposit issued by a qualified financial institution; or

(3) maintain, or have a parent company that maintains, a net worth or stockholders' equity of at least \$100 million.

(b) If the provider ensures its obligations under Subsection (a)(2), the amount maintained in the reserve account may not be less than an amount equal to 40 percent of the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in this state, minus any claims paid. The executive director may review and examine the reserve account. The amount of the security deposit may not be less than \$250,000. The provider must submit to the executive director on request a copy of the provider's financial statements that must be prepared in accordance with generally accepted accounting principles, be without qualification as to the going concern status of the provider, and be audited by an independent certified public accountant. The commission by rule may require the provider to submit additional financial reports.

(c) If the provider ensures its obligations under Subsection (a)(3), the provider must give to the executive director on request:

(1) a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission within the preceding calendar year; or

(2) if the provider or the provider's parent company does not file with the Securities and Exchange Commission, a copy of the provider's or the provider's parent company's audited financial statements showing a net worth of the provider or its parent company of at least \$100 million.

(d) If the provider's parent company's Form 10-K, Form 20-F, or audited financial statements are filed to show that the provider meets the financial security requirement, the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in this state.

(e) The executive director may not require a provider to meet any additional financial security requirement.

(f) In the event of a provider's bankruptcy or a similar event affecting the ability of the provider to faithfully perform its obligations to its service contract holders, the executive director may distribute any funds held in trust as financial security for the provider under this section to eligible service contract holders as payment for claims. The executive director must distribute the funds in an equitable and cost-effective manner as determined by the executive director.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 13.008, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.11, eff. September 1, 2011.

Sec. 1304.152. REIMBURSEMENT INSURANCE POLICY. (a) A reimbursement insurance policy that a provider uses to comply with Sections 1304.1025 and 1304.151(a)(1) must state that:

(1) the insurer that issued the policy shall:

(A) reimburse or pay on behalf of the provider any covered amount the provider is legally obligated to pay; or

(B) provide the service that the provider is legally obligated to perform according to the provider's contractual obligations under the insured service contract;

(2) if the covered service is not provided to a service contract holder not later than the 60th day after the date of proof of loss, the insurer shall pay the covered amount directly to the service contract holder or provide the required service; and

(3) if a refund is not paid to the service contract holder

or credited to the service contract holder's account as required by Section 1304.158, the insurer, after receiving written notice, shall pay the refund amount directly to the service contract holder.

(a-1) For a reimbursement insurance policy to comply with Section 1304.151(a)(1), the insurer issuing the policy must:

(1) maintain surplus as to policyholders and paid-in capital of at least \$15 million and annually file with the executive director copies of the insurer's audited financial statements, National Association of Insurance Commissioners annual statement, and actuarial certification if the certification is required and filed in the insurer's state of domicile; or

(2) maintain surplus as to policyholders and paid-in capital of at least \$10 million but not more than \$15 million, demonstrate to the satisfaction of the executive director that the insurer maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not more than three to one, and annually file with the executive director copies of the insurer's audited financial statements, National Association of Insurance Commissioners annual statement, and actuarial certification if the certification is required and filed in the insurer's state of domicile.

(b) The insurer may not cancel the reimbursement insurance policy until the insurer delivers to the provider and the executive director a written notice of cancellation that complies with the notice requirements prescribed by Subchapters B and C, Chapter 551, Insurance Code, for cancellation of an insurance policy under those subchapters. Cancellation of the policy does not affect the insurer's liability for a service contract issued by the provider and insured under the policy before the effective date of the cancellation.

(b-1) If the insurer or provider cancels the reimbursement insurance policy, the provider named on the policy may not issue a new service contract after the effective date of the cancellation unless:

(1) the provider files with the executive director a copy of a new policy that meets the requirements of this section and that provides coverage after that date; or

(2) the provider complies with other financial security requirements provided by Section 1304.151(a).

(c) A provider is considered the agent of an insurer that

issues a reimbursement insurance policy for purposes of obligating the insurer to the service contract holder in accordance with the service contract and this chapter. The insurer issuing the reimbursement insurance policy is considered to have received the premium for the policy on the date the service contract holder pays the purchase price of the service contract.

(d) This chapter does not prevent or limit the right of the insurer to seek indemnification or subrogation against a provider for any amount the insurer pays or is obligated to pay to a service contract holder on behalf of the provider.

(e) In this section, "net written premiums" means the sum of direct written premiums and assumed reinsurance premiums, minus ceded reinsurance premiums.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.041, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.345, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 63 (H.B. [1286](#)), Sec. 9, eff. January 1, 2006.

Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 11.150, eff. September 1, 2005.

Sec. 1304.1521. FINANCIAL SECURITY TRANSITION. (a) In this section, "provider that maintained a funded reserve account" means a provider that, in order to ensure the faithful performance of the provider's obligations to service contract holders, maintained a funded reserve account covering the provider's obligations under service contracts that were issued and outstanding in this state and placed in trust with the executive director a financial security deposit consisting of:

- (1) a surety bond issued by an authorized surety;
- (2) securities of the type eligible for deposit by an authorized insurer in this state;
- (3) a statutory deposit of cash or cash equivalents;
- (4) a letter of credit issued by a qualified financial institution; or
- (5) another form of security prescribed by commission

rules.

(b) This section applies only to a provider that maintained a funded reserve account on August 31, 2011.

(c) Not later than September 1, 2012, a provider that maintained a funded reserve account shall submit to the executive director documentation that the provider is in compliance with the financial security requirements provided by Section 1304.151 for service contracts sold or issued in this state on or after September 1, 2012. A provider that maintained a funded reserve account may not sell or issue a service contract on or after September 1, 2012, unless the provider is in compliance with this subsection.

(d) A provider that maintained a funded reserve account shall:

(1) continue to maintain the funded reserve account and security deposit at appropriate levels for service contracts that were sold or issued in this state before September 1, 2012, until the contracts are no longer in effect; or

(2) provide financial security for service contracts sold or issued before September 1, 2012, by complying with the financial security requirements of Section 1304.151.

(e) If a provider provides financial security for service contracts sold or issued before September 1, 2012, by complying with the financial security requirements of Section 1304.151, the provider shall give to the executive director satisfactory documentation that the reimbursement insurance policy, funded reserve account and security deposit, or net worth covers all outstanding service contracts issued before September 1, 2012.

(f) A service contract that is sold or issued before September 1, 2012, and is covered under a funded reserve account and security deposit may not be extended or renewed at the end of the service contract term unless the provider provides financial security for those service contracts by complying with the financial security requirements of Section 1304.151 before the extension or renewal.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. [1169](#)), Sec. 1.12, eff. September 1, 2011.

Sec. 1304.153. APPOINTMENT AND RESPONSIBILITIES OF ADMINISTRATOR. (a) A provider may appoint an administrator registered under this chapter to be responsible for:



(1) all or any part of the administration or sale of service contracts; and

(2) compliance with this chapter, except for Section 1304.151.

(b) The appointment of an administrator under this section does not affect a provider's responsibility to comply with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 10, eff. March 1, 2006.

Sec. 1304.1531. SERVICE CONTRACT SELLERS; RESPONSIBILITIES.

(a) A provider may employ or contract with a seller to be responsible for:

(1) all or any part of the sale or marketing of service contracts for the provider; and

(2) compliance with this chapter in connection with the sale or marketing of service contracts.

(b) The hiring of or contracting with a seller under this section does not affect a provider's responsibility to comply with this chapter.

(c) Unless registered as a provider or administrator, a seller is prohibited from engaging in activities that would require registration as a provider or administrator.

(d) A seller shall process a service contract application and a payment from a consumer in accordance with this chapter and with any sales agreement or contract between the provider and the seller.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.12, eff. September 1, 2011.

Sec. 1304.154. PROVIDER REQUIREMENTS. A provider may not sell, offer for sale, or issue a service contract in this state unless the provider gives the service contract holder:

(1) a receipt for, or other written evidence of, the purchase of the contract; and

(2) a copy of the contract within a reasonable period after the date of purchase.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1304.155. PROVIDER RECORDS. (a) A provider shall maintain accurate accounts, books, and other records regarding transactions regulated under this chapter. The provider's records must include:

- (1) a copy of each unique form of service contract sold;
- (2) the name and address of each service contract holder who provided the holder's name and address;
- (3) a list of each location at which the provider's service contracts are marketed, sold, or offered for sale; and
- (4) written claims files that contain at least the date and a description of each claim related to the service contracts.

(b) The records required by this section may be maintained in an electronic medium or through other recordkeeping technology. If a record is not in a hard copy, the provider must be able to reformat the record into a legible hard copy at the request of the executive director.

(c) Except as provided by Subsection (d), a provider shall retain the records required by this section until at least the first anniversary of the expiration date of the specified period of coverage under the service contract.

(d) A provider that discontinues business in this state shall retain its records until the provider furnishes the executive director with proof satisfactory to the executive director that the provider has discharged all obligations to service contract holders in this state.

(e) An administrator appointed to maintain the provider's records is responsible for compliance with this section to the same extent as the provider.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.042, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.346, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 63 (H.B. [1286](#)), Sec. 11, eff. January 1, 2006.

Sec. 1304.156. FORM OF SERVICE CONTRACT AND REQUIRED DISCLOSURES. (a) A service contract marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state must:

- (1) be written, printed, or typed in clear, understandable language that is easy to read;
- (2) state the name and address of the provider;
- (3) state the purchase price of the contract and the terms under which the contract is sold;
- (4) state the terms and restrictions governing cancellation of the contract by the provider or the service contract holder before the expiration date of the contract;
- (5) identify:
  - (A) any administrator and any registration number issued to the administrator under this chapter;
  - (B) the seller; and
  - (C) the service contract holder, if the service contract holder provides the holder's name;
- (6) state the amount of any deductible;
- (7) specify the products and services to be provided under the contract and any limitation, exception, or exclusion;
- (8) specify any restriction governing the transferability of the contract;
- (9) state the duties of the service contract holder, including any duty to protect against any further damage and any requirement to follow the instructions in the owner's manual; and
- (10) state whether the contract provides for or excludes consequential damages or preexisting conditions, if applicable.

(b) The identity and, if applicable, registration number issued under this chapter of a person described by Subsection (a)(5) is not required to be preprinted on the service contract and may be added to the contract at the time of sale.

(c) The purchase price is not required to be preprinted on the service contract and may be negotiated with the service contract holder at the time of sale.

(d) A service contract insured under a reimbursement insurance policy under Section 1304.152 must:

- (1) state the name and address of the insurer;
- (2) state that the service contract holder may apply for reimbursement directly to the insurer if:

(A) a covered service is not provided to the service contract holder by the provider before the 61st day after the date of proof of loss; or

(B) a refund or credit is not paid before the 46th day after the date on which the contract is canceled under Section 1304.1581; and

(3) contain a statement substantially similar to the following: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy."

(e) A service contract that is not insured under a reimbursement insurance policy must contain a statement substantially similar to the following: "Obligations of the provider under this service contract are backed by the full faith and credit of the provider." (V.A.C.S. Art. 9034, Secs. 10(a), (b), (c), (d), (e), (f) (part), (g), as added Acts 76th Leg., R. S., Ch. 1559.)

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 12, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.13, eff. September 1, 2011.

Sec. 1304.1581. CANCELLATION BY SERVICE CONTRACT HOLDER; REFUND. (a) A service contract must allow the service contract holder to cancel the service contract at any time.

(b) If a service contract holder cancels a service contract before the 31st day after the date of purchase, the provider:

(1) shall refund to the service contract holder or credit to the account of the service contract holder the full purchase price of the contract, decreased by the amount of any claims paid under the contract; and

(2) may not impose a cancellation fee.

(c) If a service contract holder cancels a service contract on or after the 31st day after the date of purchase, the provider:

(1) shall refund to the service contract holder or credit to the account of the service contract holder the prorated purchase price of the contract reflecting the remaining term of the contract, based on mileage, time, or another reasonably applicable measure of

the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract; and

(2) may impose a reasonable cancellation fee not to exceed \$50.

(d) A provider may allow a service contract holder to cancel a service contract on other terms included in the contract, provided the terms do not conflict with this section.

(e) A provider who does not pay the refund or credit the service contract holder's account before the 46th day after the date notice of cancellation is received by the provider is liable to the service contract holder for a penalty for each month an amount remains outstanding equal to 10 percent of the amount outstanding. The penalty is in addition to the full or prorated purchase price of the contract that is owed to the service contract holder under this section or the terms of the contract.

(f) The right to cancel a service contract is not transferable to a subsequent holder of the contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. [1169](#)), Sec. 1.14, eff. September 1, 2011.

Sec. 1304.159. CANCELLATION BY PROVIDER; REFUND. (a) A provider may cancel a service contract by mailing a written notice of cancellation to the service contract holder at the service contract holder's last known address according to the records of the provider. The provider must mail the notice before the fifth day preceding the effective date of the cancellation. The notice must state the effective date of the cancellation and the reason for the cancellation.

(b) The provider is not required to provide prior notice of cancellation if the service contract is canceled because of:

- (1) nonpayment of the consideration for the contract;
- (2) fraud or a material misrepresentation by the service contract holder to the provider or the provider's administrator; or
- (3) a substantial breach of a duty by the service contract holder relating to the covered product or its use.

(c) A service contract holder whose contract is canceled by the provider in accordance with this section is entitled to a prorated refund of the purchase price of the contract reflecting the remaining

term of the contract, based on mileage, time, or another reasonably applicable measure of the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract. A provider who cancels a contract under this section may not impose a cancellation fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.15, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.16, eff. September 1, 2011.

Sec. 1304.160. LIMITATIONS ON PROVIDER NAME. (a) A provider may not use a name that:

(1) includes "insurance," "casualty," "surety," or "mutual" or any other word descriptive of the insurance, casualty, or surety business; or

(2) is deceptively similar to the name or description of an insurance or surety corporation or to the name of any other provider.

(b) A provider may include in its name "guaranty" or a similar word.

(c) This section does not apply to a provider that, before September 1, 1999, included a word prohibited under this section in its name. A provider described by this subsection must include in each service contract a statement substantially similar to the following: "This agreement is not an insurance contract."

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1304.161. PROHIBITED ACTS. (a) A provider, administrator, seller, or other representative of the provider may not, in the provider's service contracts or literature or in any written communication:

(1) make, permit, or cause to be made any false, deceptive, or misleading statement; or

(2) deliberately omit a material statement if the omission would be considered misleading.

(b) A person, including a bank, a savings and loan association,

a lending institution, or the manufacturer or seller of a product, may not require the purchase of a service contract as a condition of a loan or the sale of property.

(c) A provider, administrator, seller, or other representative of the provider may not make a telemarketing call to a consumer as provided by Sections 304.002 and 304.003, Business & Commerce Code, unless the provider, administrator, seller, or representative has an established business relationship, as defined by Section 304.002, Business & Commerce Code, with the consumer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.17, eff. September 1, 2011.

#### **SUBCHAPTER E. DISCIPLINARY ACTION**

Sec. 1304.201. DISCIPLINARY ACTION. On a finding that a ground for disciplinary action exists under this chapter, the commission or executive director may impose an administrative sanction or administrative penalty or seek a civil penalty or any other remedy as provided by this chapter and Chapter 51.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 13.009, 13.010(2), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.347(a), eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.18, eff. September 1, 2011.

Sec. 1304.202. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The executive director may institute an action under Section 51.352 for injunctive relief to restrain a violation or a threatened violation of this chapter or an order issued or rule adopted under this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the executive director may institute an action for a civil penalty as provided by Section 51.352. The amount of a civil penalty assessed under this section may not exceed:

- (1) \$2,500 for each violation; or
- (2) \$50,000 in the aggregate for all violations of a similar nature.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.043, eff. Sept. 1, 2003.

Sec. 1304.203. MULTIPLE VIOLATIONS. For purposes of this subchapter, violations are of a similar nature if the violations consist of the same or a similar course of conduct, action, or practice, regardless of the number of times the conduct, act, or practice occurred.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1304.204. ADMINISTRATIVE PROCEDURE. Sections 51.305, 51.310, and 51.354 apply to disciplinary action taken under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.347(b), eff. Sept. 1, 2003.

Sec. 1304.205. REMEDY FOR SERVICE CONTRACT HOLDERS. (a) If the commission by order, including an agreed order, determines that a person has operated as a provider or administrator in this state without holding the appropriate registration under this chapter, the person shall offer to a service contract holder who holds a service contract sold or issued by the person during the period that the person was not registered under this chapter the right to:

- (1) cancel the contract and obtain a refund of the full purchase price of the contract; or
- (2) retain the contract.

(b) If a seller fails to process a service contract application or a payment from a consumer in accordance with this chapter and any sales agreement or contract between the provider and the seller, the commission or executive director may, by commission order, including



an agreed order, require the seller to refund the full purchase price of the contract to the consumer.

(c) The remedies described in this section are in addition to any administrative penalty, administrative sanction, civil penalty, or other disciplinary or enforcement action sought under this chapter or Chapter 51.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.19, eff. September 1, 2011.

## **CHAPTER 1305. ELECTRICIANS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1305.001. SHORT TITLE. This chapter may be cited as the Texas Electrical Safety and Licensing Act.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Electrical Safety and Licensing Advisory Board.

(1-a) "Agricultural use" means a use or activity involving agriculture, as defined by Section 11.002, Water Code, other than the processing of an agricultural commodity.

(1-b) "Apprenticeship training program" means an electrical training program that is:

(A) recognized by the Texas Workforce Commission or the Texas Higher Education Coordinating Board;

(B) registered with the United States Department of Labor; or

(C) a competency-based standardized craft training program that meets the training program standards of the United States Department of Labor Office of Apprenticeship.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Electrical code" means the National Electrical Code published by the National Fire Protection Association as adopted by the commission.

(5) "Electrical contracting" means the business of designing, installing, erecting, repairing, or altering electrical wires or conductors to be used for light, heat, power, or signaling purposes. The term includes the installation or repair of ducts, raceways, or conduits for the reception or protection of wires or conductors and the installation or repair of any electrical machinery, apparatus, or system used for electrical light, heat, power, or signaling.

(6) "Electrical contractor" means a person engaged in electrical contracting.

(7) "Electrical engineer" means a person licensed under Chapter 1001 who possesses the necessary qualifications, training, and technical knowledge to perform electrical engineering work in this state.

(8) "Electrical inspector" means a person certified by the International Association of Electrical Inspectors or International Code Council.

(9) "Electrical sign contracting" means the business of designing, manufacturing, installing, connecting, reconnecting, or servicing an electric sign, cold cathode, neon gas tubing, or outline gas tubing, or altering electric sign wiring or conductors either inside or outside of a building.

(10) "Electrical sign contractor" means a person engaged in electrical sign contracting.

(11) "Electrical work" means any labor or material used in installing, maintaining, or extending an electrical wiring system and the appurtenances, apparatus, or equipment used in connection with the use of electrical energy in, on, outside, or attached to a building, residence, structure, property, or premises. The term includes service entrance conductors as defined by the National Electrical Code.

(11-a) "Executive director" means the executive director of the department.

(12) "Journeyman lineman" means an individual who engages in electrical work involving the maintenance and operation of equipment associated with the transmission and distribution of electricity from the electricity's original source to a substation for further distribution.

(12-a) "Residential appliance" means:

(A) equipment that:

(i) is installed as a unit in a single-family or multifamily dwelling that does not exceed four stories;

(ii) is directly connected to an electrical circuit; and

(iii) performs a specific function; or

(B) a pool-related electrical device.

(12-b) "Residential appliance installation" means electrical work that is limited to the connection or disconnection of a residential appliance, including a pool-related electrical device, to an existing electrical circuit other than by inserting or removing a plug from an electrical outlet.

(12-c) "Residential appliance installation contracting" means the business of residential appliance installation, including pool-related electrical maintenance.

(12-d) "Residential appliance installation contractor" means a business entity, other than an electrical contractor or electrical sign contractor, that is engaged in residential appliance installation contracting, including pool-related electrical maintenance.

(12-e) "Residential appliance installer" means a person, other than a licensed electrician, who is licensed to perform residential appliance installation, including pool-related electrical maintenance.

(13) "Residential wireman" means a person licensed under this chapter who may only perform electrical installations in single-family and multifamily dwellings not exceeding four stories.

(14) "Pool" means an outdoor or indoor structure that is located at a residential property, a business property, or a property owned by a municipality and that is intended for swimming or recreational bathing, including an inground structure, aboveground structure, hot tub, spa, portable spa, or non-portable wading pool.

(15) "Pool-related electrical device" means equipment for a pool that:

(A) is installed as a unit;

(B) is directly connected to an electrical circuit;

(C) performs a specific function; and

(D) uses single-phase power of 240 volts or less.

(16) "Pool-related electrical maintenance" means electrical work that is limited to the connection or disconnection of a pool-related electrical device to an existing electrical circuit other

than by inserting or removing a plug from an electrical outlet.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1052 (H.B. 1317), Sec. 1, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 418 (S.B. 1222), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 416 (H.B. 1973), Sec. 1, eff. March 1, 2010.

Acts 2009, 81st Leg., R.S., Ch. 741 (S.B. 470), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1392 (S.B. 1982), Sec. 1, eff. March 1, 2010.

Acts 2011, 82nd Leg., R.S., Ch. 452 (S.B. 1630), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 882 (H.B. 796), Sec. 1, eff. June 14, 2013.

Sec. 1305.003. EXEMPTIONS; APPLICATION OF CHAPTER. (a) This chapter does not apply to:

(1) the installation of electrical equipment in a ship, watercraft other than a floating building, railway rolling stock, aircraft, motor vehicle, or recreational vehicle;

(2) the installation of electrical equipment underground in a mine and in self-propelled mobile surface mining machinery and its attendant electrical trailing cable;

(3) the installation of electrical equipment for generation, transformation, transmission, or distribution of power used exclusively to operate railway rolling stock or exclusively for signaling and communications purposes;

(4) the installation, maintenance, alteration, or repair of communications equipment provided by a telecommunications provider;

(5) the installation, maintenance, alteration, or repair of electrical equipment under the exclusive control of an electric utility, power generation company as defined by Sections 31.002(1) and (10), Utilities Code, electric cooperative, or municipally owned utility and used for communications or metering, or for the generation, control, transformation, transmission, and distribution

of electrical energy, and located:

(A) in a building used exclusively by a utility or power generation company for those purposes;

(B) outdoors on property owned or leased by the utility or power generation company;

(C) on public highways, streets, roads, or other public rights-of-way; or

(D) outdoors by established rights in vaults or on private property;

(6) work not specifically regulated by a municipal ordinance that is performed in or on a dwelling by a person who owns and resides in the dwelling;

(7) work involved in the manufacture of electrical equipment that includes the on-site and off-site manufacturing, commissioning, testing, calibrating, coordinating, troubleshooting, or evaluating of electrical equipment, the repairing or retrofitting of electrical equipment with components of the same ampacity, and the maintenance and servicing of electrical equipment within the equipment's enclosure that is performed by an authorized employee or authorized representative of an electrical equipment manufacturer and limited to the type of products manufactured by the manufacturer;

(8) electrical work if:

(A) the work is performed by a person who does not engage in electrical work for the public;

(B) the work is performed by a person regularly employed as a maintenance person or maintenance electrician for a business; and

(C) the electrical work does not involve the installation of electrical equipment during new construction as defined by rules adopted under Chapter 151, Tax Code;

(9) the installation, maintenance, alteration, or repair of electrical equipment or associated wiring under the exclusive control of a gas utility and used for communications or metering or for the control, transmission, or distribution of natural gas;

(10) thoroughfare lighting, traffic signals, intelligent transportation systems, and telecommunications controlled by a governmental entity;

(11) electrical connections supplying heating, ventilation, and cooling and refrigeration equipment, including any required disconnect exclusively for the equipment, if the service is performed

by a licensed air conditioning and refrigeration contractor under Chapter 1302;

(12) the design, installation, erection, repair, or alteration of Class 1, Class 2, or Class 3 remote control, signaling, or power-limited circuits, fire alarm circuits, optical fiber cables, or communications circuits, including raceways, as defined by the National Electrical Code;

(13) landscape irrigation installers, as necessary to perform the installation and maintenance of irrigation control systems, and landscapers, as necessary to perform the installation and maintenance of low-voltage exterior lighting and holiday lighting excluding any required power source;

(14) electrical work performed at a business that operates:

(A) a chemical plant, petrochemical plant, refinery, natural gas plant, natural gas treating plant, pipeline, or oil and gas exploration and production operation by a person who works solely for and is employed by that business; or

(B) a chemical plant, petrochemical plant, refinery, natural gas plant, or natural gas treatment plant by a person who under a contract of at least 12 months' duration performs electrical work for that plant and:

(i) the electrical work is not performed during new construction as defined by rules adopted under Chapter 151, Tax Code; or

(ii) the person is not working for a contractor that has a principal place of business in another state or territory of the United States or a foreign country;

(15) the installation, maintenance, alteration, or repair of elevators, escalators, or related equipment, excluding any required power source, regulated under Chapter 754, Health and Safety Code;

(16) the installation, maintenance, alteration, or repair of equipment or network facilities provided or utilized by a cable operator, as that term is defined by 47 U.S.C. Section 522, as amended;

(17) the location, design, construction, extension, maintenance, and installation of on-site sewage disposal systems in accordance with Chapter 366, Health and Safety Code, or an on-site sewage facility installer licensed under Chapter 37, Water Code;

(18) electrical work performed on a building, structure, or

equipment in agricultural use as defined by Section 11.002, Water Code, other than the processing of an agricultural commodity;

(19) the installation, maintenance, alteration, or repair of well pumps and equipment in accordance with Chapter 1902;

(20) electrical work required for the construction and assembly of HUD-code manufactured housing or modular housing and building units, other than the installation of service entrance conductors, that is performed by a licensed manufacturer or installer under Chapter 1201 or 1202, as applicable, if work performed is within the scope of the license as defined by applicable statutes and administrative rules;

(21) work performed by a plumber who holds a license or endorsement or is registered under Chapter 1301 that is necessary to install, service, maintain, repair, or replace any type of plumbing fixture or appliance, as described by Section 1301.002(7), including a water heater, food disposer, garbage disposal, water softener, dishwashing machine, and clothes washing machine on existing electrical circuits only;

(22) the maintenance or repair of a residential appliance by a residential appliance dealer or manufacturer or a person authorized by a residential appliance dealer or manufacturer using only components of the same type and ampacity as the original components; and

(23) the maintenance, alteration, or repair of a pool-related electrical device by, or pool-related electrical maintenance performed by, an employee of a municipality on a pool owned or operated by the municipality.

(b) This chapter applies to all premises wiring that originates where an electric utility's facilities end and a nonutility customer's electric facilities begin, except as permitted by Section 161.123(2)(A), Utilities Code.

(c) This chapter applies to an installation in a building used by a utility for purposes other than a purpose listed in this section, including an office building, warehouse, garage, machine shop, or recreational building that is not an integral part of a generating plant, substation, or control center.

(d) This chapter does not require a political subdivision of this state, including a school district or a municipality, to hold an electrical contractor license or an electrical sign contractor license under this chapter to be authorized to employ a person to

perform electrical work for the political subdivision.

(e) Subsection (d) does not exempt an employee of a political subdivision from the requirement of holding the appropriate license under this chapter to perform electrical work.

(f) For purposes of Subsection (a)(21), any installation or replacement of a plumbing fixture or appliance must meet the requirements of existing electrical circuits.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 794 (S.B. 343), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1052 (H.B. 1317), Sec. 2, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 418 (S.B. 1222), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 649 (H.B. 1029), Sec. 1, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 17.002, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 416 (H.B. 1973), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1392 (S.B. 1982), Sec. 2, eff. September 1, 2009.

Sec. 1305.004. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. Except as otherwise provided by this section, Chapter 601, Business & Commerce Code, does not apply to a good or service provided by a license holder under this chapter if the transaction involving the good or service is initiated by the consumer. Chapter 601, Business & Commerce Code, does apply to a transaction that involves a breach of express warranty or a negligent installation in violation of a building code applicable to the good or service sold to the consumer.

Added by Acts 2009, 81st Leg., R.S., Ch. 937 (H.B. 3129), Sec. 3, eff. June 19, 2009.

#### **SUBCHAPTER B. ADVISORY BOARD**



## Sec. 1305.051. ELECTRICAL SAFETY AND LICENSING ADVISORY BOARD.

(a) The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

- (1) three master electrician members;
- (2) three journeyman electrician members; and
- (3) three public members.

(b) The advisory board members must include:

(1) two members who are affiliated with a statewide association of electrical contractors not affiliated with a labor organization;

(2) three members who are affiliated with a labor organization;

(3) one member who is not affiliated with a statewide association of electrical contractors or with a labor organization;

(4) one member who is affiliated with a historically underutilized business, as that term is defined by Section 2161.001, Government Code; and

(5) one public member who is a building contractor principally engaged in home construction and is a member of a statewide building trade association.

(c) A licensed electrical engineer or an electrical inspector may be appointed as a public member of the advisory board.

(d) An appointment to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 926 (H.B. 1503), Sec. 3, eff. June 14, 2013.

Sec. 1305.052. TERMS; VACANCIES. (a) Advisory board members serve terms of six years, with the terms of three members expiring on February 1 of each odd-numbered year.

(b) A member may not consecutively serve more than two full terms.

(c) If a vacancy occurs during a term, the presiding officer of the commission shall appoint a replacement who meets the

qualifications of the vacated position to serve for the remainder of the term.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.053. PRESIDING OFFICER. The presiding officer of the commission shall appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.054. COMPENSATION; REIMBURSEMENT OF EXPENSES. Advisory board members may not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.055. MEETINGS. The advisory board shall meet twice annually and may meet at other times at the call of the presiding officer of the commission.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

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

Sec. 1305.101. GENERAL POWERS AND DUTIES. (a) The executive director or commission, as appropriate, shall:

(1) by rule establish the financial responsibility requirements for electrical contractors; and

(2) after publication of the National Electrical Code by the National Fire Protection Association every three years, adopt the revised National Electrical Code as the electrical code for the state.

(b) The executive director or commissioner, as appropriate,

may:

(1) establish reciprocity agreements with other states that have licensing requirements substantially equivalent to the requirements of this chapter; and

(2) take other action as necessary to administer and enforce this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.102. RULES. (a) The executive director shall adopt rules for the licensing of electricians, sign electricians, electrical sign contractors, electrical contractors, journeyman linemen, residential appliance installers, and residential appliance installation contractors as prescribed by this chapter.

(b) The executive director by rule shall prescribe descriptions of the types of activities that may be performed by each class of license holder under this chapter.

(c) The executive director by rule shall adopt standards of conduct requirements for license holders under this chapter.

(d) The commission may adopt rules regarding the registration of apprenticeship training programs and to require registered programs to report the names of persons enrolled in the programs.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 418 (S.B. [1222](#)), Sec. 3, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 741 (S.B. [470](#)), Sec. 2, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 882 (H.B. [796](#)), Sec. 2, eff. June 14, 2013.

Sec. 1305.103. FEES. The commission shall establish and collect reasonable and necessary fees in amounts sufficient to cover the costs of administering this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.104. POWERS AND DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, electrical code requirements, and continuing education requirements.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.105. PERSONNEL. The department may employ personnel necessary to administer and enforce this chapter. The department shall employ an electrical occupations and code specialist to oversee the electrical licensing and safety program.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

#### **SUBCHAPTER D. LICENSE REQUIREMENTS**

Sec. 1305.151. LICENSE REQUIRED. Except as provided by Section 1305.003, a person or business may not perform or offer to perform electrical work or residential appliance installation unless the person or business holds an appropriate license issued or recognized under this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 1052 (H.B. [1317](#)), Sec. 3, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 418 (S.B. [1222](#)), Sec. 4, eff. March 1, 2008.

Sec. 1305.152. APPLICATION REQUIREMENTS. (a) An applicant for a license under this chapter must:

- (1) submit to the department a completed application on a form prescribed by the executive director;
- (2) submit to the department any other information required by executive director rule;
- (3) demonstrate to the satisfaction of the executive director the appropriate amount of electrical work experience as

required by this subchapter;

(4) demonstrate the applicant's honesty, trustworthiness, and integrity; and

(5) pay the application and examination fees.

(b) The executive director shall adopt rules to establish a process by which the department shall evaluate the experience required of applicants for a license under this chapter.

(c) The department may conduct an examination of any criminal conviction of an applicant, including obtaining any criminal history record information permitted by law.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.153. MASTER ELECTRICIAN. (a) An applicant for a license as a master electrician must:

(1) have at least 12,000 hours of on-the-job training under the supervision of a master electrician;

(2) have held a journeyman electrician license for at least two years; and

(3) pass a master electrician examination administered under this chapter.

(b) A master electrician may:

(1) perform all electrical work, including electrical work performed by a master sign electrician;

(2) supervise an electrician;

(3) verify compliance with on-the-job training requirements for issuance of a master electrician license, master sign electrician license, journeyman electrician license, or journeyman sign electrician license; and

(4) serve as master of record for an electrical sign contractor.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1052 (H.B. [1317](#)), Sec. 4, eff. June 18, 2005.

Sec. 1305.154. MASTER SIGN ELECTRICIAN. An applicant for a license as a master sign electrician must:

(1) have at least 12,000 hours of on-the-job training under the supervision of a master sign electrician; and

(2) pass a master sign electrician examination administered under this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.155. JOURNEYMAN ELECTRICIAN. An applicant for a license as a journeyman electrician must:

(1) have at least 8,000 hours of on-the-job training under the supervision of a master electrician; and

(2) pass a journeyman electrician examination administered under this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.156. JOURNEYMAN SIGN ELECTRICIAN. An applicant for a license as a journeyman sign electrician must:

(1) have at least 8,000 hours of on-the-job training under the supervision of a master sign electrician; and

(2) pass a journeyman sign electrician examination administered under this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.157. RESIDENTIAL WIREMAN. An applicant for a license as a residential wireman must:

(1) have at least 4,000 hours of on-the-job training under the supervision of a master electrician or residential wireman; and

(2) pass a residential wireman examination administered under this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.158. MAINTENANCE ELECTRICIAN. An applicant for a license as a maintenance electrician must:

(1) have at least 8,000 hours of on-the-job training under

the supervision of a master electrician or maintenance electrician;  
and

(2) pass a maintenance electrician examination administered under this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.159. ELECTRICAL CONTRACTOR. (a) An applicant for a license as an electrical contractor must:

(1) be licensed under this chapter as a master electrician or employ a person licensed under this chapter as a master electrician;

(2) establish proof of financial responsibility in the manner prescribed by the executive director; and

(3) maintain workers' compensation coverage for the contractor's employees through an insurance company authorized to engage in the business of insurance in this state or through self-insurance, or elect not to obtain workers' compensation coverage, as provided by Subchapter A, Chapter 406, Labor Code.

(b) A person who holds a master electrician license issued or recognized under this chapter may only be assigned to a single electrical contractor, unless the master electrician owns more than 50 percent of the electrical contracting business.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.160. ELECTRICAL SIGN CONTRACTOR. (a) An applicant for a license as an electrical sign contractor must:

(1) be licensed under this chapter as a master sign electrician or employ a person licensed under this chapter as a master sign electrician;

(2) establish proof of financial responsibility in the manner prescribed by the executive director; and

(3) maintain workers' compensation coverage for the contractor's employees through an insurance company authorized to engage in the business of insurance in this state or through self-insurance, or elect not to obtain workers' compensation coverage, as provided by Subchapter A, Chapter 406, Labor Code.

(b) A person who holds a master sign electrician license issued

or recognized under this chapter may only be assigned to a single electrical sign contractor, unless the master sign electrician owns more than 50 percent of the electrical sign contracting business.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1052 (H.B. 1317), Sec. 5, eff. June 18, 2005.

Sec. 1305.1605. JOURNEYMAN LINEMAN. (a) An applicant for a license as a journeyman lineman must:

(1) have at least:

(A) 7,000 hours of training in an apprenticeship program approved by the United States Department of Labor; or

(B) 3-1/2 years of experience as a journeyman lineman for an electric utility, electric cooperative, municipally owned utility, or electrical contractor in this state; and

(2) pass a journeyman lineman examination administered under this chapter.

(b) A journeyman lineman license is not required for:

(1) a person performing work exempt under Section 1305.003(a)(5); or

(2) a person who:

(A) is performing journeyman lineman work;

(B) possesses a journeyman electrician license; and

(C) is employed by an institution of higher education, as defined by Section 61.003, Education Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 882 (H.B. 796), Sec. 3, eff. June 14, 2013.

Sec. 1305.161. APPRENTICE; TEMPORARY APPRENTICE. (a) Except as provided by Subsection (b), an applicant for a license as an electrical apprentice must be at least 16 years of age and be engaged in the process of learning and assisting in the installation of electrical work under the supervision of a licensed master electrician.

(b) An applicant for a license as an electrical sign apprentice must be at least 18 years of age and be engaged in the process of



learning and assisting in the performance of electrical sign work under the supervision of a licensed master sign electrician.

(c) On the request of an applicant for an apprentice license, the executive director shall issue a temporary apprentice license that expires on the 21st day after the date of issuance to an applicant who meets the qualifications established by the executive director.

(d) The commission by rule shall set the fee, establish the qualifications, and provide for the issuance of a temporary apprentice license under this section.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1052 (H.B. 1317), Sec. 6, eff. June 18, 2005.

Sec. 1305.1615. EMERGENCY ELECTRICIAN LICENSE. (a) The commission by rule shall establish criteria and procedures for the issuance of an emergency electrician license following a disaster, as that term is defined by Section 418.004, Government Code, to a person licensed as an electrician in another state of the United States.

(b) An emergency license issued under this section expires on the 90th day after the date of issuance.

(c) The commission, with the advice of the advisory board, may adopt rules that provide for the extension of an emergency license issued under this section.

Added by Acts 2005, 79th Leg., Ch. 1052 (H.B. 1317), Sec. 7, eff. June 18, 2005.

Sec. 1305.1617. RESIDENTIAL APPLIANCE INSTALLER. An applicant for a license as a residential appliance installer must pass a residential appliance installer examination administered under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 418 (S.B. 1222), Sec. 5, eff. September 1, 2007.

## Sec. 1305.1618. RESIDENTIAL APPLIANCE INSTALLATION CONTRACTOR.

(a) An applicant for a license as a residential appliance installation contractor must:

(1) be licensed under this chapter as a residential appliance installer or employ a person licensed under this chapter as a residential appliance installer;

(2) establish proof of financial responsibility in the manner prescribed by the executive director; and

(3) maintain workers' compensation coverage for the contractor's employees through an insurance company authorized to engage in the business of insurance in this state or through self-insurance, or elect not to obtain workers' compensation coverage, as provided by Subchapter A, Chapter 406, Labor Code.

(b) A person who holds a residential appliance installer's license issued or recognized under this chapter may only be assigned to a single residential appliance installation contractor, unless the residential appliance installer owns more than 50 percent of the residential appliance installation contracting business.

Added by Acts 2007, 80th Leg., R.S., Ch. 418 (S.B. [1222](#)), Sec. 5, eff. September 1, 2007.

Sec. 1305.162. EXAMINATIONS. (a) Examinations required by this subchapter shall be conducted throughout the state.

(b) The department shall accept, develop, or contract for the examinations required by this chapter, including the administration of the examinations. Each examination must test the knowledge of the applicant about materials and methods used in electrical installations related to the activities that may be performed within each class of license under this chapter and the standards prescribed by the National Electrical Code as adopted by the executive director.

(c) The executive director shall determine uniform standards for acceptable performance on an examination.

(d) In addition to the other requirements of this section, the department shall accept, develop, or contract for a residential appliance installer examination that tests an applicant's knowledge of the materials and methods used in the installation of residential appliances and pool-related devices under this chapter and the National Electrical Code standards as adopted by the executive

director.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 416 (H.B. 1973), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1392 (S.B. 1982), Sec. 3, eff. September 1, 2009.

Sec. 1305.163. EXAMINATION RESULTS. (a) Not later than the 30th day after the date on which an examination is administered under this chapter, the department shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the department shall notify examinees of the result of the examination not later than the 14th day after the date on which the department receives the results from the testing service.

(b) If the notice of the examination results will be delayed for more than 60 days after the examination date, the department shall notify each examinee of the reason for the delay before the 60th day.

(c) If requested in writing by a person who fails an examination administered under this chapter, the department shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.164. NONRESIDENT LICENSE APPLICANT. The executive director may issue a license under this chapter to an applicant who holds a license in another state and who submits a proper application and pays the required fees if the executive director determines that the applicant is licensed in a state with which there is an agreement to recognize licenses issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.1645. LICENSE ELIGIBILITY REQUIREMENTS FOR APPLICANTS

WITH MILITARY EXPERIENCE. (a) Notwithstanding any other law, the department shall credit verified military service, training, or education toward the licensing requirements, other than examination requirements, for a license issued under this chapter by the department.

(b) The department shall expedite the issuance of a temporary license or a license by endorsement or reciprocity under this chapter to an applicant who:

(1) has verified military experience; and

(2) holds a current license issued by another jurisdiction that has license requirements that are substantially equivalent to the license requirements of this state.

(c) The commission shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 977 (H.B. 2029), Sec. 1, eff. June 14, 2013.

Sec. 1305.165. LICENSE ISSUANCE; NONTRANSFERABILITY. (a) Not later than the 30th day after the date on which the department determines that an applicant has passed the examination required under this chapter, the executive director shall issue a license to the applicant if the applicant has complied with the application requirements and paid the fees required by this chapter.

(b) A license issued by the executive director is valid throughout this state and is not transferable.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.166. DISPLAY OF LICENSE. (a) An electrical contractor, electrical sign contractor, and residential appliance installation contractor shall display the contractor's business name and the number of the license issued by the executive director on each vehicle owned by the contractor.

(b) The information required to be displayed must be:

(1) printed in letters and numbers that are at least two inches high and in a color that contrasts with the color of the background surface; and

(2) permanently affixed in conspicuous places on both sides

of the vehicle.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 418 (S.B. [1222](#)), Sec. 6, eff. September 1, 2007.

Sec. 1305.167. LICENSE RENEWAL. (a) Except as provided by Subsection (b), a license expires annually on December 31 and may be renewed annually on payment of the required renewal fee.

(b) The executive director by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, renewal fees payable on or before December 31 shall be prorated on a monthly basis so that each license holder pays only that portion of the renewal fee that is applicable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total renewal fee is due.

(c) Not later than the 30th day preceding the expiration date of a person's license, the department shall notify the person in writing, at the person's last known mailing address, of the impending license expiration. A person may renew an unexpired license by paying to the department, before the license expiration date, the required renewal fee.

(d) Repealed by Acts 2005, 79th Leg., Ch. 1052, Sec. 11, eff. June 18, 2005.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1052 (H.B. [1317](#)), Sec. 11, eff. June 18, 2005.

Sec. 1305.168. CONTINUING EDUCATION. (a) To renew a master electrician, journeyman electrician, master sign electrician, journeyman sign electrician, maintenance electrician, journeyman lineman, or residential wireman license, the license holder must complete four hours of continuing education annually.

(b) Continuing education courses that satisfy the requirements of Subsection (a) must address safety, the National Electrical Code,

as adopted under Section 1305.101, and state laws and rules that regulate the conduct of license holders under this chapter.

(b-1) To renew an electrical apprentice license or electrical sign apprentice license, a license holder who is not enrolled in an apprenticeship training program must complete four hours of continuing education annually. Continuing education courses that satisfy the requirements of this subsection must address safety, the National Electrical Code, as adopted under Section 1305.101, and state laws and rules that regulate the conduct of license holders under this chapter.

(c) The executive director by rule shall approve continuing education courses, online continuing education courses, course content, and course providers. The commission may adopt a fee for the administration of the department's duties regarding continuing education.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1052 (H.B. 1317), Sec. 8, eff. June 18, 2005.

Acts 2009, 81st Leg., R.S., Ch. 741 (S.B. 470), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 79 (H.B. 1625), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 882 (H.B. 796), Sec. 4, eff. June 14, 2013.

#### **SUBCHAPTER E. REGULATION OF ELECTRICIANS BY LOCAL GOVERNMENTS**

Sec. 1305.201. MUNICIPAL OR REGIONAL REGULATION. (a) This chapter does not prohibit a municipality or region from regulating electricians or residential appliance installers by:

- (1) enacting an ordinance requiring inspections;
- (2) offering examinations;
- (3) issuing municipal or regional licenses; or
- (4) collecting permit fees for municipal or regional

licenses and examinations from electricians and appliance installers for work performed in the municipality or region.

(b) A municipality or region may not require a person to take a municipal or regional examination if that person holds the

appropriate license issued under this chapter and is working within the scope of that license.

(c) A municipality may adopt procedures for the:

(1) adoption of local amendments to the National Electrical Code; and

(2) administration and enforcement of that code.

(d) Electrical work performed within the corporate limits of a municipality must be installed in accordance with all applicable local ordinances.

(e) Electrical work performed in an unincorporated area of the state must be installed in accordance with standards at least as stringent as the requirements of the state electrical code as adopted under Section 1305.101.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 418 (S.B. [1222](#)), Sec. 7, eff. September 1, 2007.

Sec. 1305.202. SCOPE OF MUNICIPAL OR REGIONAL LICENSE. (a) A license to perform electrical work issued by a municipality or region is valid only in the municipality or region or in another municipality or region under a reciprocal agreement.

(b) A person who holds a license to perform electrical work or electrical sign work issued by a municipality or region that elects to discontinue issuing or renewing licenses may apply for an equivalent license under this chapter without complying with the applicable examination requirement if the person:

(1) held the municipal or regional license for the preceding year; and

(2) submits an application for a license under this chapter within 90 days of the date the municipality or region stops issuing or renewing licenses.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1052 (H.B. [1317](#)), Sec. 9, eff. June 18, 2005.

**SUBCHAPTER F. LICENSE DENIAL AND DISCIPLINARY ACTIONS**

Sec. 1305.251. GROUND FOR DENIAL OR DISCIPLINARY ACTION. A person is subject to denial of a license application or disciplinary action under Section 51.353 if the person violates:

- (1) this chapter or a rule adopted under this chapter; or
- (2) a rule or order of the executive director or commission.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.252. REQUESTED SUSPENSION BY LOCAL GOVERNMENT. A municipality or region may request suspension for just cause of the license under this chapter of a license holder working in its jurisdiction.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.253. HEARINGS; ADMINISTRATIVE PROCEDURE. (a) If the department proposes to deny a license or take disciplinary action against a license holder, the license holder is entitled to a hearing.

(b) The proceedings relating to a license denial and disciplinary action by the department under this chapter are governed by Chapter 2001, Government Code. A hearing under this chapter may be conducted by a hearings officer designated by the commission.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.254. NEW APPLICATION BY HOLDER OF REVOKED LICENSE. A license holder whose license has been revoked may apply for a new license after the first anniversary of the date of the revocation.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

**SUBCHAPTER G. ENFORCEMENT**

Sec. 1305.301. ADMINISTRATIVE PENALTY. (a) The executive director may impose an administrative penalty on a person under



Subchapter F, Chapter 51, regardless of whether the person holds a license under this chapter, if the person violates:

- (1) this chapter or a rule adopted under this chapter; or
- (2) a rule or order of the executive director or commission.

(b) An administrative penalty may not be imposed unless the person charged with a violation is provided the opportunity for a hearing.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.302. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. (a) The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) The attorney general or executive director may institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.303. CRIMINAL PENALTY.

(a) A person subject to this chapter commits an offense if the person:

- (1) violates the licensing requirements of this chapter;
- (2) performs electrical work without a license to perform electrical work in this state;
- (3) employs an individual who does not hold the appropriate license required by this chapter; or
- (4) falsifies a certification of on-the-job training.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2004.

## TITLE 9. REGULATION OF BARBERS, COSMETOLOGISTS, AND RELATED OCCUPATIONS

**CHAPTER 1601. BARBERS****SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1601.001. GENERAL DEFINITIONS. (a) In this chapter:

(1) "Barber" means a person who:

(A) performs or offers or attempts to perform any act of barbering;

(B) claims to be engaged in the practice of barbering;  
or

(C) directly or indirectly advertises or represents the person to be a barber or to be authorized to practice barbering.

(1-a) "Barber school" means a place that holds a permit issued under Subchapter H to teach the practice of barbering and may be privately or publicly funded. The term includes a barber college.

(2) "Barbershop" means a place, other than a barber school that holds a permit under this chapter, in which barbering is practiced or is offered or attempted to be practiced. The term includes a barber salon.

(3) "Board" means the Advisory Board on Barbering.

(4) "Certificate" means a certificate of registration issued by the department.

(4-a) "Commission" means the Texas Commission of Licensing and Regulation.

(4-b) "Department" means the Texas Department of Licensing and Regulation.

(5) "Dual shop" means a shop owned, operated, or managed by a person holding a dual barber and beauty shop license issued under Chapter 1603.

(6) "Manager" means the person who controls or directs the business of a barbershop or directs the work of a person employed in a barbershop.

(7) "Manicurist specialty shop" means a place in which only the practice of barbering defined by Sections 1601.002(1)(E) and (F) is performed for compensation.

(8) "Permit" means a permit issued by the department.

(9) Repealed by Acts 2001, 77th Leg., ch. 246, Sec. 17(1), eff. Sept. 1, 2001.

(10) Repealed by Acts 2001, 77th Leg., ch. 246, Sec. 17(1), eff. Sept. 1, 2001.

(b) The term "barber school" includes a barber college.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 246, Sec. 17(1), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.01, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 26(1), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 1, eff. September 1, 2013.

Sec. 1601.002. DEFINITION OF BARBERING. In this chapter, "barbering," "practicing barbering," or the "practice of barbering" means:

(1) performing or offering or attempting to perform for compensation or the promise of compensation any of the following services:

(A) treating a person's mustache or beard by arranging, beautifying, coloring, processing, shaving, styling, or trimming;

(B) treating a person's hair by:

(i) arranging, beautifying, bleaching, cleansing, coloring, curling, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, tinting, or waving;

(ii) providing a necessary service that is preparatory or ancillary to a service under Subparagraph (i), including bobbing, clipping, cutting, or trimming; or

(iii) cutting the person's hair as a separate and independent service for which a charge is directly or indirectly made separately from a charge for any other service;

(C) cleansing, stimulating, or massaging a person's scalp, face, neck, arms, or shoulders:

(i) by hand or by using a device, apparatus, or appliance; and

(ii) with or without the use of any cosmetic preparation, antiseptic, tonic, lotion, or cream;

(D) beautifying a person's face, neck, arms, or shoulders using a cosmetic preparation, antiseptic, tonic, lotion, powder, oil, clay, cream, or appliance;

- (E) treating a person's nails by:
  - (i) cutting, trimming, polishing, tinting, coloring, cleansing, manicuring, or pedicuring; or
  - (ii) attaching false nails;
- (F) massaging, cleansing, treating, or beautifying a person's hands;
- (G) administering facial treatments;
- (H) weaving a person's hair by using any method to attach commercial hair to a person's hair or scalp;
- (I) shampooing or conditioning a person's hair;
- (J) servicing in any manner listed in Paragraph (B) a person's wig, toupee, or artificial hairpiece on a person's head or on a block after the initial retail sale; or
- (K) braiding a person's hair, trimming hair extensions only as applicable to the braiding process, and attaching commercial hair only by braiding and without the use of chemicals or adhesives;
- (2) advertising or representing to the public in any manner that a person is a barber or is authorized to practice barbering; or
- (3) advertising or representing to the public in any manner that a location or place of business is a barbershop, specialty shop, or barber school.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. [2106](#)), Sec. 1, eff. June 15, 2007.

Sec. 1601.003. APPLICATION OF CHAPTER. This chapter does not apply to a person who:

(1) does not represent or advertise to the public directly or indirectly that the person is authorized by the department to practice barbering; and

(2) is:

(A) a physician or registered nurse licensed in this state and operating within the scope of the person's license;

(B) a commissioned or authorized medical or surgical officer of the United States armed forces;

(C) a person regulated under Chapter 1602, if the person practices within the scope of a permit, license, or

certificate issued by the department under that chapter; or

(D) an inmate in the institutional division of the Texas Department of Criminal Justice who performs barbering during the person's incarceration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.02, eff. September 1, 2005.

#### **SUBCHAPTER B. ADVISORY BOARD ON BARBERING**

Sec. 1601.051. BOARD; MEMBERSHIP. The Advisory Board on Barbering consists of five members appointed by the presiding officer of the commission, with the commission's approval, as follows:

(1) two members, each of whom:

(A) is engaged in the practice of barbering as a Class A barber; and

(B) does not hold a barbershop permit;

(2) two members, each of whom is a barbershop owner who holds a barbershop permit; and

(3) one member who holds a permit to conduct or operate a barber school.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 5.01, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.04, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 5.01(3), eff. September 1, 2005.

Sec. 1601.055. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms, with the terms of one or two members expiring on the same date each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2003, 78th Leg., ch. 1170, Sec. 5.02, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.05, eff.  
September 1, 2005.

Sec. 1601.058. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, shall designate a board member as presiding officer to serve in that capacity for a two-year term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.  
Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.06, eff.  
September 1, 2005.

Sec. 1601.059. BOARD DUTIES. (a) The board shall advise the commission and the department on:

- (1) education and curricula for applicants;
- (2) the content of examinations;
- (3) proposed rules and standards on technical issues related to barbering; and
- (4) other issues affecting barbering.

(b) The board shall respond to questions from the department and the commission regarding barbering.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.07, eff.  
September 1, 2005.

#### **SUBCHAPTER F. GENERAL CERTIFICATE, LICENSE, AND PERMIT REQUIREMENTS**

Sec. 1601.251. CERTIFICATE, LICENSE, OR PERMIT REQUIRED. (a) A person may not perform or offer or attempt to perform any act of barbering unless the person holds an appropriate certificate, license, or permit.

(b) Unless the person holds an appropriate certificate, license, or permit, a person may not directly or indirectly use or cause to be used any of the following terms, or any combination, variation, or abbreviation of the terms, as a professional or business identification, title, name, representation, asset, or means

of advantage or benefit:

- (1) "barber" or "barbering";
- (2) "barber school" or "barber college"; or
- (3) "barbershop," "barber salon," or "specialty shop."

(c) Unless the person holds an appropriate certificate, license, or permit, a person may not directly or indirectly use or cause to be used a symbol, or a combination, variation, or abbreviation of symbols, that in any manner creates an impression with the public that the person is qualified or authorized to practice barbering or own or manage a barbershop, specialty shop, or barber school.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1601.253. ELIGIBILITY FOR CLASS A BARBER CERTIFICATE. (a) An applicant for a Class A barber certificate must:

- (1) be at least 16 years of age; and
- (2) pass a written and practical examination demonstrating to the department's satisfaction the applicant's fitness and competence to practice barbering.

(b) The department shall issue a Class A barber certificate to an applicant who:

- (1) complies with the application requirements of this chapter;
- (2) passes the applicable examination;
- (3) pays the required fee; and
- (4) possesses the other qualifications required by this chapter.

(c) The commission shall adopt rules for the issuance of a Class A barber certificate to a person who holds an operator license under Chapter 1602. The department shall issue the certificate to an applicant who:

- (1) holds an active operator license under Chapter 1602;
  - (2) completes at least 300 hours of instruction in barbering that includes barber history and shaving through a commission-approved training program in a barber school;
  - (3) passes the examination required under Subsection (a);
- and
- (4) submits to the department:

- (A) an application on a form prescribed by the department; and
- (B) the required fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.08, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 2, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 2, eff. September 1, 2011.

Sec. 1601.254. ELIGIBILITY FOR BARBER INSTRUCTOR LICENSE. (a) A person holding a barber instructor license may perform any act of barbering and may instruct a person in any act of barbering.

(b) To be eligible for a barber instructor license, an applicant must:

- (1) be at least 18 years of age;
- (2) have a high school diploma or a high school equivalency certificate;
- (3) hold a current Class A barber certificate;
- (4) have completed:
  - (A) a course consisting of 750 hours of instruction in barber courses and methods of teaching in a barber school; or
  - (B) at least one year of work experience as a licensed Class A barber and:
    - (i) have completed 500 hours of instruction in barber courses and methods of teaching in a commission-approved training program;
    - (ii) have completed 15 semester hours in education courses from an accredited college or university within the 10 years preceding the date of the application; or
    - (iii) have obtained a degree in education from an accredited college or university; and
- (5) pass the required examination.

(c) The commission shall adopt rules for the licensing of specialty instructors to teach specialty courses in the practice of barbering as defined by Sections 1601.002(1)(C)-(H) and (K).



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.09, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 3, eff. September 1, 2011.

Sec. 1601.256. ELIGIBILITY FOR BARBER TECHNICIAN LICENSE. (a) A person holding a barber technician license may:

- (1) perform only barbering as defined by Sections 1601.002(1)(C), (D), (F), (G), and (I); and
- (2) practice only at a location that has been issued a barbershop permit.

(b) An applicant for a barber technician license must:

- (1) be at least 16 years of age;
- (2) have completed the seventh grade or the equivalent of the seventh grade;
- (3) have completed a course of instruction in a commission-approved training program consisting of not less than 300 hours in a period of not less than eight weeks; and
- (4) submit the required fee with the application.

(c) The course of instruction described by Subsection (b)(3) must include the theory and practice of:

- (1) laws governing the practice of barbering in this state;
  - (2) hygienic bacteriology;
  - (3) histology of the skin, muscles, and nerves;
  - (4) the structure of the head, neck, and face;
  - (5) elementary chemistry relating to sterilization and antiseptics;
  - (6) common disorders of the skin;
  - (7) massage and manipulation of the muscles of the scalp, face, and neck;
  - (8) shampooing;
  - (9) the administration of facial treatments;
  - (10) the preparation of patrons and making of appointments;
- and
- (11) any other services within the scope of barbering under Subsection (a).

(d) The department shall issue a barber technician license to

an applicant who:

- (1) possesses the qualifications described by Subsection (b);
- (2) passes the appropriate examination;
- (3) pays the required license fee; and
- (4) has not committed an act that is a ground for denial of a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.10, eff. September 1, 2005.

Sec. 1601.257. ELIGIBILITY FOR MANICURIST LICENSE. (a) A person holding a manicurist license may perform only barbering as defined by Sections 1601.002(1)(E) and (F).

(b) An applicant for a manicurist license must:

- (1) be at least 17 years of age;
- (2) have completed the seventh grade or the equivalent of the seventh grade;
- (3) have completed a commission-approved training program consisting of 600 hours of instruction in manicuring; and
- (4) submit the required fee with the application.

(c) The department shall issue a manicurist license to an applicant who:

- (1) possesses the qualifications described by Subsection (b);
- (2) passes the appropriate examination;
- (3) pays the required license fee; and
- (4) has not committed an act that is a ground for denial of a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 246, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.11, eff. September 1, 2005.

Sec. 1601.258. ELIGIBILITY FOR HAIR WEAVING SPECIALTY

CERTIFICATE OF REGISTRATION. (a) A person holding a hair weaving specialty certificate of registration may perform only barbering as defined by Section 1601.002(1)(H).

(b) An applicant for a hair weaving specialty certificate of registration must:

(1) be at least 17 years of age; and

(2) satisfy the requirements specified by the department, including training through a commission-approved training program.

(c) The department shall issue a hair weaving specialty certificate of registration to an applicant who:

(1) possesses the qualifications described by Subsection (b);

(2) pays the required registration fee; and

(3) has not committed an act that constitutes a ground for denial of the certificate.

Added by Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 3, eff. June 15, 2007.

Sec. 1601.259. ELIGIBILITY FOR HAIR BRAIDING SPECIALTY

CERTIFICATE OF REGISTRATION. (a) A person holding a hair braiding specialty certificate of registration may perform only barbering as defined by Section 1601.002(1)(K).

(b) An applicant for a hair braiding specialty certificate must:

(1) be at least 17 years of age; and

(2) satisfy the requirements specified by the department, including training through a commission-approved training program.

(c) The department shall issue a hair braiding specialty certificate of registration to an applicant who:

(1) possesses the qualifications described by Subsection (b);

(2) pays the required registration fee; and

(3) has not committed an act that constitutes a ground for denial of the certificate.

Added by Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 3, eff. June 15, 2007.

Sec. 1601.260. ELIGIBILITY FOR STUDENT PERMIT. (a) An applicant for a permit to be a student in a barber school must:

- (1) submit an enrollment application to the department in the form prescribed by the department;
  - (2) have completed the seventh grade;
  - (3) satisfy other requirements specified by the department;
- and
- (4) submit with the application the required nonrefundable application fee.

(b) A separate application is required for each enrollment, reenrollment, or transfer enrollment. The application fee applies only to the first enrollment. The department may not charge the application fee for any later enrollment, reenrollment, or transfer enrollment.

(c) A person holding a student permit may shampoo or condition a person's hair in a facility licensed under this chapter or Chapter 1603. The barber school in which the permit holder is enrolled may not receive compensation for services performed under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.12, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 2, eff. September 1, 2013.

Sec. 1601.261. ELIGIBILITY FOR SHAMPOO APPRENTICE PERMIT. (a) A person holding a shampoo apprentice permit may perform only barbering as defined by Section 1601.002(1)(I).

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 62, Sec. 24(1), eff. September 1, 2013.

(c) A shampoo apprentice permit expires on the second anniversary of the date of issuance and may not be renewed.

(d) The commission shall adopt rules as necessary to administer this section. The commission may not require an applicant to:

- (1) complete any hours of instruction at a barber training program as a prerequisite for the issuance of a shampoo apprentice permit; or

(2) pay a fee for a shampoo apprentice permit.

(e) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 62, Sec. 24(1), eff. September 1, 2013.

(f) This section applies only to a person who holds a permit under this section issued to the person before September 1, 2013.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 4, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 24(1), eff. September 1, 2013.

Sec. 1601.262. ELIGIBILITY FOR BARBER TECHNICIAN/MANICURIST SPECIALTY LICENSE. (a) A person holding a barber technician/manicurist specialty license may perform only barbering as defined by Sections 1601.002(1)(C) through (G).

(b) To be eligible for a barber technician/manicurist specialty license, an applicant must:

(1) submit an application on a form prescribed by the department;

(2) pay the required fee; and

(3) either:

(A) hold both an active barber technician license and an active manicurist license; or

(B) meet the requirements of Subsection (c).

(c) An applicant who qualifies under Subsection (b)(3)(B) must:

(1) be at least 17 years of age and have completed the seventh grade or its equivalent; and

(2) have completed:

(A) 900 hours of instruction in a barber technician/manicurist curriculum in a commission-approved training program; or

(B) 600 hours of instruction in a manicure curriculum and 300 hours of instruction in a barber technician curriculum in a commission-approved training program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 4, eff. September 1, 2011.

Sec. 1601.263. ELIGIBILITY FOR BARBER TECHNICIAN/HAIR WEAVING SPECIALTY LICENSE. (a) A person holding a barber technician/hair weaving specialty license may perform only barbering as defined by Sections 1601.002(1)(C), (D), (G), and (H).

(b) To be eligible for a barber technician/hair weaving specialty license, an applicant must:

(1) submit an application on a form prescribed by the department;

(2) pay the required fee; and

(3) either:

(A) hold both an active barber technician license and an active hair weaving specialty certificate of registration; or

(B) meet the requirements of Subsection (c).

(c) An applicant who qualifies under Subsection (b)(3)(B) must:

(1) be at least 17 years of age and have completed the seventh grade or its equivalent; and

(2) have completed:

(A) 600 hours of instruction in a barber technician/hair weaving curriculum in a commission-approved training program; or

(B) 300 hours of instruction in a hair weaving curriculum and 300 hours of instruction in a barber technician curriculum in a commission-approved training program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 4, eff. September 1, 2011.

Sec. 1601.265. WAIVER OF CERTAIN LICENSE AND CERTIFICATE REQUIREMENTS; PERSONAL INTERVIEW. (a) The department shall issue a license or certificate to an applicant for a license or certificate issued under Section 1601.253, 1601.256, 1601.258, or 1601.259 if the applicant:

(1) submits an application on a form prescribed by the department;

(2) pays the application fee; and

(3) provides proof that the applicant holds a current license to engage in the same or a similar activity issued by another

jurisdiction that has license requirements substantially equivalent to those of this state.

(a-1) The department may waive any requirement for a license or certificate issued under this chapter, other than a license or certificate listed in Subsection (a), for an applicant holding a license from another state or country that has license requirements substantially equivalent to those of this state.

(b) The department may not require a personal interview as part of the application process.

(c) A license or certificate issued under Subsection (a) must be renewed as provided by Subchapter I.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.13, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 258 (H.B. 619), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 258 (H.B. 619), Sec. 2, eff. September 1, 2013.

#### **SUBCHAPTER G. PERMITTING OF BARBERSHOPS AND SPECIALTY SHOPS**

Sec. 1601.301. PERMIT REQUIRED. (a) A person may not own, operate, or manage a barbershop, dual shop, or specialty shop unless the person holds the appropriate permit.

(b) Not later than the third day after the date the shop opens, a person who owns, operates, or manages a barbershop, dual shop, or specialty shop must submit an application to the department for an appropriate permit for each shop, accompanied by a fee set by commission rule.

(c) A person who owns, operates, or manages a barbershop, dual shop, or specialty shop may employ a person holding a student permit under Section 1601.260 to shampoo or condition a person's hair.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.14, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 4, eff. September 1, 2013.

Sec. 1601.303. ISSUANCE OF BARBERSHOP PERMIT. The department shall issue a barbershop permit to an applicant if:

- (1) the applicant owns the barbershop;
- (2) the applicant verifies the application; and
- (3) the shop meets the minimum health standards for barbershops set by the commission and complies with all other commission rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 246, Sec. 6, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 736 (H.B. 2627), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.15, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 4, eff. June 15, 2007.

Sec. 1601.304. SPECIALTY SHOP PERMIT. (a) A person who holds a specialty shop permit may maintain an establishment in which only barbering as defined by Section 1601.002(1)(E), (F), (H), or (K) is performed.

- (b) An applicant for a specialty shop permit must submit:
  - (1) an application on a department-approved form; and
  - (2) the required inspection fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.16, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 5, eff. June 15, 2007.

Sec. 1601.305. ISSUANCE OF SPECIALTY SHOP PERMIT. The department shall issue a specialty shop permit to an applicant if:

- (1) the applicant submits proof that the applicant satisfies the requirements established by the commission for a



specialty shop;

(2) the applicant pays the required inspection fee and permit fee;

(3) the applicant verifies the application and the application complies with commission rules; and

(4) the applicant has not committed an act that constitutes a ground for denial of a permit, certificate, or license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 246, Sec. 7, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.17, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 5, eff. June 15, 2007.

Sec. 1601.308. TRANSFER OF BARBERSHOP OR SPECIALTY SHOP PERMIT.

(a) A permit issued under this subchapter is not transferable.

(b) If the ownership of a barbershop or specialty shop is transferred, the new owner of the shop may continue to operate the shop if the new owner applies for and obtains a new permit not later than the 30th day after the date of the transfer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1601.309. PRACTICE BY COSMETOLOGIST AT SPECIALTY SHOP PROHIBITED. A person who holds a license, permit, or certificate issued by the department under Chapter 1602 may not practice under that authority at a specialty shop regulated under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.18, eff. September 1, 2005.

#### **SUBCHAPTER H. PERMITTING OF BARBER SCHOOLS**

Sec. 1601.351. PERMIT REQUIRED. A person may not operate a

barber school unless the person holds a barber school permit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1601.352. APPLICATION FOR BARBER SCHOOL PERMIT. An applicant for a barber school permit must:

(1) provide to the department adequate proof of financial responsibility;

(2) submit an application on a form prescribed by the department;

(3) satisfy the facility and equipment requirements of Section 1601.353; and

(4) pay the required fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. [411](#)), Sec. 2.19, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. [1170](#)), Sec. 5, eff. September 1, 2011.

Sec. 1601.353. REQUIRED FACILITIES AND EQUIPMENT. The department may approve an application for a permit for a barber school if the school:

(1) is located in:

(A) a municipality with a population of more than 50,000 that has a building of permanent construction containing at least 2,000 square feet of floor space, including classroom and practical areas, covered in a hard-surface floor-covering of tile or other suitable material; or

(B) a municipality with a population of 50,000 or less or an unincorporated area of a county that has a building of permanent construction containing at least 1,000 square feet of floor space, including classroom and practical areas, covered in a hard-surface floor-covering of tile or other suitable material;

(2) has the following equipment:

(A) at least 10 student workstations that include a chair that reclines, a back bar, and a wall mirror;

(B) a sink behind every two workstations;

- (C) adequate lighting for each room;
  - (D) at least 10 classroom chairs and other materials necessary to teach the required subjects; and
  - (E) access to permanent restrooms and adequate drinking fountain facilities; and
- (3) meets any other requirement set by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. [411](#)), Sec. 2.20, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. [2106](#)), Sec. 6, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. [1170](#)), Sec. 6, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. [2095](#)), Sec. 5, eff. September 1, 2013.

Sec. 1601.3571. BARBER SCHOOL TUITION PROTECTION ACCOUNT. (a) If on January 1 of any year the amount in the barber school tuition protection account is less than \$25,000, the department shall collect a fee from each barber school during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to \$25,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the department for the purpose of refunding unused tuition if a barber school ceases operation before its course of instruction is complete. The department shall administer claims made against the account.

(c) Attorney's fees, court costs, or damages may not be paid from the account.

(d) The barber school tuition protection account is created as a trust fund with the comptroller, who is custodian of the fund.

Added by Acts 2001, 77th Leg., ch. 246, Sec. 10, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. [411](#)), Sec. 2.23, eff. September 1, 2005.

**SUBCHAPTER I. CERTIFICATE, LICENSE, AND PERMIT RENEWAL**

Sec. 1601.402. RENEWAL OF CERTIFICATE OR LICENSE. (a) A certificate or license expires two years from the date of issuance.

(b) A Class A barber, barber technician, instructor, manicurist, or other licensed specialist must renew the person's certificate or license on or before the expiration date.

(c) The department shall issue a renewal certificate or license on receipt of a renewal application in the form prescribed by the department, accompanied by a renewal fee in an amount equal to the original certificate or license fee.

(d) Repealed by Acts 2005, 79th Leg., Ch. 798, Sec. 5.01(3), eff. September 1, 2005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 246, Sec. 11, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.24, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 5.01(3), eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 7, eff. September 1, 2011.

Sec. 1601.404. REINSTATEMENT OF EXPIRED CERTIFICATE OR LICENSE BY RETIREE. (a) Repealed by Acts 2005, 79th Leg., Ch. 798, Sec. 5.01(3), eff. September 1, 2005.

(b) Repealed by Acts 2005, 79th Leg., Ch. 798, Sec. 5.01(3), eff. September 1, 2005.

(c) A Class A barber or license holder who retires from practice and whose certificate or license has been expired for more than five years may qualify for a new certificate or license by applying to the department and by:

(1) making a proper showing to the department, supported by a personal affidavit;

(2) paying the required examination fee;

(3) passing a satisfactory examination conducted by the department; and

(4) paying the fee for an original certificate or license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.25, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.26, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 5.01(3), eff. September 1, 2005.

Sec. 1601.405. RENEWAL WHILE IN ARMED FORCES. (a) The department may not require a Class A barber, barber technician, instructor, or manicurist who is serving on active duty in the United States armed forces to renew the person's certificate or license.

(b) The department shall issue a renewal certificate or license on application and payment of the required renewal fee not later than the 90th day after the date the person is released or discharged from active duty in the armed forces.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 246, Sec. 12, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.27, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 8, eff. September 1, 2011.

Sec. 1601.406. RENEWAL OF BARBERSHOP OR SPECIALTY SHOP PERMIT.

(a) A barbershop permit or specialty shop permit expires on the second anniversary of the date of issuance.

(b) A barbershop permit holder may renew the permit by paying the required renewal fee.

(c) A specialty shop permit holder may renew the permit by submitting to the department a renewal application accompanied by the required renewal fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.28, eff. September 1, 2005.

Sec. 1601.407. RENEWAL OF BARBER SCHOOL PERMIT. (a) A barber school permit expires on the first anniversary of the date of issuance.

(b) A barber school may renew its permit by paying the required renewal fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.29, eff. September 1, 2005.

#### **SUBCHAPTER J. PRACTICE BY INDIVIDUAL CERTIFICATE OR LICENSE HOLDER**

Sec. 1601.451. DISPLAY OF CERTIFICATE OR LICENSE. A certificate or license holder shall display the original certificate or license and an attached photograph of the certificate or license holder in a conspicuous place adjacent to or near the certificate or license holder's work chair in the shop in which the certificate or license holder is working.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1601.452. DISPLAY OF SANITATION RULES. Each barbershop or specialty shop shall post in the shop a copy of the commission's sanitation rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 246, Sec. 13, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.30, eff. September 1, 2005.

Sec. 1601.453. LOCATION OF PRACTICE. A person licensed by the department may practice barbering only at a location for which the department has issued a barbershop permit, specialty shop permit, or barber school permit under this chapter or a permit issued under Chapter 1603.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.31, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 7, eff. June 15, 2007.

Sec. 1601.454. PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY. (a) The commission may not adopt rules to restrict or prohibit practice by a Class A barber or manicurist in a facility solely because the facility is licensed or permitted by the department under both this chapter and Chapter 1602.

(b) If a facility has a license or permit under both this chapter and Chapter 1602, the commission may not adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

- (1) work areas for barbers and cosmetologists;
- (2) waiting areas for customers of the barbers and cosmetologists; or
- (3) restrooms for the barbers and cosmetologists practicing in the facility or for their customers.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 246, Sec. 14, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.32, eff. September 1, 2005.

Sec. 1601.455. SERVICE AT UNLICENSED LOCATION. (a) In this section, "licensed facility" means the premises of a place of business that holds a license, certificate, or permit under this chapter or Chapter 1603.

(b) A person holding a license, certificate, or permit under this chapter may perform a service within the scope of the license, certificate, or permit at a location other than a licensed facility for a client who, because of illness or physical or mental incapacitation, is unable to receive the services at a licensed facility.

(c) An appointment for a service performed under this section

must be made through a licensed facility.

Added by Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 6, eff. September 1, 2013.

**SUBCHAPTER K. OPERATION OF BARBERSHOP AND SPECIALTY SHOP**

Sec. 1601.501. DISPLAY OF SHOP PERMIT. A barbershop or specialty shop permit holder must display the permit in a conspicuous place in the shop for which the permit is issued.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.33, eff. September 1, 2005.

Sec. 1601.504. NECESSARY EQUIPMENT. The owner, operator, or manager of a barbershop or specialty shop shall equip the shop with the facilities, supplies, and appliances, furnishings, or materials necessary to enable a person employed on the premises to comply with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1601.505. EMPLOYEE WITH DISEASE. (a) An owner, operator, or manager of a barbershop or specialty shop may not knowingly permit a person with a communicable skin disease or a venereal disease to act as a barber or employee or work in the shop.

(b) A person who knows the person has a communicable disease or a venereal disease may not act as a barber or work in a barbershop or specialty shop.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1601.507. USE OF SHOP AS SLEEPING QUARTERS. (a) An owner or manager of a barbershop or specialty shop may not permit a person to sleep in a room used as part of the shop.

(b) A person may not act as a barber or be employed in a



barbershop or specialty shop in a room used as sleeping quarters.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER L. OPERATION OF BARBER SCHOOL**

Sec. 1601.551. DISPLAY OF PERMIT. A barber school shall prominently display the barber school's permit at all times.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1601.552. DISPLAY OF SANITATION RULES. Each barber school shall post in the school a copy of the commission's sanitation rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 246, Sec. 15, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. [411](#)), Sec. 2.34, eff. September 1, 2005.

Sec. 1601.553. SIGN REQUIRED. (a) A barber school shall place a sign on the front outside portion of its building in a prominent place that reads in at least 10-inch block letters: "BARBER SCHOOL--STUDENT BARBERS."

(b) The school shall prominently display printed signs containing the information required by Subsection (a) on each inside wall of the school.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1601.554. CHANGE OF BARBER SCHOOL OWNERSHIP OR LOCATION.

(a) If a barber school changes ownership, the department must be notified of the change not later than the 10th day before the date the change takes effect.

(b) A barber school may not change the location of the school unless the school obtains approval from the department before the change by showing that the proposed location meets the requirements of Subchapter H for issuance of a permit to the school.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.35, eff. September 1, 2005.

Sec. 1601.555. COMPLIANCE WITH CERTAIN REQUIREMENTS. A barber school is subject to the requirements of Sections 1601.504-1601.507.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1601.556. INFORMATION PROVIDED TO PROSPECTIVE STUDENT. The holder of a barber school permit shall furnish each prospective student with:

- (1) a course outline;
- (2) a schedule of the tuition and other fees assessed;
- (3) the school's refund policy required under Section 1601.563;
- (4) the school's grading policy and rules relating to incomplete grades;
- (5) the school's rules of operation and conduct, including rules relating to absences;
- (6) the department's name, mailing address, and telephone number for the purpose of directing complaints to the department; and
- (7) the current rates of job placement and employment of students who complete a course of training.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.36, eff. September 1, 2005.

Sec. 1601.557. COURSE LENGTH AND CURRICULUM CONTENT. (a) A barber school shall submit to the department for approval the course length and curriculum content for a course offered by the school. The course length and curriculum content shall be designed to reasonably ensure that a student develops the job skills and knowledge necessary for employment. The school may not implement a course length or curriculum content unless it is approved by the

department.

(b) Before issuing or renewing a permit under this chapter, the department shall require a school to account for all course lengths and curriculum contents.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.37, eff. September 1, 2005.

Sec. 1601.558. REQUIRED COURSES. (a) A barber school shall instruct students in the theory and practice of subjects necessary and beneficial to the practice of barbering, including:

- (1) the laws governing the practice of barbering in this state;
- (2) scientific fundamentals of barbering;
- (3) hygienic bacteriology;
- (4) histology of the hair, skin, muscles, and nerves;
- (5) the structure of the head, neck, and face;
- (6) elementary chemistry relating to sterilization and antiseptics;
- (7) common disorders of the skin and hair;
- (8) massaging of muscles of the scalp, face, and neck;
- (9) haircutting;
- (10) shaving, shampooing, bleaching, and dyeing of hair;
- (11) administration of facial treatments, hair weaving, and servicing of wigs; and
- (12) any other barbering services.

(b) At least five hours each week shall be devoted in the classroom to the instruction of theory. If classes are conducted:

- (1) five days a week, one hour each day shall be devoted to instruction in theory; and
- (2) four days a week, one hour and 15 minutes each day shall be devoted to instruction in theory.

(c) Saturdays shall be devoted exclusively to practical work over the chair.

(d) A barber school may not increase, decrease, or withhold for any reason the number of credit hours earned by a student.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 246, Sec. 16, eff. Sept. 1, 2001.

Sec. 1601.559. DAILY ATTENDANCE REPORTS. (a) A barber school shall maintain an attendance book showing a record of the students' daily attendance.

(b) The department may inspect a school's attendance record book at any time.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.38, eff. September 1, 2005.

Sec. 1601.560. INSTRUCTOR-TO-STUDENT RATIO. (a) A barber school must have at least one instructor for every 25 students on the school's premises.

(b) A barber school must have at least one instructor for every three student instructors on the school's premises. A student instructor shall concentrate on developing teaching skills and may not be booked with customers.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.39, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 9, eff. September 1, 2011.

Sec. 1601.561. REPORTS TO DEPARTMENT. (a) A barber school shall maintain a monthly progress report regarding each student attending the school. The report must certify the daily attendance record of each student and the number of credit hours earned by each student during the previous month.

(b) On a student's completion of a prescribed course of instruction, the school shall notify the department that the student has completed the required number of hours and is eligible to take the appropriate examination.

(c) A barber school permit holder shall furnish to the

department:

- (1) the current course completion rates of students who attend a course of instruction offered by the school; and
- (2) job placement rates and employment rates of students who complete a course of instruction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.40, eff. September 1, 2005.

Sec. 1601.562. CANCELLATION AND SETTLEMENT POLICY. A barber school permit holder shall maintain a cancellation and settlement policy that provides a full refund of all money paid by a student if the student:

- (1) cancels the enrollment agreement not later than midnight of the third day after the date the agreement is signed by the student, excluding Saturdays, Sundays, and legal holidays; or
- (2) entered into the enrollment agreement because of a misrepresentation made:
  - (A) in the school's advertising or promotional materials; or
  - (B) by an owner or representative of the school.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1601.563. REFUND POLICY. (a) A barber school permit holder shall maintain a refund policy to provide for the refund of the unused part of tuition, fees, and other charges paid by a student who, after the expiration of the cancellation period established under Section 1601.562:

- (1) fails to begin the course of training;
- (2) withdraws from the course of training; or
- (3) is terminated from the course of training before completion of the course.

(b) A barber school's refund policy must provide that:

- (1) the refund is based on the period of the student's enrollment, computed on the basis of course time expressed in scheduled hours, as specified by an enrollment agreement, contract,

or other document acceptable to the department;

(2) the effective date of the termination for refund purposes is the earliest of:

(A) the last date of attendance, if the student is terminated by the school;

(B) the date the permit holder receives the student's written notice of withdrawal; or

(C) 10 school days after the last date of attendance; and

(3) the school may retain not more than \$100 if:

(A) tuition is collected before the course of training begins; and

(B) the student does not begin the course of training before the date the cancellation period under Section 1601.562 expires.

(c) A barber school permit holder shall publish in the catalogue and enrollment agreement of the school a description of the refund policy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 10, eff. September 1, 2011.

Sec. 1601.564. WITHDRAWAL OR TERMINATION OF STUDENT. (a) If a student who begins a course of training scheduled to last not more than 12 months withdraws from the course or is terminated from the course by the barber school, the school:

(1) may retain \$100 in tuition and fees paid by the student; and

(2) is not obligated to refund any additional outstanding tuition if the student withdraws or is terminated during the last 50 percent of the course.

(b) If the student withdraws or is terminated before the last 50 percent of the course begins, the school shall refund:

(1) 90 percent of any outstanding tuition for a withdrawal or termination that occurs during the first week or first one-tenth of the course, whichever period is shorter;

(2) 80 percent of any outstanding tuition for a withdrawal

or termination that occurs after the first week or first one-tenth of the course, whichever period is shorter;

(3) 75 percent of any outstanding tuition for a withdrawal or termination that occurs after the first three weeks of the course but not later than the completion of the first 25 percent of the course; and

(4) 50 percent of any outstanding tuition for a withdrawal or termination that occurs not later than the completion of the first 50 percent of the course.

(c) If a student withdraws or is terminated after 50 percent of the course has been completed, the school shall allow the student to reenter the school at any time before the fourth anniversary of the date of withdrawal or termination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1601.565. EFFECT OF STUDENT WITHDRAWAL. (a) A barber school shall record a grade of incomplete for a student who withdraws from a course of training but who is not entitled to a refund under Section 1601.564 if:

(1) the student requests the grade at the time of withdrawal; and

(2) the withdrawal is for an appropriate reason unrelated to the student's academic status.

(b) A student who receives a grade of incomplete may reenroll in the course of training before the fourth anniversary of the date the student withdraws and may complete the subjects without paying additional tuition.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1601.566. PAYMENT OF REFUND. (a) A barber school shall pay a refund owed under this subchapter not later than the 30th day after the date the student becomes eligible for the refund.

(b) A school that fails to pay the refund within the period required by this section shall pay interest on the amount of the refund for the period beginning on the 31st day after the date the student becomes eligible for the refund and ending on the day preceding the date the refund is made. The commissioner of education

shall annually set the interest rate at a rate sufficient to deter a school from retaining money paid by a student.

(c) If a school refunds tuition to a lending institution, the interest is paid to the institution and applied against the student's loan.

(d) The department may exempt a school from the payment of interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school shall provide to the department on request documentation of the school's effort to locate the student.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.41, eff. September 1, 2005.

#### **SUBCHAPTER M. DENIAL AND DISCIPLINARY PROCEEDINGS**

Sec. 1601.602. REVOCATION OF STUDENT INSTRUCTOR'S BARBER CERTIFICATE. A violation of Section 1601.560(b) by a student instructor is a ground for the revocation of the student instructor's barber certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 11, eff. September 1, 2011.

Sec. 1601.603. DENIAL OF PERMIT; SUIT. (a) If the department denies an application for a barber school permit, the school may request in writing the reasons for the refusal.

(b) If the barber school meets the requirements for issuance of the permit and shows that the requirements of this chapter have been met, and the department refuses to issue the permit, the school may file suit in a district court in Travis County to require the department to issue the permit.

(c) A suit under Subsection (b) must be filed not later than the 20th day after the date of the department's final order denying issuance of the permit, if registered notice of the order is mailed or it is otherwise shown that the school had notice of the order not



later than the 10th day after the date the department entered the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.42, eff. September 1, 2005.

Sec. 1601.604. SUSPENSION OR REVOCATION OF BARBER SCHOOL PERMIT. (a) The commission shall suspend or revoke the permit of a barber school that directly or indirectly violates this chapter.

(b) A proceeding under this section is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.43, eff. September 1, 2005.

Sec. 1601.605. PROBATION FOR ALTERING COURSE LENGTH. The commission shall place on probation a barber school that alters a course length below or above industry standards until the school:

- (1) provides justification for the alteration; or
- (2) adjusts the course length to meet industry standards.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.44, eff. September 1, 2005.

Sec. 1601.606. PEER REVIEW. (a) If the department has reasonable cause to believe that a barber school has violated this chapter or a rule adopted under this chapter, the department may:

- (1) order a peer review of the school; or
- (2) suspend the admission of students to the school.

(b) The peer review shall be conducted by a peer review team consisting of knowledgeable persons selected by the department. The department shall attempt to provide a balance on a peer review team

between members assigned to the team who are from this state and members who are from other states.

(c) The peer review team shall provide the department with an objective assessment of the school's curriculum content and its application.

(d) A barber school under peer review shall pay the costs of the peer review.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 2.45, eff. September 1, 2005.

Sec. 1601.607. ADMINISTRATIVE PROCEDURE. A hearing or an appeal from a hearing under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## CHAPTER 1602. COSMETOLOGISTS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1602.001. GENERAL DEFINITIONS. In this chapter:

(1) "Board" means the Advisory Board on Cosmetology.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(3-a) "Dual shop" means a shop owned, operated, or managed by a person holding a dual barber and beauty shop license issued under Chapter 1603.

(4) "Executive director" means the executive director of the department.

(5) "Public school" includes a public high school, a public junior college, or any other nonprofit tax-exempt institution that conducts a cosmetology program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.01, eff.

September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 7, eff.  
September 1, 2013.

Sec. 1602.002. DEFINITION OF COSMETOLOGY. (a) In this chapter, "cosmetology" means the practice of performing or offering to perform for compensation any of the following services:

(1) treating a person's hair by:

(A) providing any method of treatment as a primary service, including arranging, beautifying, bleaching, cleansing, coloring, cutting, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, tinting, or waving;

(B) providing a necessary service that is preparatory or ancillary to a service under Paragraph (A), including bobbing, clipping, cutting, or trimming a person's hair or shaving a person's neck with a safety razor; or

(C) cutting the person's hair as a separate and independent service for which a charge is directly or indirectly made separately from charges for any other service;

(2) braiding a person's hair;

(3) shampooing and conditioning a person's hair;

(4) servicing a person's wig or artificial hairpiece on a person's head or on a block after the initial retail sale and servicing in any manner listed in Subdivision (1);

(5) treating a person's mustache or beard by arranging, beautifying, coloring, processing, styling, trimming, or shaving with a safety razor;

(6) cleansing, stimulating, or massaging a person's scalp, face, neck, or arms:

(A) by hand or by using a device, apparatus, or appliance; and

(B) with or without the use of any cosmetic preparation, antiseptic, tonic, lotion, or cream;

(7) beautifying a person's face, neck, or arms using a cosmetic preparation, antiseptic, tonic, lotion, powder, oil, clay, cream, or appliance;

(8) administering facial treatments;

(9) removing superfluous hair from a person's body using depilatories, preparations, or tweezing techniques;

(10) treating a person's nails by:

(A) cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring; or

(B) attaching false nails;

(11) massaging, cleansing, treating, or beautifying a person's hands or feet;

(12) applying semipermanent, thread-like extensions composed of single fibers to a person's eyelashes; or

(13) weaving a person's hair.

(a-1) In this section, "safety razor" means a razor that is fitted with a guard close to the cutting edge of the razor that is intended to:

(1) prevent the razor from cutting too deeply; and

(2) reduce the risk and incidence of accidental cuts.

(b) The commission by rule may amend the definition of cosmetology to eliminate a service included in that definition under Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 154, Sec. 1, eff. May 18, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.02, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 331 (H.B. 2727), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 12, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 8, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 412 (S.B. 362), Sec. 1, eff. September 1, 2013.

Sec. 1602.003. APPLICATION OF CHAPTER. (a) In this section, "fashion photography studio" means a permanent establishment that charges a fee exclusively for a photographic sitting.

(b) This chapter does not apply to a person who:

(1) provides a service in an emergency;

(2) is licensed in this state to practice medicine, dentistry, podiatry, chiropractic, or nursing and is operating within

the scope of the person's license;

(3) is in the business of or receives compensation for makeup applications only;

(4) acts as a barber under Chapter 1601, if the person does not hold the person out as a cosmetologist;

(5) provides a cosmetic service as a volunteer or an employee performing regular duties at a licensed nursing or convalescent custodial or personal care home to a patient residing in the home;

(6) owns, operates, or manages a licensed nursing or convalescent custodial or personal care home that allows a person with an operator license to perform cosmetic services for patients residing in the home on an occasional but not daily basis; or

(7) provides an incidental cosmetic service, or owns, operates, or manages the location where that service is provided, if the primary purpose of the service is to enable or assist the recipient of the service to participate as the subject of:

(A) a photographic sitting at a fashion photography studio;

(B) a television appearance; or

(C) the filming of a motion picture.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. ADVISORY BOARD ON COSMETOLOGY**

Sec. 1602.051. BOARD; MEMBERSHIP. (a) The Advisory Board on Cosmetology consists of nine members appointed by the presiding officer of the commission, with the commission's approval, as follows:

(1) one member who holds a license for a beauty shop that is part of a chain of beauty shops;

(2) one member who holds a license for a beauty shop that is not part of a chain of beauty shops;

(3) one member who holds a private beauty culture school license;

(4) two members who each hold an operator license;

(5) one member who represents a licensed public secondary or postsecondary beauty culture school;

(6) one member who represents a licensed public secondary

beauty culture school; and

(7) two public members.

(b) The associate commissioner of the Texas Education Agency responsible for career and technical education or the associate commissioner's authorized representative shall serve as an ex officio member of the commission without voting privileges.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.04, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.05, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 5.01(3), eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 253 (S.B. 1920), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 457 (H.B. 2548), Sec. 4, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 9, eff. September 1, 2013.

Sec. 1602.055. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms, with the terms of one or two members expiring on the same date each odd-numbered year.

(b) Repealed by Acts 2005, 79th Leg., Ch. 798, Sec. 5.01(3), eff. September 1, 2005.

(c) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.06, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 5.01(3), eff. September 1, 2005.

Sec. 1602.058. PRESIDING OFFICER. The presiding officer of the

commission, with the commission's approval, shall designate one member of the commission as presiding officer to serve in that capacity for a two-year term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.07, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.08, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 5.01(3), eff. September 1, 2005.

Sec. 1602.060. BOARD DUTIES. (a) The board shall advise the commission and the department on:

- (1) education and curricula for applicants;
- (2) the content of examinations;
- (3) proposed rules and standards on technical issues related to cosmetology; and
- (4) other issues affecting cosmetology.

(b) The board shall respond to questions from the department and the commission regarding cosmetology.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.09, eff. September 1, 2005.

#### **SUBCHAPTER D. ADDITIONAL POWERS AND DUTIES RELATED TO COSMETOLOGY**

Sec. 1602.153. SUBPOENA. (a) The department may request and, if necessary, compel by subpoena:

- (1) the attendance of a witness for examination under oath; and
- (2) the production for inspection and copying of records and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) If a person fails to comply with a subpoena issued under this section, the department, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the department may be held.

(c) The court shall order a person to comply with the subpoena if the court determines that good cause exists for issuing the subpoena.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.11, eff. September 1, 2005.

#### **SUBCHAPTER F. LICENSE AND CERTIFICATE REQUIREMENTS FOR INDIVIDUALS**

Sec. 1602.251. LICENSE OR CERTIFICATE REQUIRED. (a) A person may not perform or attempt to perform a practice of cosmetology unless the person holds a license or certificate to perform that practice.

(b) A person may not teach cosmetology unless the person:

- (1) holds an instructor license issued in this state; and
- (2) performs the instruction in a private beauty culture school or a vocational cosmetology program in a public school.

(c) A person licensed by the department may practice cosmetology only at a facility operated by a person holding a beauty shop license, specialty shop license, private beauty culture school license, or other license issued by the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.12, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 10, eff. September 1, 2013.

Sec. 1602.254. ELIGIBILITY FOR AN OPERATOR LICENSE. (a) A person holding an operator license may perform any practice of cosmetology.

(b) To be eligible for an operator license, an applicant must meet the requirements of Subsection (c) or:

- (1) be at least 17 years of age;
- (2) have obtained a high school diploma or the equivalent of a high school diploma or have passed a valid examination administered by a certified testing agency that measures the person's



ability to benefit from training; and

(3) have completed:

(A) 1,500 hours of instruction in a licensed beauty culture school; or

(B) 1,000 hours of instruction in beauty culture courses and 500 hours of related high school courses prescribed by the commission in a vocational cosmetology program in a public school.

(c) The commission shall adopt rules for the issuance of an operator license under this section to a person who holds a Class A barber certificate. The department shall issue the license to an applicant who:

(1) holds an active Class A barber certificate;

(2) completes 300 hours of instruction in cosmetology through a commission-approved training program in a cosmetology school;

(3) passes the examination required under Section 1602.262;

and

(4) submits to the department:

(A) an application on a form prescribed by the department; and

(B) the required fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 750, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 13, eff. September 1, 2011.

Sec. 1602.255. ELIGIBILITY FOR AN INSTRUCTOR LICENSE. (a) A person holding an instructor license may perform any practice of cosmetology and may instruct a person in any practice of cosmetology.

(b) To be eligible for an instructor license, an applicant must:

(1) be at least 18 years of age;

(2) have a high school diploma or a high school equivalency certificate;

(3) hold an operator license under this chapter;

(4) have:

(A) completed 750 hours of instruction in methods of teaching in:

(i) a licensed private beauty culture school; or  
(ii) a vocational training program of a publicly financed postsecondary institution;

(B) completed at least:

(i) one year of verifiable experience as a licensed cosmetology operator; and

(ii) 500 hours of instruction in cosmetology in a commission-approved training program;

(C) completed 15 semester hours in education courses through an accredited college or university within the 10 years before the date of application; or

(D) obtained a degree in education from an accredited college or university; and

(5) pass the examination required under Section 1602.262.

(c) The commission shall adopt rules for the licensing of specialty instructors to teach specialty courses in the practice of cosmetology defined in Sections 1602.002(a)(7), (9), (10), and (12).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 331 (H.B. [2727](#)), Sec. 2, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. [1170](#)), Sec. 14, eff. September 1, 2011.

Sec. 1602.256. ELIGIBILITY FOR A MANICURIST SPECIALTY LICENSE.

(a) A person holding a manicurist specialty license may perform only the practice of cosmetology defined in Section 1602.002(a)(10) or (11).

(b) To be eligible for a manicurist specialty license, an applicant must:

(1) be at least 17 years of age;

(2) have obtained a high school diploma or the equivalent of a high school diploma or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and

(3) have completed 600 hours of instruction in manicuring

through a commission-approved training program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 750, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 8, eff. June 15, 2007.

Sec. 1602.257. ELIGIBILITY FOR ESTHETICIAN SPECIALTY LICENSE.

(a) A person holding an esthetician specialty license may perform only the practice of cosmetology defined in Sections 1602.002(a)(6), (7), (8), (9), and (12).

(b) To be eligible for an esthetician specialty license, an applicant must:

(1) be at least 17 years of age;

(2) have obtained a high school diploma or the equivalent of a high school diploma or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and

(3) have completed 750 hours of instruction in esthetics specialty through a commission-approved training program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 750, Sec. 3, eff. Sept. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 9, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 331 (H.B. 2727), Sec. 3, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 15, eff. September 1, 2011.

Sec. 1602.2571. ELIGIBILITY FOR A SPECIALTY LICENSE IN EYELASH EXTENSION APPLICATION. (a) A person holding a specialty license in eyelash extension application may perform only the practice of cosmetology defined in Section 1602.002(a)(12).

(b) To be eligible for a specialty license in eyelash extension application, an applicant must:

(1) be at least 17 years of age;

(2) have obtained a high school diploma or the equivalent of a high school diploma or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and

(3) have completed a training program described by Section 1602.2572 that has been approved by the commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 331 (H.B. 2727), Sec. 4, eff. June 17, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 16, eff. September 1, 2011.

Sec. 1602.2572. EYELASH EXTENSION APPLICATION TRAINING PROGRAM.

(a) An eyelash extension application training program must include at least 320 hours of classroom instruction and practical experience, including at least eight hours of theoretical instruction, and include instruction in the following areas:

- (1) recognizing infectious or contagious diseases of the eye and allergic reactions to materials;
- (2) proper sanitation practices;
- (3) occupational health and safety practices;
- (4) eyelash extension application procedures; and
- (5) eyelash extension isolation and separation procedures.

(b) An instructor at an eyelash extension application training program must comply with Section 1602.251(b).

(c) The commission shall adopt rules regarding eyelash extension application training programs and may establish or designate approved training programs.

Added by Acts 2011, 82nd Leg., R.S., Ch. 331 (H.B. 2727), Sec. 4, eff. June 17, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 16, eff. September 1, 2011.

Sec. 1602.258. ELIGIBILITY FOR A HAIR BRAIDING SPECIALTY CERTIFICATE. (a) A person holding a hair braiding specialty certificate may perform only the practice of cosmetology defined in Section 1602.002(a)(2).

(b) To be eligible for a hair braiding specialty certificate,

an applicant must:

- (1) be at least 17 years of age; and
- (2) have the necessary requisites as determined by the department in the particular specialty for which certification is sought, including training through a commission-approved training program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 750, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.13, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 10, eff. June 15, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 11, eff. September 1, 2013.

Sec. 1602.259. ELIGIBILITY FOR A HAIR WEAVING SPECIALTY CERTIFICATE. (a) A person holding a hair weaving specialty certificate may perform only the practice of cosmetology defined in Sections 1602.002(a)(2), (3), and (13).

(b) To be eligible for a hair weaving specialty certificate, an applicant must:

- (1) be at least 17 years of age; and
- (2) have the necessary requisites as determined by the department in the particular specialty for which certification is sought, including training through a commission-approved training program.

Added by Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 12, eff. September 1, 2013.

Sec. 1602.260. ELIGIBILITY FOR A WIG SPECIALTY CERTIFICATE. (a) A person holding a wig specialty certificate may perform only the practice of cosmetology defined in Section 1602.002(a)(4).

(b) To be eligible for a wig specialty certificate, an applicant must:

- (1) be at least 17 years of age; and
- (2) have the necessary requisites as determined by the

department in the particular specialty for which certification is sought, including training through a commission-approved training program.

Added by Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 12, eff. September 1, 2013.

Sec. 1602.261. ELIGIBILITY FOR MANICURIST/ESTHETICIAN SPECIALTY LICENSE. (a) A person holding a manicurist/esthetician specialty license may perform only the practice of cosmetology defined in Sections 1602.002(a)(6) through (11).

(b) To be eligible for a manicurist/esthetician specialty license, an applicant must:

- (1) submit an application on a form prescribed by the department;
- (2) pay the required fee; and
- (3) either:
  - (A) hold both an active manicurist specialty license and an active esthetician specialty license; or
  - (B) meet the educational requirements of Subsection (c).

(c) An applicant who qualifies under Subsection (b)(3)(B) must:

- (1) either:
  - (A) have obtained a high school diploma or a high school equivalency certificate; or
  - (B) have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and
- (2) have completed:
  - (A) 1,200 hours of instruction in a manicure/esthetics specialty curriculum in a commission-approved training program; or
  - (B) 600 hours of instruction in a manicure curriculum and 750 hours of instruction in an esthetics curriculum in commission-approved training programs.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 17, eff. September 1, 2011.

Sec. 1602.262. ISSUANCE OF LICENSE OR CERTIFICATE. (a) An

applicant for a license under this chapter is entitled to the license if the applicant:

- (1) meets the applicable eligibility requirements;
- (2) passes the applicable examination;
- (3) pays the required fee;
- (4) has not committed an act that constitutes a ground for denial of the license; and
- (5) submits an application on a form prescribed by the department.

(b) An applicant for a specialty certificate is entitled to the certificate if the applicant:

- (1) meets the eligibility requirements;
- (2) pays the required fee;
- (3) has not committed an act that constitutes a ground for denial of the certificate; and
- (4) submits an application on a form prescribed by the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. [2106](#)), Sec. 11, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 331 (H.B. [2727](#)), Sec. 5, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. [1170](#)), Sec. 18, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 14.005, eff. September 1, 2013.

Sec. 1602.266. STUDENT PERMIT. (a) The department shall require a student enrolled in a school of cosmetology in this state to hold a permit stating the student's name and the name of the school. The permit shall be displayed in a reasonable manner at the school.

(b) The department shall issue a student permit to an applicant who submits an application to the department for a student permit accompanied by the required fee.

(c) A person holding a student permit may shampoo or condition a person's hair in a facility licensed under this chapter or Chapter

1603.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.14, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 21, eff. June 15, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 13, eff. September 1, 2013.

Sec. 1602.267. SHAMPOO APPRENTICE PERMIT.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 62, Sec. 24(2), eff. September 1, 2013.

(a) A person holding a shampoo apprentice permit may perform only the practice of cosmetology defined by Section 1602.002(3).

(e) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 62, Sec. 24(2), eff. September 1, 2013.

(f) This section applies only to a person who holds a permit under this section issued to the person before September 1, 2013.

(c) A shampoo apprentice permit expires on the second anniversary of the date of issuance and may not be renewed.

(d) The commission shall adopt rules as necessary to administer this section. The commission may not require an applicant to:

(1) complete any hours of instruction at a cosmetology training program as a prerequisite for the issuance of a shampoo apprentice permit; or

(2) pay a fee for a shampoo apprentice permit.

Added by Acts 2003, 78th Leg., ch. 1282, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.15, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 19, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 14, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 24(2), eff. September 1, 2013.



Sec. 1602.268. WAIVER OF CERTAIN LICENSE REQUIREMENTS. (a) The department shall issue a license to an applicant for a license issued under Section 1602.254 if the applicant:

- (1) submits an application on a form prescribed by the department;
- (2) pays the application fee; and
- (3) provides proof that the applicant holds a current license to engage in the same or a similar activity issued by another state that has license requirements substantially equivalent to those of this state.

(b) The department may waive any requirement for a license or certificate issued under this chapter, other than a license listed in Subsection (a), for an applicant holding a license from another state that has license requirements substantially equivalent to those of this state.

(c) A license issued under Subsection (a) must be renewed as provided by Subchapter H.

Added by Acts 2013, 83rd Leg., R.S., Ch. 258 (H.B. 619), Sec. 3, eff. September 1, 2013.

#### **SUBCHAPTER G. LICENSING OF FACILITIES**

Sec. 1602.301. FACILITY LICENSE REQUIRED. (a) A person may not operate a beauty shop, beauty culture school, specialty shop, or other place of business in which cosmetology is taught or practiced unless the person holds a license to operate that place of business.

(b) A person may not operate a vocational cosmetology program in a public school or lease space on the premises of a beauty shop, specialty shop, or dual shop to engage in the practice of cosmetology as an independent contractor unless the person holds a license issued under this chapter.

(c) A person who owns, operates, or manages a beauty shop, specialty shop, or dual shop may employ a person holding a student permit under Section 1602.266 to shampoo or condition a person's hair.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 15, eff. September 1, 2013.

Sec. 1602.302. BEAUTY SHOP LICENSE. (a) A person holding a beauty shop license may maintain an establishment in which any practice of cosmetology is performed.

(b) An application for a beauty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the department;

(2) contain proof of the particular requisites for a beauty shop established by the commission; and

(3) be verified by the applicant.

(c) The applicant is entitled to a beauty shop license if:

(1) the application complies with commission rules;

(2) the applicant pays the required license fee; and

(3) the applicant has not committed an act that constitutes a ground for denial of a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.16, eff. September 1, 2005.

Sec. 1602.303. PRIVATE BEAUTY CULTURE SCHOOL LICENSE. (a) A person holding a private beauty culture school license may maintain an establishment in which any practice of cosmetology is taught, including providing an eyelash extension application training program described by Section 1602.2572.

(b) An application for a private beauty culture school license must be accompanied by the required license fee and inspection fee and:

(1) be on a form prescribed by the department;

(2) be verified by the applicant; and

(3) contain a statement that the building:

(A) is of permanent construction and is divided into at least two separate areas:

(i) one area for instruction in theory; and

(ii) one area for clinic work;

(B) contains a minimum of:

(i) 2,800 square feet of floor space if the building is located in a county with a population of more than 100,000; or

(ii) 1,800 square feet of floor space if the building is located in a county with a population of 100,000 or less;

(C) has access to permanent restrooms and adequate drinking fountain facilities; and

(D) contains, or will contain before classes begin, the equipment established by commission rule as sufficient to properly instruct a minimum of 10 students.

(c) The applicant is entitled to a private beauty culture school license if:

(1) the department determines that the applicant is financially sound and capable of fulfilling the school's commitments for training;

(2) the applicant's facilities pass an inspection conducted by the department under Section 1603.103; and

(3) the applicant has not committed an act that constitutes a ground for denial of a license.

(d) Repealed by Acts 2005, 79th Leg., Ch. 798, Sec. 5.01(3), eff. September 1, 2005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. [411](#)), Sec. 3.17, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 798 (S.B. [411](#)), Sec. 5.01(3), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. [2106](#)), Sec. 12, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 331 (H.B. [2727](#)), Sec. 6, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. [1170](#)), Sec. 20, eff. September 1, 2011.

Sec. 1602.304. PUBLIC SECONDARY OR POSTSECONDARY BEAUTY CULTURE SCHOOL CERTIFICATE. (a) Each application for a license as a public secondary or public post secondary beauty culture school must be

accompanied by the required license fee.

(b) Repealed by Acts 2005, 79th Leg., Ch. 798, Sec. 5.01(3), eff. September 1, 2005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 750, Sec. 6, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 5.01(3), eff. September 1, 2005.

Sec. 1602.305. SPECIALTY SHOP LICENSE. (a) A person holding a specialty shop license may maintain an establishment in which only the practice of cosmetology as defined in Section 1602.002(a)(2), (4), (7), (9), (10), or (12) is performed.

(b) An application for a specialty shop license must be accompanied by the required inspection fee and:

- (1) be on a form prescribed by the department;
- (2) contain proof of the particular requisites for a specialty shop as established by the commission; and
- (3) be verified by the applicant.

(c) The applicant is entitled to a specialty shop license if:

- (1) the application complies with commission rules;
- (2) the applicant pays the required license fee; and
- (3) the applicant has not committed an act that constitutes a ground for denial of a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.18, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 331 (H.B. 2727), Sec. 7, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 21, eff. September 1, 2011.

Sec. 1602.306. BOOTH RENTAL LICENSE. (a) A person licensed or certified under this chapter may not lease space on the premises of a beauty shop to engage in the practice of cosmetology as an independent contractor unless the person also holds a booth rental

license issued under this section.

(b) An application for a booth rental license must:

- (1) be on a form prescribed by the department;
- (2) contain information as required by commission rule; and
- (3) be verified by the applicant.

(c) The applicant is entitled to a booth rental license if the applicant:

- (1) pays the application fee set by the commission in an amount reasonable and necessary to cover the costs of administering the booth rental licensing program;
- (2) complies with commission rules; and
- (3) has not committed an act that constitutes a ground for denial of a license or certificate.

(d) The commission shall adopt rules relating to the information submitted for a booth rental license, including information regarding the applicant's compliance with state and federal tax laws.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.19, eff. September 1, 2005.

#### **SUBCHAPTER H. LICENSE RENEWAL**

Sec. 1602.351. RENEWAL OF LICENSE OR CERTIFICATE REQUIRED. (a) Except as provided by Subsections (b) and (c), a license or certificate issued under this chapter expires on the second anniversary of the date the license or certificate is issued.

(b) A temporary license expires on the 60th day after the date the license is issued. A temporary license may not be renewed.

(c) A private beauty culture school license or a public secondary or postsecondary beauty culture school license expires on the anniversary of the date the license is issued.

(d) Repealed by Acts 2005, 79th Leg., Ch. 798, Sec. 5.01(3), eff. September 1, 2005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 750, Sec. 7, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 5.01(3), eff.

September 1, 2005.

Sec. 1602.352. REQUIREMENT FOR FIRST RENEWAL OF LICENSE. (a) A person applying to renew a license for the first time must:

(1) hold a high school diploma;  
 (2) hold the equivalent of a high school diploma; or  
 (3) have passed an examination that measures the person's ability to benefit from training.

(b) Repealed by Acts 2005, 79th Leg., Ch. 798, Sec. 5.01(3), eff. September 1, 2005.

(c) Repealed by Acts 2005, 79th Leg., Ch. 798, Sec. 5.01(3), eff. September 1, 2005.

(d) Repealed by Acts 2005, 79th Leg., Ch. 798, Sec. 5.01(3), eff. September 1, 2005.

(e) Repealed by Acts 2005, 79th Leg., Ch. 798, Sec. 5.01(3), eff. September 1, 2005.

(f) Repealed by Acts 2005, 79th Leg., Ch. 798, Sec. 5.01(3), eff. September 1, 2005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.20, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 5.01(3), eff. September 1, 2005.

Text of section as added by Acts 2005, 79th Leg., R.S., Ch. 1311  
 (H.B. 3149), Sec. 1

For text of section as added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.21, see other Sec. 1602.353.

Sec. 1602.353. INACTIVE STATUS. (a) The holder of a certificate or license issued under this chapter may place the holder's certificate or license on inactive status by:

(1) applying to the commission on a form prescribed by the commission not later than the 10th day before the date the certificate or license expires; and

(2) paying the required fee.

(b) The holder of a certificate or license that has been placed

on inactive status under this section is not required to comply with continuing education requirements under this chapter.

(c) To maintain inactive status, the holder of a certificate or license must reapply for inactive status on or before the second anniversary of the date the status is granted by submitting the required form accompanied by the required renewal fee.

(d) The holder of a certificate or license to practice cosmetology that has been placed on inactive status under this section may not perform or attempt to perform the practice of cosmetology.

(e) The holder of an instructor's license that has been placed on inactive status may not teach or attempt to teach cosmetology at a private beauty culture school or in a vocational cosmetology program in a public school.

(f) The holder of a license to operate a vocational cosmetology program in a public school, or a beauty shop, beauty culture school, specialty shop, or other place of business in which cosmetology is taught or practiced under this chapter, may not employ a person to perform the practice of cosmetology or to teach as an instructor if the person's certificate or license has been placed on inactive status.

(g) A person whose certificate or license is on inactive status under this section may return the person's certificate or license to active status by:

(1) applying to the commission for reinstatement of the certificate or license on the form prescribed by the commission;

(2) submitting written documentation that the person has completed applicable continuing education requirements under this chapter within the preceding two years; and

(3) paying the required certificate or license fee.

Added by Acts 2005, 79th Leg., Ch. 1311 (H.B. [3149](#)), Sec. 1, eff. September 1, 2005.

Text of section as added by Acts 2005, 79th Leg., R.S., Ch. 798 (S.B. [411](#)), Sec. 3.21

For text of section as added by Acts 2005, 79th Leg., Ch. 1311 (H.B. [3149](#)), Sec. 1, see other Sec. 1602.353.

Sec. 1602.353. INACTIVE STATUS. (a) Not later than the 10th

day before the expiration date of a certificate or license issued under this chapter, the certificate or license holder may place the certificate or license on inactive status by:

(1) submitting an application for inactive status to the department on a form prescribed by the department; and

(2) paying the required fee.

(b) Except as provided by Subsection (e), a person whose certificate or license is on inactive status is not required to complete continuing education required under this chapter.

(c) A person whose certificate or license is on inactive status may reapply for inactive status before the expiration date of the certificate or license. The person must pay the required fee.

(d) A license holder may not employ a person on inactive status.

(e) A person on inactive status may return the certificate or license to active status by:

(1) applying to the department for active status on a form prescribed by the department;

(2) paying the required fee; and

(3) providing evidence satisfactory to the department that the person has completed the number of hours of continuing education that would otherwise have been required for a renewal of an active license for the preceding two-year license period.

(f) The commission may set fees and adopt rules to implement this section.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. [411](#)), Sec. 3.21, eff. January 1, 2006.

Sec. 1602.354. CONTINUING EDUCATION. (a) The commission will by rule recognize, prepare, or administer continuing education programs for the practice of cosmetology. Participation in the programs is mandatory for all license renewals other than renewal of a shampoo specialty certificate.

(b) The commission may only require a license holder to complete continuing education of not more than four hours in health and safety courses if the license holder:

(1) is at least 65 years of age; and

(2) has held a cosmetology license for at least 15 years.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 750, Sec. 8, eff. Sept. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 13, eff. June 15, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 16, eff. September 1, 2013.

#### **SUBCHAPTER I. PRACTICE BY LICENSE HOLDER**

Sec. 1602.401. DISPLAY OF CERTIFICATE OR LICENSE. A person holding a license or certificate issued under this chapter shall display the license or certificate in the person's place of business or employment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1602.402. LICENSE OR CERTIFICATE NOT TRANSFERABLE. A license or certificate issued under this chapter is not transferable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1602.403. EMPLOYMENT OF LICENSE OR CERTIFICATE HOLDER.

(a) A private beauty culture school may not employ:

(1) a person holding an operator license, manicurist specialty license, or specialty certificate solely to perform the practices of cosmetology for which the person is licensed or certified; or

(2) a person holding an instructor license to perform any act or practice of cosmetology.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1241, Sec. 26(4), eff. September 1, 2011.

(c) A person holding a beauty shop license or specialty shop license may not employ:

(1) a person as an operator or specialist or lease to a person who acts as an operator or specialist unless the person holds a license or certificate under this chapter or under Chapter 1601; or

(2) a person to shampoo or condition a person's hair unless the person holds a shampoo apprentice permit or student permit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 14, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 26(4), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 17, eff. September 1, 2013.

Sec. 1602.404. OPERATING CERTAIN SHOPS OR SCHOOLS ON SINGLE PREMISES. A person may not operate a beauty shop, specialty shop, or private beauty culture school on the same premises as another one of those facilities unless the facilities are separated by walls of permanent construction without an opening between the facilities.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1602.405. PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY. (a) The commission may not adopt rules to restrict or prohibit practice by a cosmetologist in a facility solely because the facility is licensed or permitted by the department under both this chapter and Chapter 1601.

(b) If a facility has a license or permit under both this chapter and Chapter 1601, the commission may not adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

(1) work areas for barbers and cosmetologists;

(2) waiting areas for customers of the barbers and cosmetologists; or

(3) restrooms for the barbers and cosmetologists practicing in the facility or for their customers.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.22, eff. September 1, 2005.

Sec. 1602.406. INFECTIOUS AND CONTAGIOUS DISEASES. (a) A

person holding an operator license, instructor license, or specialty certificate may not perform any practice of cosmetology if the person knows the person is suffering from an infectious or contagious disease for which the person is not entitled to protection under the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(b) A person holding a beauty shop license, specialty shop license, private beauty culture school license, or license to operate a vocational cosmetology program in a public school may not employ a person to perform any practice of cosmetology if the license holder knows that the person is suffering from an infectious or contagious disease for which the person is not entitled to protection under the Americans with Disabilities Act of 1990.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1602.407. SERVICE AT UNLICENSED LOCATION. (a) In this section, "licensed facility" means the premises of a place of business that holds a license, certificate, or permit under this chapter or Chapter 1603.

(b) A person holding a license, certificate, or permit under this chapter may perform a service within the scope of the license, certificate, or permit at a location other than a licensed facility for a client who, because of illness or physical or mental incapacitation, is unable to receive the services at a licensed facility.

(c) An appointment for a service performed under this section must be made through a licensed facility.

Added by Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 18, eff. September 1, 2013.

#### **SUBCHAPTER J. OPERATION OF BEAUTY CULTURE SCHOOL**

Sec. 1602.451. DUTIES OF LICENSE HOLDER. (a) The holder of a private beauty culture school license shall:

- (1) maintain a sanitary establishment;
- (2) maintain on duty one licensed instructor for each 25 students in attendance;
- (3) maintain a daily record of students' attendance;

- (4) establish regular class and instruction hours and grades;
- (5) require a school term of not less than nine months and not less than 1,500 hours instruction for a complete course in cosmetology;
- (6) require a school term of not less than 600 hours instruction for a complete course in manicuring;
- (7) hold examinations before issuing diplomas;
- (8) maintain a copy of the school's curriculum in a conspicuous place and verify that the curriculum is being followed;
- (9) publish in the school's catalogue and enrollment contract a description of the refund policy required under Section 1602.458; and
- (10) provide the department with information on:
  - (A) the current course completion rates of students who attend a course of instruction offered by the school; and
  - (B) job placement rates and employment rates of students who complete the course of instruction.

(b) The holder of a private beauty culture school license may not require a student to work, be instructed, or earn credit for more than 48 hours in a calendar week.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.23, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 22, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 19, eff. September 1, 2013.

Sec. 1602.452. INFORMATION PROVIDED TO PROSPECTIVE STUDENT. The holder of a private beauty culture school license shall furnish each prospective student with:

- (1) a course outline;
- (2) a schedule of the tuition and other fees assessed;
- (3) the refund policy required under Section 1602.458;
- (4) the school grading policy and rules relating to incomplete grades;

(5) the school rules of operation and conduct, including rules relating to absences;

(6) the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department; and

(7) the current rates of job placement and employment of students who complete a course of training.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.24, eff. September 1, 2005.

Sec. 1602.453. COURSE LENGTH AND CURRICULUM CONTENT. (a) A private beauty culture school shall design course length and curriculum content to reasonably ensure that a student develops the job skills and knowledge necessary for employment.

(b) A school must submit to the commission for approval the course length and curriculum content for each course offered by the school. The school may implement a course length and curriculum content only after approval by the commission.

(c) Before issuing or renewing a license under this chapter, the department shall require a school to account for each course length and curriculum content.

(d) If a school manipulates a course length below or above industry standards, the commission shall place the school on probation until:

(1) justification for the deviation is proven; or

(2) the course length is adjusted to meet industry standards.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.25, eff. September 1, 2005.

Sec. 1602.454. STUDENT RECORD. A private beauty culture school shall notify the department when a student graduates from a course of training offered by the school and is eligible to take the

appropriate examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.26, eff. September 1, 2005.

Sec. 1602.455. TRANSFER OF HOURS OF INSTRUCTION. (a) A student of a private beauty culture school or a vocational cosmetology program in a public school may transfer completed hours of instruction to a private beauty culture school or a vocational cosmetology program in a public school in this state.

(b) In order for the hours of instruction to be transferred, a transcript showing the completed courses and number of hours certified by the school in which the instruction was given must be submitted to the executive director.

(c) In evaluating a student's transcript, the executive director shall determine whether the agreed tuition has been paid. If the tuition has not been paid, the executive director shall notify the student that the student's transcript cannot be certified to the school to which the student seeks a transfer until proof is provided that the tuition has been paid.

(d) On evaluation and approval, the executive director shall certify in writing to the student and to the school to which the student seeks a transfer that:

(1) the stated courses and hours have been successfully completed; and

(2) the student is not required to repeat the hours of instruction.

(e) If a private beauty culture school license has been expired for more than 30 days, a student of that school may not transfer hours of instruction the student completed at that school.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1602.456. IDENTIFICATION OF AND WORK PERFORMED BY STUDENTS. (a) Each private beauty culture school or vocational cosmetology program in a public school shall maintain in a conspicuous place a list of the names and identifying pictures of the

students who are enrolled in cosmetology courses.

(b) A private beauty culture school or public school may not receive compensation for work done by a student unless the student has completed 10 percent of the required number of hours for a license under this chapter.

(b-1) A private beauty culture school or public school in which a student permit holder is enrolled may not receive compensation for services performed under Section 1602.266(c).

(c) If a private beauty culture school or public school violates this section, the license of the private beauty culture school or the certificate of the public school may be revoked or suspended.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. [2095](#)), Sec. 20, eff. September 1, 2013.

Sec. 1602.457. CANCELLATION AND SETTLEMENT POLICY. The holder of a private beauty culture school license shall maintain a cancellation and settlement policy that provides a full refund of money paid by a student if the student:

(1) cancels the enrollment agreement or contract not later than midnight of the third day after the date the agreement or contract is signed by the student, excluding Saturdays, Sundays, and legal holidays; or

(2) entered into the enrollment agreement or contract because of a misrepresentation made:

(A) in the advertising or promotional materials of the school; or

(B) by an owner or representative of the school.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1602.458. REFUND POLICY. (a) The holder of a private beauty culture school license shall maintain a refund policy to provide for the refund of any unused part of tuition, fees, and other charges paid by a student who, at the expiration of the cancellation period established under Section 1602.457:

(1) fails to enter the course of training;  
 (2) withdraws from the course of training; or  
 (3) is terminated from the course of training before completion of the course.

(b) The refund policy must provide that:

(1) the refund is based on the period of the student's enrollment, computed on the basis of course time expressed in scheduled hours, as specified by an enrollment agreement, contract, or other document acceptable to the department;

(2) the effective date of the termination for refund purposes is the earliest of:

(A) the last date of attendance, if the student is terminated by the school;

(B) the date the license holder receives the student's written notice of withdrawal; or

(C) 10 school days after the last date of attendance;

and

(3) the school may retain not more than \$100 if:

(A) tuition is collected before the course of training begins; and

(B) the student fails to withdraw from the course of training before the cancellation period expires.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. [1170](#)), Sec. 23, eff. September 1, 2011.

Sec. 1602.459. WITHDRAWAL OR TERMINATION OF STUDENT. (a) If a student begins a course of training at a private beauty culture school that is scheduled to run not more than 12 months and, during the last 50 percent of the course, withdraws from the course or is terminated by the school, the school:

(1) may retain 100 percent of the tuition and fees paid by the student; and

(2) is not obligated to refund any additional outstanding tuition.

(b) If a student begins a course of training at a private beauty culture school that is scheduled to run not more than 12



months and, before the last 50 percent of the course, withdraws from the course or is terminated by the school, the school shall refund:

(1) 90 percent of any outstanding tuition for a withdrawal or termination that occurs during the first week or first one-tenth of the course, whichever period is shorter;

(2) 80 percent of any outstanding tuition for a withdrawal or termination that occurs after the first week or first one-tenth of the course, whichever period is shorter, but within the first three weeks of the course;

(3) 75 percent of any outstanding tuition for a withdrawal or termination that occurs after the first three weeks of the course but not later than the completion of the first 25 percent of the course; and

(4) 50 percent of any outstanding tuition for a withdrawal or termination that occurs not later than the completion of the first 50 percent of the course.

(c) A refund owed under this section must be paid not later than the 30th day after the date the student becomes eligible for the refund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1602.460. INTEREST ON REFUND. (a) If tuition is not refunded within the period required by Section 1602.459, the school shall pay interest on the amount of the refund for the period beginning the first day after the date the refund period expires and ending the day preceding the date the refund is made.

(b) If tuition is refunded to a lending institution, the interest shall be paid to that institution and applied against the student's loan.

(c) The commissioner of education shall annually set the interest rate at a rate sufficient to deter a school from retaining money paid by a student.

(d) The department may exempt a school from the payment of interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school shall provide to the department on request documentation of the effort to locate the student.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.27, eff. September 1, 2005.

Sec. 1602.461. REENTRY OF STUDENT AFTER WITHDRAWAL OR TERMINATION. If a student voluntarily withdraws or is terminated after completing 50 percent of the course at a private beauty culture school, the school shall allow the student to reenter at any time during the 48-month period following the date of withdrawal or termination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1602.462. EFFECT OF STUDENT WITHDRAWAL. (a) A private beauty culture school shall record a grade of incomplete for a student who withdraws but is not entitled to a refund under Section 1602.459(a) if the student:

(1) requests the grade at the time the student withdraws; and

(2) withdraws for an appropriate reason unrelated to the student's academic status.

(b) A student who receives a grade of incomplete may reenroll in the program during the 48-month period following the date the student withdraws and complete the subjects without payment of additional tuition.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1602.463. EFFECT OF SCHOOL CLOSURE. (a) If a private beauty culture school closes, the department shall attempt to arrange for students enrolled in the closed school to attend another private beauty culture school.

(b) If a student from a closed school is placed in a private beauty culture school, the expense incurred by the school in providing training directly related to educating the student, including the applicable tuition for the period for which the student paid tuition, shall be paid from the private beauty culture school tuition protection account.

(c) If a student from a closed school cannot be placed in another school, the student's tuition and fees shall be refunded as provided by Section 1602.458. If a student from a closed school does not accept a place that is available and reasonable in another school, the student's tuition and fees shall be refunded under the refund policy maintained by the closed school under Section 1602.459. A refund under this subsection shall be paid from the private beauty culture school tuition protection account. The amount of the refund may not exceed \$35,000.

(d) If another school assumes responsibility for the closed school's students and there are no significant changes in the quality of the training, the student from the closed school is not entitled to a refund under Subsection (c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. [411](#)), Sec. 3.28, eff. September 1, 2005.

Sec. 1602.464. PRIVATE BEAUTY CULTURE SCHOOL TUITION PROTECTION ACCOUNT. (a) If on January 1 of any year the amount in the private beauty culture school tuition protection account is less than \$200,000, the department shall collect a fee from each private beauty culture school during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to \$200,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the department for the purpose described by Section 1602.463. The department shall administer claims made against the account.

(c) Attorney's fees, court costs, or damages may not be paid from the account.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. [411](#)), Sec. 3.29, eff. September 1, 2005.

Sec. 1602.465. PEER REVIEW. (a) If the department has reasonable cause to believe that a private beauty culture school has violated this chapter or a rule adopted under this chapter, the department may:

- (1) order a peer review of the school; or
- (2) suspend the admission of students to the school.

(b) The peer review shall be conducted by a peer review team consisting of knowledgeable persons selected by the department. The department shall attempt to provide a balance on each team between members assigned to the team who are from this state and those who are from other states.

(c) The team shall provide the department with an objective assessment of the content of the school's curriculum and its application.

(d) The school under review shall pay the costs of the peer review.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 3.30, eff. September 1, 2005.

**CHAPTER 1603. REGULATION OF BARBERING AND COSMETOLOGY**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1603.001. GENERAL DEFINITIONS. (a) In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Executive director" means the executive director of the department.

(b) Unless the context clearly indicates otherwise, the definitions in Chapters 1601 and 1602 apply to this chapter.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.002. REGULATION OF BARBERING AND COSMETOLOGY BY DEPARTMENT OF LICENSING AND REGULATION. The department shall

administer this chapter and Chapters 1601 and 1602. A reference in this chapter to the commission's or department's powers or duties applies only in relation to those chapters, except that this section does not limit the department's or commission's general powers under Chapter 51.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

#### **SUBCHAPTER B. ADVISORY BOARDS FOR BARBERING AND COSMETOLOGY**

Sec. 1603.051. DUTIES. The advisory boards established under Chapters 1601 and 1602 shall advise the commission on administering this chapter and Chapters 1601 and 1602 regarding barbering or cosmetology, as applicable.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

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

Sec. 1603.101. RULES. The commission shall adopt rules consistent with this chapter for:

- (1) the administration of this chapter and the operations of the department in regulating barbering and cosmetology; and
- (2) the administration of Chapters 1601 and 1602.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.102. SANITATION RULES. The commission shall establish sanitation rules to prevent the spread of an infectious or contagious disease.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.103. INSPECTION OF SCHOOLS BEFORE OPERATION. (a) Until the department determines, by inspection, that the person has

established the school in compliance with this chapter, Chapter 1601, or Chapter 1602, a person may not operate a school licensed or permitted under this chapter, Chapter 1601, or Chapter 1602.

(b) A school that is not approved by the department on initial inspection may be reinspected.

(c) The department may charge the school a fee for each inspection. The commission shall by rule set the amount of the fee.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 15, eff. June 15, 2007.

Sec. 1603.104. PERIODIC AND RISK-BASED INSPECTIONS. (a) The department may enter and inspect at any time during business hours:

(1) the place of business of any person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(2) any place in which the department has reasonable cause to believe that a certificate, license, or permit holder is practicing in violation of this chapter, Chapter 1601, or Chapter 1602 or in violation of a rule or order of the commission or executive director.

(b) At least once every two years, the department shall inspect each shop or other facility that holds a license, certificate, or permit in which the practice of barbering or cosmetology is performed under this chapter, Chapter 1601, or Chapter 1602, and at least twice per year, the department shall inspect each school in which barbering or cosmetology is taught under this chapter, Chapter 1601, or Chapter 1602.

(c) The department shall conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

(1) the type and nature of the school, shop, or other facility;

(2) whether there has been a prior sanitation violation at the school, shop, or facility;

(3) the inspection history of the school, shop, or other facility;

(4) any history of complaints involving the school, shop,

or other facility; and

(5) any other factor determined by the commission by rule.

(d) An inspector who discovers a violation of this chapter, Chapter 1601, or Chapter 1602 or of a rule or order of the commission or executive director shall:

(1) provide written notice of the violation to the license, certificate, or permit holder on a form prescribed by the department; and

(2) file a complaint with the executive director.

(e) The department may charge the school, shop, or other facility a fee for each inspection performed under Subsection (c). The commission shall by rule set the amount of the fee.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 16, eff. June 15, 2007.

Sec. 1603.1045. CONTRACT TO PERFORM INSPECTIONS. The department may contract with a person to perform for the department inspections of a school, shop, or other facility under this chapter, Chapter 1601, or Chapter 1602.

Added by Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 17, eff. June 15, 2007.

Sec. 1603.105. RETENTION OF STUDENT RECORDS. The department may not retain student records, including student transcripts, beyond the time required by state law.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

#### **SUBCHAPTER D. PUBLIC PARTICIPATION AND COMPLAINT PROCEDURES**

Sec. 1603.151. NOTIFICATION OF PUBLIC INTEREST INFORMATION AND PARTICIPATION. The commission by rule shall establish methods by which consumers and service recipients are notified of the name,

mailing address, and telephone number of the department for the purpose of directing complaints to the department regarding barbering and cosmetology. The department may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter, Chapter 1601, or Chapter 1602;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(3) in a bill for service provided by a person regulated under this chapter, Chapter 1601, or Chapter 1602.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.152. COMPLAINT JURISDICTION; NOTIFICATION. If the department determines that it lacks jurisdiction to resolve the complaint, the department shall notify the complainant in writing that the department is closing the complaint because it lacks jurisdiction.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.154. INFORMAL SETTLEMENT CONFERENCE. The department shall establish guidelines for an informal settlement conference related to a complaint filed with the department.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

#### **SUBCHAPTER E. CERTIFICATE, LICENSE, AND PERMIT REQUIREMENTS**

Sec. 1603.201. APPLICATION FORM. An application for a certificate, license, or permit must be made on a form prescribed and provided by the department.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.



Sec. 1603.202. DUPLICATE CERTIFICATE, LICENSE, OR PERMIT. The department shall issue a duplicate certificate, license, or permit to an applicant who:

- (1) submits an application for a duplicate certificate, license, or permit to the department; and
- (2) pays the required fee.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. [411](#)), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.203. PROVISIONAL CERTIFICATE OR LICENSE. (a) The department may issue a provisional certificate or license to an applicant currently licensed in another jurisdiction who seeks a certificate or license in this state and who:

- (1) has been licensed in good standing in the profession for which the person seeks the certificate or license for at least two years in another jurisdiction, including a foreign country, that has requirements substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602, as appropriate; and
- (2) has passed a national or other examination recognized by the commission relating to the practice of that profession.

(b) A provisional certificate or license is valid until the date the department approves or denies the provisional certificate or license holder's application. The department shall issue a certificate or license to the provisional certificate or license holder if:

- (1) the provisional certificate or license holder is eligible to hold a certificate or license under Chapter 1601 or Chapter 1602; or

- (2) the provisional certificate or license holder passes the part of the examination under Chapter 1601 or Chapter 1602 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of the profession in this state and:

- (A) the department verifies that the provisional certificate or license holder meets the academic and experience requirements for the certificate or license; and

(B) the provisional certificate or license holder satisfies any other certificate or license requirements.

(c) The department must approve or deny a provisional certificate or license holder's application for a certificate or license not later than the 180th day after the date the provisional certificate or license is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.204. RECIPROCAL CERTIFICATE, LICENSE, OR PERMIT. (a) A person who holds a license, certificate, or permit to practice barbering or cosmetology from another state or country that has standards or work experience requirements that are substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602 may apply for a license, certificate, or permit to perform the same acts of barbering or cosmetology in this state that the person practiced in the other state or country.

(b) The person must:

(1) submit an application for the license, certificate, or permit to the department; and

(2) pay fees in an amount prescribed by the commission, including any applicable license, certificate, or permit fee.

(c) A person issued a license, certificate, or permit under this section:

(1) may perform the acts of barbering or cosmetology stated on the license, certificate, or permit; and

(2) is subject to the renewal procedures and fees provided in this chapter, Chapter 1601, or Chapter 1602 for the performance of those acts of barbering or cosmetology.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.205. DUAL BARBER AND BEAUTY SHOP LICENSE. (a) A person holding a dual barber and beauty shop license may own, operate, or manage a shop in which any practice of barbering defined

by Section 1601.002(1) or cosmetology defined by Section 1602.002(a) is performed.

(b) An applicant for a dual barber and beauty shop license must submit:

(1) an application on a department-approved form that is verified by the applicant;

(2) proof that the applicant meets the applicable requirements under Chapters 1601 and 1602 for obtaining a barbershop permit and a beauty shop license; and

(3) the required license fee.

(c) The department shall issue a dual barber and beauty shop license to an applicant that:

(1) meets the requirements under this chapter and Chapters 1601 and 1602;

(2) complies with commission rules; and

(3) pays the required fees.

(d) The holder of a dual barber and beauty shop license must comply with this chapter, Chapters 1601 and 1602, and commission rules related to barbering and cosmetology.

Added by Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. [2106](#)), Sec. 18, eff. June 15, 2007.

Sec. 1603.206. MOBILE SHOPS. (a) In this section, "mobile shop" means a facility that is readily movable and where barbering, cosmetology, or both are practiced other than at a fixed location.

(b) A barbershop, beauty shop, or specialty shop licensed or permitted under this chapter, Chapter 1601, or Chapter 1602 may be a mobile shop.

(c) The commission may adopt rules to administer this section, including rules providing for:

(1) the licensing or permitting of a mobile shop;

(2) the fees for a mobile shop;

(3) the operation of a mobile shop;

(4) reporting requirements for a mobile shop; and

(5) the inspection of a mobile shop.

Added by Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. [2106](#)), Sec. 18, eff. June 15, 2007.

Sec. 1603.207. MINI-SALONS AND MINI-BARBERSHOPS. (a) In this section, "mini-salon or mini-barbershop" includes a room or suite of rooms that is one of a number of connected establishments in a single premises that open onto a common hallway or another configuration of operations as determined by commission rule in which a person practices barbering or cosmetology under a license, certificate, or permit issued under this chapter, Chapter 1601, or Chapter 1602.

(b) The commission may adopt rules for the:

- (1) licensing, permitting, operation, inspection, and reporting requirements of a mini-salon or mini-barbershop;
- (2) fees required to issue or renew a license or permit for or to inspect a mini-salon or mini-barbershop; and
- (3) sanitation standards required for a mini-salon or mini-barbershop.

(c) A mini-salon or mini-barbershop licensed, certified, or permitted under this section must meet the requirements of a barbershop, beauty shop, dual shop, or specialty shop licensed, certified, or permitted under this chapter, Chapter 1601, or Chapter 1602.

Added by Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 21, eff. September 1, 2013.

#### **SUBCHAPTER F. EXAMINATION REQUIREMENTS**

Sec. 1603.252. GENERAL EXAMINATION REQUIREMENTS. (a) The department may accept, develop, or contract for the examinations required by this chapter, including the administration of the examinations.

(b) The executive director shall determine uniform standards for acceptable performance on an examination for a license or certificate under Chapter 1601 and for a license or certificate under Chapter 1602.

(c) The examination must include a written examination as provided by Section 1603.253 and may include a practical examination as provided by Section 1603.256.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.253. WRITTEN EXAMINATION. The commission shall select an examination for each written examination required under this chapter, Chapter 1601, or Chapter 1602. The written examination must be:

- (1) validated by an independent testing professional; or
- (2) purchased from a national testing service.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.254. EXAMINATION FOR BARBERS. (a) An applicant for an examination for a certificate or license issued under Chapter 1601 must submit to the department an application on a form prescribed and provided by the department accompanied by:

- (1) two photographs of the applicant, one of which accompanies the application and one of which is to be returned to the applicant to be presented at the examination; and
- (2) the appropriate examination fee.

(b) The department shall examine applicants for a Class A barber certificate and a teacher's certificate.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.255. EARLY EXAMINATION. The department may allow for the early written examination of a student who has completed the following number of hours of instruction in a department-approved training program:

- (1) 1,000 hours for a student seeking a Class A barber certificate or operator license in a private barber or cosmetology school; or
- (2) 900 hours for a student seeking a Class A barber certificate or operator license in a publicly funded barber or cosmetology school.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 24, eff.

September 1, 2011.

Sec. 1603.256. PRACTICAL EXAMINATION. (a) The commission may require a practical examination as it considers necessary for a license or certificate issued under Chapter 1601 or 1602.

(b) The department shall prescribe the method and content of any practical examination.

(c) The following persons may administer a practical examination required under this subchapter:

- (1) the department; or
- (2) a person with whom the department contracts under Section 1603.252.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 22, eff. September 1, 2013.

#### **SUBCHAPTER G. CERTIFICATE, LICENSE, AND PERMIT RENEWAL**

Sec. 1603.301. DENIAL OF RENEWAL DUE TO ADMINISTRATIVE PENALTY. The department may deny a person's request to renew a certificate, license, or permit issued under this chapter, Chapter 1601, or Chapter 1602 if the person has not paid an administrative penalty imposed under Subchapter F, Chapter 51. This section does not apply if:

- (1) the person's time to pay or request a hearing has not expired under Section 51.304;
- (2) the person has requested a hearing under Section 51.304, but the person's time to pay has not expired under Section 51.307; or
- (3) the penalty is stayed.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

#### **SUBCHAPTER H. PRACTICE PROVISIONS APPLICABLE TO CHAPTERS 1601 AND 1602**

Sec. 1603.351. MINIMUM CURRICULUM FOR SCHOOLS; DISTANCE EDUCATION. (a) The commission shall prescribe the minimum curriculum, including the subjects and the number of hours in each subject, taught by a school licensed under this chapter, Chapter 1601, or Chapter 1602.

(b) The commission may adopt rules allowing distance education only for the theory portion of the curriculum taught by a school licensed under this chapter, Chapter 1601, or Chapter 1602.

(c) Distance education does not satisfy the requirements of the practical portion of the curriculum taught by a school licensed under this chapter, Chapter 1601, or Chapter 1602.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 23, eff. September 1, 2013.

Sec. 1603.352. STERILIZATION REQUIREMENTS FOR CERTAIN SERVICES.

(a) A person who holds a license, certificate, or permit issued under this chapter, Chapter 1601, or Chapter 1602 and who performs a barbering service described by Section 1601.002(1)(E) or (F) or a cosmetology service described by Section 1602.002(a)(10) or (11) shall, before performing the service, clean, disinfect, and sterilize with an autoclave or dry heat sterilizer or sanitize with an ultraviolet sanitizer, in accordance with the sterilizer or sanitizer manufacturer's instructions, each metal instrument, including metal nail clippers, cuticle pushers, cuticle nippers, and other metal instruments, used to perform the service.

(b) The owner or manager of a barber shop, barber school, beauty shop, specialty shop, beauty culture school, or other facility licensed under this chapter, Chapter 1601, or Chapter 1602, is responsible for providing an autoclave, a dry heat sterilizer, or an ultraviolet sanitizer for use in the shop or school as required by Subsection (a).

(c) Each sterilized or sanitized instrument must be stored in accordance with the manufacturer's instructions.

(d) This section does not apply to:

(1) single-use instruments; or

(2) nonmetal nail files, buffer blocks, pumice stones, nail brushes, or other similar instruments.

(e) The commission may adopt rules to administer this section.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 19, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 25, eff. September 1, 2011.

#### **SUBCHAPTER I. DENIAL AND DISCIPLINARY PROCEDURES**

Sec. 1603.401. DENIAL, SUSPENSION, OR REVOCATION. The department shall deny an application for issuance or renewal of, or shall suspend or revoke, a certificate, license, or permit if the applicant or person holding the certificate, license, or permit:

- (1) engages in gross malpractice;
- (2) knowingly continues to practice while having an infectious or contagious disease;
- (3) knowingly makes a false or deceptive statement in advertising;
- (4) advertises, practices, or attempts to practice under another person's name or trade name;
- (5) engages in fraud or deceit in obtaining a certificate, license, or permit; or
- (6) engages in an act that violates this chapter, Chapter 51, Chapter 1601, or Chapter 1602 or a rule or order adopted or issued under those chapters.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

#### **SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 1603.451. INJUNCTIVE RELIEF. (a) If a certificate, license, or permit holder commits a violation of this chapter, Chapter 1601, Chapter 1602, or a commission rule and the violation poses a serious threat to the public health, the attorney general shall initiate a suit for injunction and proceedings for suspension



or revocation of the certificate, license, or permit.

(b) In seeking an injunction under this section, the attorney general is not required to allege or prove:

- (1) that an adequate remedy at law does not exist; or
- (2) that substantial or irreparable damage would result

from the continued violation.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.452. CIVIL PENALTY. (a) A barber, barbershop owner, barber school, or private beauty culture school that violates this chapter, Chapter 1601, Chapter 1602, or a commission rule is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law.

(b) The amount of the civil penalty for a barber or barbershop owner may not exceed \$25 a day for each violation.

(c) The amount of the civil penalty for a barber school or private beauty culture school may not exceed \$1,000 a day for each violation.

(d) The attorney general may sue to collect the civil penalty.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.453. APPEAL BOND NOT REQUIRED. The department is not required to give an appeal bond in a cause arising under this chapter, Chapter 1601, or Chapter 1602.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.454. ENFORCEMENT BY ATTORNEY GENERAL. The attorney general shall represent the department in an action to enforce this chapter, Chapter 1601, or Chapter 1602.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.455. EMERGENCY ORDERS. (a) The executive director may issue an emergency order to suspend or revoke a license or permit issued, or to cease the operation of an unsafe facility regulated, by the department under this title if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety.

(b) The executive director may issue the emergency order with or without notice and hearing as the executive director considers practicable under the circumstances.

(c) If an emergency order is issued under this section without a hearing, the executive director, not later than the 10th day after the date the emergency order was issued, shall set the time and place for a hearing conducted by the State Office of Administrative Hearings to affirm, modify, or set aside the emergency order. The executive director shall set the hearing for a date not later than the 30th day after the date the time and place for the hearing are set. The hearing examiner shall affirm the order to the extent that reasonable cause existed to issue the order.

(d) The commission by rule may prescribe procedures for the issuance and appeal of an emergency order under this section, including a rule to allow the commission to affirm, modify, or set aside a decision by the State Office of Administrative Hearings under Subsection (c).

(e) A proceeding under this section is a contested case under Chapter 2001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. [2106](#)), Sec. 20, eff. June 15, 2007.

Sec. 1603.456. CEASE AND DESIST ORDERS. The executive director may issue a cease and desist order, after notice and opportunity for hearing, if the executive director determines that the order is necessary to prevent a violation of:

- (1) this chapter, Chapter 1601, or Chapter 1602; or
- (2) a rule adopted by the commission.

Added by Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. [2106](#)), Sec. 20, eff. June 15, 2007.

**TITLE 10. OCCUPATIONS RELATED TO LAW ENFORCEMENT AND SECURITY****CHAPTER 1701. LAW ENFORCEMENT OFFICERS****SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1701.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Commission on Law Enforcement.
- (2) "County jailer" means a person employed as a county jail guard under Section 85.005, Local Government Code.
- (3) "Officer" means a peace officer or reserve law enforcement officer.
- (4) "Peace officer" means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, or other law.
- (5) "Public security officer" means a person employed or appointed as an armed security officer by this state or a political subdivision of this state. The term does not include a security officer employed by a private security company that contracts with this state or a political subdivision of this state to provide security services for the entity.
- (6) "Reserve law enforcement officer" means a person designated as a reserve law enforcement officer under Section 85.004, 86.012, or 341.012, Local Government Code, or Section 60.0775, Water Code.
- (7) "Telecommunicator" means a person acknowledged by the commission and employed by or serving a law enforcement agency that performs law enforcement services on a 24-hour basis who receives, processes, and transmits public safety information and criminal justice data for the agency by using a base radio station on a public safety frequency regulated by the Federal Communications Commission or by another method of communication.
- (8) "School marshal" means a person employed and appointed by the board of trustees of a school district or the governing body of an open-enrollment charter school under Article 2.127, Code of Criminal Procedure, and in accordance with and having the rights provided by Section 37.0811, Education Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 173 (H.B. 340), Sec. 2, eff. May 27, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 1.01, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 655 (H.B. 1009), Sec. 6, eff. June 14, 2013.

Sec. 1701.002. APPLICATION OF SUNSET ACT. The Texas Commission on Law Enforcement is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2021.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 1.02, eff. May 18, 2013.

Sec. 1701.003. APPLICATION OF CHAPTER. (a) Except as expressly provided by this chapter, this chapter does not:

(1) limit the powers or duties of a municipality or county;  
or

(2) affect Chapter 143, Local Government Code.

(b) This chapter does not affect a constable or other officer or county jailer elected under the Texas Constitution before September 1, 1985, and does not affect a person who held the office of sheriff before January 1, 1994.

(c) This chapter does not prevent an employing agency from establishing qualifications and standards for hiring or training officers, county jailers, or telecommunicators that exceed the commission's minimum standards.

(d) A provision of this chapter applying to issuance or revocation of a peace officer license applies to issuance or revocation of a public security officer license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 2, eff. September 1, 2011.

Sec. 1701.004. REFERENCE TO COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION. A reference in law to the Commission on Law Enforcement Officer Standards and Education or the Texas Commission on Law Enforcement Officer Standards and Education means the Texas Commission on Law Enforcement.

Added by Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 1.03, eff. May 18, 2013.

#### **SUBCHAPTER B. TEXAS COMMISSION ON LAW ENFORCEMENT**

Sec. 1701.051. COMMISSION MEMBERSHIP. (a) The Texas Commission on Law Enforcement is an agency of this state and consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) three members who are sheriffs, constables, or chiefs of police;

(2) three members who:

(A) are licensed under this chapter, two of whom are peace officers who, at the time of appointment, hold nonsupervisory positions with a law enforcement agency; and

(B) have been licensed under this chapter for the five years preceding the date of appointment; and

(3) three members who represent the public.

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

(c) A public officer appointed to the commission serves on the commission as an additional duty of the office.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1172, Sec. 35(1), eff. September 1, 2009.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 35(1),

eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 1.05, eff. May 18, 2013.

Sec. 1701.052. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the commission if the person or the person's spouse:

- (1) is registered, certified, or licensed by an occupational regulatory agency in the field of law enforcement;
- (2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission;
- (4) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or
- (5) is an officer, employee, or paid consultant of a law enforcement labor union.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a commission member and may not be an employee of the commission employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

- (1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of law enforcement or

county corrections; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of law enforcement or county corrections.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 2, eff. September 1, 2009.

Sec. 1701.054. TERMS; VACANCY. (a) Appointed commission members serve staggered six-year terms. Every two years:

(1) the term of one of the members appointed under Section 1701.051(a)(1) expires;

(2) the term of one of the members appointed under Section 1701.051(a)(2) expires; and

(3) the term of one of the members appointed under Section 1701.051(a)(3) expires.

(b) A vacancy in an office of a member of the commission shall be filled for the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.055. OFFICERS; QUORUM; VOTING. (a) The governor shall designate a commission member to serve as the commission's presiding officer. The presiding officer serves in that capacity at the will of the governor.

(b) At its first meeting after appointment of members to serve regular terms, the commission shall elect an assistant presiding officer and a secretary from its appointed members.

(c) Five members constitute a quorum.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1224, Sec. 6, eff. September 1, 2011.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1224 (S.B. 542), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1224 (S.B. 542), Sec. 6, eff. September 1, 2011.

Sec. 1701.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the commission that a member:

- (1) does not have at the time of taking office the qualifications required by Section 1701.051(a) or 1701.052;
- (2) does not maintain during service on the commission the qualifications required by Section 1701.051(a) or 1701.052;
- (3) is ineligible for membership under Section 1701.053;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.

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

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the commission's presiding officer of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 3, eff. September 1, 2009.



Sec. 1701.057. COMPENSATION; REIMBURSEMENT. (a) A commission member may not receive compensation for service on the commission.

(b) A commission member is entitled to reimbursement for actual and necessary expenses incurred in performing functions under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.058. MEETINGS. (a) The commission shall meet at least once during each biennium to receive public comment on training and standards for officers and county jailers. Within a reasonable time after the meeting, the commission shall report to the governor and legislature findings and recommendations resulting from the meeting.

(b) The commission may meet at other times and places in this state that the commission considers proper. The presiding officer may call a meeting on the officer's own motion and shall call a meeting on the written request of five members.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

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

- (1) the legislation that created the commission;
- (2) the programs, functions, rules, and budget of the commission;
- (3) the results of the most recent formal audit of the commission;
- (4) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and
- (5) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to

reimbursement, as provided by the General Appropriations Act, for travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 4, eff. September 1, 2009.

Sec. 1701.060. APPLICATION OF OPEN RECORDS LAW AND ADMINISTRATIVE PROCEDURE LAW. Except as provided by Sections 1701.502 and 1701.503, the commission is subject to Chapters 551 and 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL**

Sec. 1701.101. EXECUTIVE DIRECTOR. The commission may employ an executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.102. PERSONNEL. The commission may employ personnel necessary to perform commission functions.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.103. DIVISION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly define the policy-making responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.104. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide, as often as necessary, to the commission's members and employees information regarding their:

- (1) qualifications for office or employment under this chapter; and
- (2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.105. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for employees within the agency. The program must require intra-agency posting of all positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for commission employees must be based on this system.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

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

- (1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with requirements of Chapter 21, Labor Code;

- (2) a comprehensive analysis of the commission workforce that meets federal and state laws, rules, and regulations and instructions promulgated directly from those laws, rules, and regulations;

(3) procedures by which a determination can be made of underuse in the commission workforce of all persons for whom federal or state laws, rules, and regulations and instructions promulgated directly from those laws, rules, and regulations encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. POWERS AND DUTIES OF COMMISSION**

Sec. 1701.151. GENERAL POWERS OF COMMISSION; RULEMAKING AUTHORITY. The commission may:

(1) adopt rules for the administration of this chapter and for the commission's internal management and control;

(2) establish minimum standards relating to competence and reliability, including education, training, physical, mental, and moral standards, for licensing as an officer, county jailer, public security officer, or telecommunicator;

(3) report to the governor and legislature on the commission's activities, with recommendations on matters under the commission's jurisdiction, and make other reports that the commission considers desirable;

(4) require a state agency or a county, special district, or municipality in this state that employs officers, telecommunicators, or county jailers to submit reports and information;

(5) contract as the commission considers necessary for services, facilities, studies, and reports required for:

(A) cooperation with municipal, county, special district, state, and federal law enforcement agencies in training programs; and

(B) performance of the commission's other functions; and

(6) conduct research and stimulate research by public and private agencies to improve law enforcement and police administration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 3, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 1, eff. January 1, 2014.

Sec. 1701.152. RULES RELATING TO HIRING DATE OF PEACE OFFICER. The commission may not adopt or enforce a rule that sets the date of appointment of a peace officer at a later date than the date that appears on employment records of the hiring law enforcement agency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.1521. USE OF TECHNOLOGY. The commission shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 7, eff. September 1, 2009.

Sec. 1701.1522. ALTERNATIVE DISPUTE RESOLUTION. (a) The commission shall develop and implement a policy to encourage the use of:

- (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and
- (2) appropriate alternative dispute resolution procedures

under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 7, eff. September 1, 2009.

Sec. 1701.1523. ELECTRONIC SUBMISSION OF FORMS, DATA, AND DOCUMENTS. The commission by rule shall:

(1) develop and establish a system for the electronic submission of forms, data, and documents required to be submitted to the commission under this chapter; and

(2) once that system is established, require law enforcement agencies to submit to the commission electronically any form, data, or document required to be submitted to the commission under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 7, eff. September 1, 2009.

Sec. 1701.1524. RULES RELATING TO CONSEQUENCES OF CRIMINAL CONVICTION OR DEFERRED ADJUDICATION. (a) The commission by rule shall establish guidelines consistent with this chapter that are necessary to comply with Chapter 53 to the extent that chapter applies to persons licensed under this chapter.

(b) In its rules under this section, the commission shall list the offenses for which a conviction would constitute grounds for the commission to take action under Section 53.021 or for which placement

on deferred adjudication community supervision would constitute grounds for the commission to take action under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 7, eff. September 1, 2009.

Sec. 1701.153. REPORTS FROM AGENCIES AND SCHOOLS. (a) The commission shall establish reporting standards and procedures for:

(1) the appointment or employment and the termination of officers, county jailers, and telecommunicators by law enforcement agencies;

(2) the activities of licensed training schools; and

(3) other matters the commission considers necessary for the administration of this chapter.

(b) The commission shall furnish each agency and licensed training school with the required reporting forms, including access to electronic submission forms when the system under Section 1701.1523 is established.

(c) The chief administrative officer of a law enforcement agency or licensed training school is responsible for compliance with the reporting standards and procedures prescribed by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 5, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 4, eff. September 1, 2011.

Sec. 1701.154. FEES. The commission may establish reasonable and necessary fees for the administration of this chapter, including reasonable and necessary fees for the administration of Section 1701.257.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.155. GIFTS AND GRANTS. The commission may accept grants or gifts from private individuals, foundations, or the federal

government.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.156. LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION FUND. (a) The law enforcement officer standards and education fund account is in the general revenue fund.

(b) The commission shall use the account in administering this chapter and performing other commission duties established by law.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1172, Sec. 35(2), eff. September 1, 2009.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1158, Sec. 87, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 35(2), eff. September 1, 2009.

Sec. 1701.157. MONEY ALLOCATED AND USED FOR CONTINUING EDUCATION. (a) Not later than March 1 of each calendar year, the comptroller shall allocate money deposited during the preceding calendar year in the general revenue fund to the credit of the law enforcement officer standards and education fund account for expenses related to the continuing education of persons licensed under this chapter as follows:

(1) 20 percent of the money is allocated to all local law enforcement agencies in this state in equal shares; and

(2) 80 percent of the money is allocated to all local law enforcement agencies in this state in a share representing a fixed amount for each position in the agency, as of January 1 of the preceding calendar year, that is reserved to a person who:

(A) is licensed under this chapter;

(B) works as a peace officer on the average of at least 32 hours a week; and

(C) is compensated by a political subdivision of this state at least at the minimum wage and is entitled to all employee benefits offered to a peace officer by the political subdivision.

(b) To provide the necessary information for an allocation of money under Subsection (a), a local law enforcement agency must



report to the comptroller not later than November 1 of the preceding calendar year:

(1) the number of agency positions described by Subsection (a)(2) authorized as of January 1 of the year the report is due;

(2) the number of agency positions described by Subsection (a)(2) filled as of January 1 of the year the report is due;

(3) the percentage of the money received by the agency under Subsection (a) pursuant to the allocation made by the comptroller on or before March 1 of the year preceding the year in which the report is due that was used by the agency before the date of the allocation made by the comptroller under Subsection (a) on or before March 1 of the year the report is due;

(4) the number of training hours received during the 12-month or approximately 12-month period described by Subdivision (3) that were funded by money received by the agency pursuant to the allocation made by the comptroller on or before March 1 of the year preceding the year in which the report is due; and

(5) that the agency has complied with the requirements of this section regarding the use of any money received by the agency pursuant to the allocation made by the comptroller on or before March 1 of the year preceding the year in which the report is due.

(c) The head of a law enforcement agency shall maintain a complete and detailed record of money received and spent by the agency under this section. Money received under this section is subject to audit by the comptroller. Money spent under this section is subject to audit by the state auditor.

(d) A local law enforcement agency shall use money received under Subsection (a) only as necessary to ensure the continuing education of persons licensed under this chapter or to provide necessary training, as determined by the agency head, to full-time fully paid law enforcement support personnel in the agency.

(e) A local law enforcement agency may not use money received under Subsection (a) to replace funds that are provided to the agency by the county or municipality having jurisdiction over the agency on a recurring basis for training law enforcement officers and support personnel.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. [3389](#)), Sec. 6, eff.

September 1, 2009.

Sec. 1701.159. ACTIVE AND INACTIVE PEACE OFFICERS. (a) The commission shall establish a list of active licensed peace officers and a list of inactive licensed peace officers who leave the employment of a law enforcement agency.

(b) A retired peace officer as defined by Section 1701.3161 continues to hold as an inactive license the license the retired officer held at the time the retired officer last served as an elected, appointed, or employed peace officer unless the license was revoked for cause under Section 1701.501.

(c) A retired peace officer who holds an inactive license may not serve as a peace officer unless the person reactivates the license as provided by Section 1701.316 or 1701.3161.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 878 (H.B. 1955), Sec. 1, eff. June 15, 2007.

Sec. 1701.160. AUTHORITY TO COMMISSION INVESTIGATORS AS PEACE OFFICERS. The commission may commission certified peace officers as investigators employed by the commission for the limited purpose of assisting the commission in administering this chapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.501(a), eff. Sept. 1, 2001.

Sec. 1701.161. PROVISION OF STATE FLAG TO NEXT OF KIN OF DECEASED PEACE OFFICER. (a) If the next of kin of a deceased peace officer requests a state flag, the commission shall:

(1) provide a state flag, at no cost to the next of kin, if the peace officer was:

(A) a current peace officer at the time of the officer's death; or

(B) an honorably retired peace officer who voluntarily terminated employment with a law enforcement agency of this state or a political subdivision of this state; and

(2) notify the office of the governor of the death of the peace officer.

(b) The commission may apply for and accept gifts and grants from public and private entities on behalf of the Texas peace officer flag account.

(c) The commission shall deposit any gift or grant accepted by the commission under Subsection (b) to the credit of the Texas peace officer flag account. The Texas peace officer flag account is a special account in the general revenue fund. Money in the account may be appropriated only to the commission for the purpose of implementing this section. Interest earned on money in the Texas peace officer flag account shall be credited to the account.

Added by Acts 2001, 77th Leg., ch. 476, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 744 (H.B. 2769), Sec. 4, eff. September 1, 2005.

Sec. 1701.162. RECORDS AND AUDIT REQUIREMENTS. (a) The commission is entitled to access records maintained under Sections 1701.303, 1701.306, and 1701.310 by an agency hiring a person to be an officer or county jailer, including records that relate to age, education, physical standards, citizenship, experience, and other matters relating to competence and reliability, as evidence of qualification for licensing of an officer or county jailer.

(b) The commission shall audit the records described by Subsection (a) of each law enforcement agency at least once every five years.

(c) The commission by rule shall develop and establish a framework for the audits conducted by the commission under Subsection (b) that:

- (1) addresses the types of documents subject to audit;
- (2) provides a schedule for additional risk-based inspections based on:
  - (A) whether there has been a prior violation by the law enforcement agency;
  - (B) the inspection history of the agency; and
  - (C) any other factor the commission by rule considers appropriate;

(3) provides timelines for complying with an audit request or correcting a violation found during the audit process; and

(4) establishes sanctions for failing to comply with an audit request or to correct a violation found during the audit process.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 7, eff. September 1, 2009.

Sec. 1701.163. INFORMATION PROVIDED BY COMMISSIONING ENTITIES.

(a) This section applies only to an entity authorized by statute or by the constitution to create a law enforcement agency or police department and commission, appoint, or employ officers that first creates a law enforcement agency or police department and first begins to commission, appoint, or employ officers on or after September 1, 2009.

(b) The entity shall submit to the commission on creation of the law enforcement agency or police department information regarding:

(1) the need for the law enforcement agency or police department in the community;

(2) the funding sources for the law enforcement agency or police department;

(3) the physical resources available to officers;

(4) the physical facilities that the law enforcement agency or police department will operate, including descriptions of the evidence room, dispatch area, and public area;

(5) law enforcement policies of the law enforcement agency or police department, including policies on:

(A) use of force;

(B) vehicle pursuit;

(C) professional conduct of officers;

(D) domestic abuse protocols;

(E) response to missing persons;

(F) supervision of part-time officers; and

(G) impartial policing;

(6) the administrative structure of the law enforcement agency or police department;

(7) liability insurance; and

(8) any other information the commission requires by rule.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 7, eff. September 1, 2009.

Sec. 1701.164. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. The commission shall collect and maintain incident-based data submitted to the commission under Article 2.134, Code of Criminal Procedure, including incident-based data compiled by a law enforcement agency from reports received by the law enforcement agency under Article 2.133 of that code. The commission in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth, Jr., Police Institute at Dallas, and the Texas Police Chiefs Association shall develop guidelines for submitting in a standard format the report containing incident-based data as required by Article 2.134, Code of Criminal Procedure.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 8, eff. September 1, 2009.

#### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 1701.201. PUBLIC INTEREST INFORMATION. (a) The commission shall prepare information of public interest describing the regulatory functions of the commission and the procedures by which public complaints are filed with and resolved by the commission.

(b) The commission shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.202. COMPLAINTS. (a) The commission by rule shall establish a comprehensive procedure for each phase of the commission's jurisdictional complaint enforcement process, including:

- (1) complaint intake;
- (2) investigation;
- (3) adjudication and relevant hearings;

- (4) appeals;
- (5) the imposition of sanctions; and
- (6) public disclosure.

(b) On request, a license holder may obtain information regarding a complaint made against the license holder under this chapter, including a complete copy of the complaint file. On receipt of a request under this subsection, the commission shall provide the requested information in a timely manner to allow the license holder time to respond to the complaint.

(c) The commission shall ensure that detailed information regarding the commission's complaint enforcement process described by this section is available on any publicly accessible Internet website and in any appropriate printed materials maintained by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 9, eff. September 1, 2009.

Sec. 1701.203. RECORDS OF COMPLAINTS. (a) The commission shall maintain a system to promptly and efficiently act on jurisdictional complaints filed with the commission. The commission shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The commission shall make information available describing its procedures for complaint investigation and resolution.

(c) The commission shall periodically notify the parties to the complaint of the status of the complaint until final disposition.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 10, eff. September 1, 2009.

Sec. 1701.2035. TRACKING AND ANALYSIS OF COMPLAINT AND VIOLATION DATA. (a) The commission shall develop and implement a method for:

(1) tracking complaints filed with the commission through their final disposition, including:

(A) the reason for each complaint;

(B) how each complaint was resolved; and

(C) the subject matter of each complaint that was not within the jurisdiction of the commission and how the commission responded to the complaint; and

(2) tracking and categorizing the sources and types of complaints filed with the commission and of violations of this chapter or a rule adopted under this chapter.

(b) The commission shall analyze the complaint and violation data maintained under Subsection (a) to identify trends and areas that may require additional regulation or enforcement.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 11, eff. September 1, 2009.

Sec. 1701.204. PUBLIC PARTICIPATION. (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the commission's jurisdiction.

(b) The commission shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the commission's programs and services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. TRAINING PROGRAMS AND SCHOOLS**

Sec. 1701.251. TRAINING PROGRAMS; INSTRUCTORS. (a) The commission shall establish and maintain training programs for officers, county jailers, and telecommunicators. The training shall be conducted by the commission staff or by other agencies and institutions the commission considers appropriate.

(b) The commission may authorize reimbursement for a political subdivision or state agency as authorized by the legislature for expenses incurred in attending a training program.

(c) The commission may:

(1) issue or revoke the license of a school operated by or for this state or a political subdivision of this state specifically

for training officers, county jailers, recruits, or telecommunicators;

(2) operate schools and conduct preparatory, in-service, basic, and advanced courses in the schools, as the commission determines appropriate, for officers, county jailers, recruits, and telecommunicators;

(3) issue a license to a person to act as a qualified instructor under conditions that the commission prescribes; and

(4) consult and cooperate with a municipality, county, special district, state agency or other governmental agency, or a university, college, junior college, or other institution, concerning the development of schools and training programs for officers, county jailers, and telecommunicators.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 2, eff. January 1, 2014.

Sec. 1701.252. PROGRAM AND SCHOOL REQUIREMENTS; ADVISORY BOARD. (a) Unless a school has created an advisory board for developing a curriculum, the commission may not issue a license to the school or approve a training program or course for officers or county jailers other than a program created by the Bill Blackwood Law Enforcement Management Institute of Texas.

(b) At least one-third of the members of an advisory board under Subsection (a) must be public members who meet the qualifications required of a public member of the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.253. SCHOOL CURRICULUM. (a) The commission shall establish minimum curriculum requirements for preparatory and advanced courses and programs for schools subject to approval under Section 1701.251(c)(1).

(b) In establishing requirements under this section, the commission shall require courses and programs to provide training in:

(1) the investigation and documentation of cases that involve:



(A) child abuse or neglect;  
(B) family violence; and  
(C) sexual assault;  
(2) issues concerning sex offender characteristics; and  
(3) crime victims' rights under Chapter 56, Code of Criminal Procedure, and Chapter 57, Family Code, and the duty of law enforcement agencies to ensure that a victim is afforded those rights.

(c) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on civil rights, racial sensitivity, and cultural diversity for persons licensed under this chapter.

(d) Training in documentation of cases required by Subsection (b) shall include instruction in:

(1) making a written account of the extent of injuries sustained by the victim of an alleged offense;  
(2) recording by photograph or videotape the area in which an alleged offense occurred and the victim's injuries; and  
(3) recognizing and recording a victim's statement that may be admissible as evidence in a proceeding concerning the matter about which the statement was made.

(e) As part of the minimum curriculum requirements relating to the vehicle and traffic laws of this state, the commission shall require an education and training program on laws relating to the operation of motorcycles and to the wearing of protective headgear by motorcycle operators and passengers. In addition, the commission shall require education and training on motorcycle operator profiling awareness and sensitivity training.

(f) Training for officers and recruits in investigation of cases required by Subsection (b)(1)(B) shall include instruction in preventing dual arrest whenever possible and conducting a thorough investigation to determine which person is the predominant aggressor when allegations of family violence from two or more opposing persons are received arising from the same incident.

(g) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on asset forfeiture under Chapter 59, Code of Criminal Procedure, for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is

licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(h) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(i) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on identity theft under Section 32.51, Penal Code, for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(j) As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. An officer may not satisfy the requirements of this section or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(k) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program for officers licensed under this chapter that covers the laws of this state and of the United States pertaining to peace officers.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 657, Sec. 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 897, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 929, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th

Leg., ch. 947, Sec. 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1034, Sec. 14, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14.007, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1326, Sec. 8, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 393 (S.B. 1473), Sec. 3, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 12, eff. September 1, 2009.

Sec. 1701.254. RISK ASSESSMENT AND INSPECTIONS. (a) The commission may visit and inspect a school conducting a training course for officers, county jailers, telecommunicators, or recruits and make necessary evaluations to determine if the school complies with this chapter and commission rules.

(b) The commission shall develop a risk assessment method to determine the relative performance of schools conducting training courses for officers, county jailers, telecommunicators, or recruits. The commission shall base its schedule for inspection of schools on the results of the risk assessment.

(c) The risk assessment method must:

(1) consider the scores of students enrolled in a school on the basic peace officer examination;

(2) consider the past inspection records of a school;

(3) consider a self-assessment performed by a school in a noninspection year; and

(4) include a random element to ensure periodic inspection of each school.

(d) The commission by rule shall establish a system for placing a training provider on at-risk probationary status. The rules must prescribe:

(1) the criteria to be used by the commission in determining whether to place a training provider on at-risk probationary status;

(2) a procedure and timeline for imposing corrective conditions on a training provider placed on at-risk probationary status and for notifying the provider regarding those conditions; and

(3) a procedure for tracking a training provider's progress toward compliance with any corrective conditions imposed on the

provider by the commission under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 13, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 5, eff. September 1, 2011.

Sec. 1701.255. ENROLLMENT QUALIFICATIONS. (a) The commission by rule shall establish minimum qualifications for a person to enroll in a training program under Section 1701.251(a) that provides instruction in defensive tactics, arrest procedures, firearms, or use of a motor vehicle for law enforcement purposes.

(b) A person who is disqualified by law to be an officer or county jailer may not enroll in a training program described by Subsection (a).

(c) A person may not enroll in a peace officer training program under Section 1701.251(a) unless the person has received:

- (1) a high school diploma;
- (2) a high school equivalency certificate; or
- (3) an honorable discharge from the armed forces of the United States after at least 24 months of active duty service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1441, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 14, eff. September 1, 2009.

Sec. 1701.256. INSTRUCTION IN WEAPONS PROFICIENCY REQUIRED. A peace officer training program under Section 1701.251(a) must provide instruction in weapons proficiency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.257. FIREARMS TRAINING PROGRAM FOR SUPERVISION OFFICERS. (a) The commission and the Texas Department of Criminal

Justice by rule shall adopt a memorandum of understanding that establishes each agency's respective responsibilities in developing a basic training program in the use of firearms by community supervision and corrections department officers and parole officers. The program established under the memorandum of understanding must provide instruction in:

- (1) legal limitations on the use of firearms and on the powers and authority of the officers;
- (2) range firing and procedure;
- (3) firearms safety and maintenance; and
- (4) other topics determined by each agency to be necessary for the responsible use of firearms by the officers.

(b) The commission shall administer the training program and shall issue a certificate of firearms proficiency to each community supervision and corrections department officer or parole officer the commission determines has successfully completed the program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.258. EDUCATION AND TRAINING PROGRAMS ON TRAFFICKING OF PERSONS. (a) The commission by rule shall require an officer first licensed by the commission on or after January 1, 2011, to complete within a reasonable time after obtaining the license a one-time basic education and training program on the trafficking of persons. The program must:

- (1) consist of at least four hours of training; and
- (2) include a review of the substance of Sections 20A.02 and 43.05, Penal Code.

(b) The commission shall make available to each officer a voluntary advanced education, instruction, and training program on the trafficking of persons and compelling prostitution prohibited under Sections 20A.02 and 43.05, Penal Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1002 (H.B. 4009), Sec. 5, eff. September 1, 2009.

Sec. 1701.259. FIREARMS TRAINING PROGRAM FOR JUVENILE PROBATION OFFICERS. (a) The commission and the Texas Juvenile Probation Commission by rule shall adopt a memorandum of understanding that

establishes a training program in the use of firearms by juvenile probation officers. The memorandum of understanding must establish a program that provides instruction in:

(1) legal limitations on the use of firearms and on the powers and authority of juvenile probation officers;

(2) range firing and procedure, and firearms safety and maintenance; and

(3) other topics determined by the commission and the Texas Juvenile Probation Commission to be necessary for the responsible use of firearms by juvenile probation officers.

(b) The commission shall administer the training program and shall issue a certificate of firearms proficiency to each juvenile probation officer the commission determines has successfully completed the program described by Subsection (a).

(c) The commission may establish reasonable and necessary fees for the administration of this section.

(d) This section does not affect the sovereign immunity of the state, an agency of the state, or a political subdivision of the state.

Added by Acts 2009, 81st Leg., R.S., Ch. 794 (S.B. 1237), Sec. 5, eff. June 19, 2009.

Redesignated from Occupations Code, Section 1701.258 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(47), eff. September 1, 2011.

Sec. 1701.260. TRAINING FOR HOLDERS OF LICENSE TO CARRY CONCEALED HANDGUN; CERTIFICATION OF ELIGIBILITY FOR APPOINTMENT AS SCHOOL MARSHAL. (a) The commission shall establish and maintain a training program open to any employee of a school district or open-enrollment charter school who holds a license to carry a concealed handgun issued under Subchapter H, Chapter 411, Government Code. The training may be conducted only by the commission staff or a provider approved by the commission.

(b) The commission shall collect from each person who participates in the training program identifying information that includes the person's name, the person's date of birth, the license number of the license issued to the person under Subchapter H, Chapter 411, Government Code, and the address of the person's place

of employment.

(c) The training program shall include 80 hours of instruction designed to:

- (1) emphasize strategies for preventing school shootings and for securing the safety of potential victims of school shootings;
- (2) educate a trainee about legal issues relating to the duties of peace officers and the use of force or deadly force in the protection of others;
- (3) introduce the trainee to effective law enforcement strategies and techniques;
- (4) improve the trainee's proficiency with a handgun; and
- (5) enable the trainee to respond to an emergency situation requiring deadly force, such as a situation involving an active shooter.

(d) The commission, in consultation with psychologists, shall devise and administer to each trainee a psychological examination to determine whether the trainee is psychologically fit to carry out the duties of a school marshal in an emergency shooting or situation involving an active shooter. The commission may license a person under this section only if the results of the examination indicate that the trainee is psychologically fit to carry out those duties.

(e) The commission shall charge each trainee a reasonable fee to cover the cost to the commission of conducting the program. The commission shall charge each person seeking renewal of a school marshal license a reasonable fee to cover the cost to the commission of renewing the person's license.

(f) The commission shall license a person who is eligible for appointment as a school marshal who:

- (1) completes training under this section to the satisfaction of the commission staff; and
- (2) is psychologically fit to carry out the duties of a school marshal as indicated by the results of the psychological examination administered under this section.

(g) A person's license under this section expires on the first birthday of the person occurring after the second anniversary of the date the commission licenses the person. A renewed school marshal license expires on the person's birth date, two years after the expiration of the previous license.

(h) A person may renew the school marshal license under this section by:

(1) successfully completing a renewal course designed and administered by the commission, which such license renewal training will not exceed 16 hours combined of classroom and simulation training;

(2) demonstrating appropriate knowledge on an examination designed and administered by the commission;

(3) demonstrating handgun proficiency to the satisfaction of the commission staff; and

(4) demonstrating psychological fitness on the examination described in Subsection (d).

(i) The commission shall revoke a person's school marshal license if the commission is notified by the Department of Public Safety that the person's license to carry a concealed handgun issued under Subchapter H, Chapter 411, Government Code, has been suspended or revoked. A person whose school marshal license is revoked may obtain recertification by:

(1) furnishing proof to the commission that the person's concealed handgun license has been reinstated; and

(2) completing the initial training under Subsection (c) to the satisfaction of the commission staff, paying the fee for the training, and demonstrating psychological fitness on the psychological examination described in Subsection (d).

(j) The commission shall submit the identifying information collected under Subsection (b) for each person licensed by the commission under this section to:

(1) the director of the Department of Public Safety;

(2) the person's employer, if the person is employed by a school district or open-enrollment charter school;

(3) the chief law enforcement officer of the local municipal law enforcement agency if the person is employed at a campus of a school district or open-enrollment charter school located within a municipality;

(4) the sheriff of the county if the person is employed at a campus of a school district or open-enrollment charter school that is not located within a municipality; and

(5) the chief administrator of any peace officer commissioned under Section 37.081, Education Code, if the person is employed at a school district that has commissioned a peace officer under that section.

(k) The commission shall immediately report the expiration or



revocation of a school marshal license to the persons listed in Subsection (j).

(1) Identifying information about a person collected or submitted under this section is confidential, except as provided by Subsection (j), and is not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 655 (H.B. 1009), Sec. 5, eff. June 14, 2013.

#### **SUBCHAPTER G. LICENSE REQUIREMENTS; DISQUALIFICATIONS AND EXEMPTIONS**

Sec. 1701.301. LICENSE REQUIRED. Except as provided by Sections 1701.310, 1701.311, and 1701.405, a person may not appoint or employ a person to serve as an officer, county jailer, school marshal, public security officer, or telecommunicator unless the person holds an appropriate license issued by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 655 (H.B. 1009), Sec. 7, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 3, eff. January 1, 2014.

Sec. 1701.302. CERTAIN ELECTED LAW ENFORCEMENT OFFICERS; LICENSE REQUIRED. (a) An officer, including a sheriff, elected under the Texas Constitution or a statute or appointed to fill a vacancy in an elective office must obtain a license from the commission not later than the second anniversary of the date the officer takes office.

(b) The commission shall establish requirements for issuing the license and for revocation, suspension, or denial of the license.

(c) An officer to whom this section applies who does not obtain the license by the required date or does not remain licensed is incompetent and is subject to removal from office under Section 665.052, Government Code, or another removal statute.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.303. LICENSE APPLICATION; DUTIES OF APPOINTING ENTITY. (a) A law enforcement agency or governmental entity that hires a person for whom a license is sought must file an application with the commission as provided by commission rule.

(b) A person who appoints an officer or county jailer licensed by the commission shall notify the commission not later than the 30th day after the date of the appointment. If the person appoints an individual who previously served as an officer or county jailer and the appointment occurs after the 180th day after the last date of service as an officer or county jailer, the person must have on file for the officer or county jailer in a form readily accessible to the commission:

- (1) new criminal history record information;
- (2) a new declaration of psychological and emotional health and lack of drug dependency or illegal drug use; and
- (3) two completed fingerprint cards.

(c) A person who appoints or employs a telecommunicator licensed by the commission shall notify the commission not later than the 30th day after the date of the appointment or employment. If the person appoints or employs an individual who previously served as a telecommunicator and the appointment or employment occurs after the 180th day after the last date of service as a telecommunicator, the person must have on file in a form readily accessible to the commission:

- (1) new criminal history record information; and
- (2) two completed fingerprint cards.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 4, eff. January 1, 2014.

Sec. 1701.304. EXAMINATION. (a) The commission shall conduct an examination for each type of license issued by the commission at least four times each year at times and places designated by the commission. The commission shall:

- (1) prescribe the content of an examination for each type of license;
- (2) include in each examination a written examination that

tests the applicant's knowledge of the appropriate occupation; and

(3) prescribe standards for acceptable performance on each examination.

(b) The commission by rule shall establish minimum qualifications for a person to be examined under this section. A person who is disqualified by law to be an officer or county jailer may not take an examination under this section.

(c) A law enforcement agency may request the commission to conduct examinations required by this chapter in the jurisdiction served by the agency. The commission may conduct the examinations in the jurisdiction if:

(1) the commission determines that doing so will not place a significant hardship on the commission's resources; and

(2) the requesting law enforcement agency reimburses the commission for additional costs incurred in conducting the examination in the agency's jurisdiction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.305. EXAMINATION RESULTS. (a) The commission shall notify each examinee of the examination results not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the commission shall notify each examinee of the examination results not later than the 14th day after the date the commission receives the results from the testing service.

(b) If notice of the results of an examination graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commission shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the commission shall provide to the person an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.306. PSYCHOLOGICAL AND PHYSICAL EXAMINATION. (a) The commission may not issue a license to a person unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

(c) The commission shall adopt rules that:

(1) relate to appropriate standards and measures to be used by a law enforcement agency in reporting the declarations made under Subsection (a); and

(2) provide for exceptional circumstances in the administration of the examination of the applicant's psychological and emotional health, including permitting the examination to be made by a qualified licensed physician instead of a psychologist or psychiatrist.

(d) The commission may order an applicant to submit to an examination described by Subsection (a) by a psychologist, psychiatrist, or physician appointed by the commission if the commission:

(1) has cause to believe that a law enforcement agency failed to follow commission rules relating to an examination; or

(2) discovers that the applicant has submitted a false declaration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1224 (S.B. 542), Sec. 2, eff. September 1, 2011.

Sec. 1701.307. ISSUANCE OF OFFICER OR COUNTY JAILER LICENSE.

(a) The commission shall issue an appropriate officer or county jailer license to a person who, as required by this chapter:

- (1) submits an application;
- (2) completes the required training;
- (3) passes the required examination;
- (4) is declared to be in satisfactory psychological and emotional health and free from drug dependency or illegal drug use; and
- (5) demonstrates weapons proficiency.

(b) The commission may issue a permanent license to a person who meets the requirements of this chapter and the rules prescribed by the commission to serve as an officer.

(c) The commission may issue a temporary or permanent license to a person to serve as a county jailer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 878 (H.B. 1955), Sec. 2, eff. June 15, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 5, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 6, eff. January 1, 2014.

Sec. 1701.3071. ISSUANCE OF TELECOMMUNICATOR LICENSE. (a) The commission shall issue a telecommunicator license to a person who:

- (1) submits an application;
- (2) completes the required training;
- (3) passes the required examination; and
- (4) meets any other requirement of this chapter and the rules prescribed by the commission to qualify as a telecommunicator.

(b) The commission may issue a temporary or permanent license to a person to act as a telecommunicator.

Added by Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 7, eff. January 1, 2014.

Sec. 1701.3075. QUALIFIED APPLICANT AWAITING APPOINTMENT. (a) A person who meets the requirements set forth in Section 1701.307(a) has the same reporting responsibilities toward the commission under rules adopted by the commission as a license holder who has already

been appointed as a peace officer.

(b) The commission may determine that a person who meets the requirements under Section 1701.307(a) is ineligible for appointment as a peace officer based on events that occur after the person meets the requirements in Section 1701.307(a) but before the person is appointed.

Added by Acts 2009, 81st Leg., R.S., Ch. 701 (H.B. 2799), Sec. 1, eff. September 1, 2009.

Sec. 1701.308. WEAPONS PROFICIENCY. The commission shall require a person applying for a peace officer license to demonstrate weapons proficiency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.309. AGE REQUIREMENT. The commission by rule shall set 21 years of age as the minimum age for obtaining a license as an officer. The rules must provide that a person at least 18 years of age may be issued a license as an officer if the person has:

- (1) completed and received credit for at least 60 hours of study at an accredited college or university or received an associate degree from an accredited college or university; or
- (2) received an honorable discharge from the United States armed forces after at least two years of service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.310. APPOINTMENT OF COUNTY JAILER; TRAINING REQUIRED. (a) Except as provided by Subsection (e), a person may not be appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory training program, as required by the commission, in the operation of a county jail at a school operated or licensed by the commission.

(b) A county jailer appointed on a temporary basis who does not satisfactorily complete the preparatory training program before the first anniversary of the date that the person is appointed shall be removed from the position. A temporary appointment may not be

renewed, except that not earlier than the first anniversary of the date that a person is removed under this subsection, the sheriff may petition the commission for reinstatement of the person to a temporary appointment.

(c) A county jailer serving under permanent appointment before September 1, 1979, regardless of whether the person's employment was terminated before that date because of failure to satisfy standards adopted under Chapter 511, Government Code, is not required to meet a requirement of this section as a condition of continued employment or promotion unless:

(1) in an attempt to meet the standards the person took an examination and failed or was not allowed to finish the examination because the person acted dishonestly in regard to the examination;

(2) the person forged a document purporting to show that the person meets the standards; or

(3) the person seeks a new appointment as a county jailer on or after September 1, 1984.

(d) A county jailer serving under permanent appointment before September 1, 1979, is eligible to attend training courses in the operation of a county jail, subject to commission rules.

(e) A person trained and certified by the Texas Department of Criminal Justice to serve as a corrections officer in that agency's correctional institutions division is not required to complete the training requirements of this section to be appointed a part-time county jailer. Examinations under Section 1701.304 and psychological examinations under Section 1701.306 apply.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.502(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.142, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1224 (S.B. 542), Sec. 3, eff. September 1, 2011.

Sec. 1701.311. PROVISIONAL LICENSE FOR WORKFORCE SHORTAGE. (a) The commission shall adopt rules to allow a law enforcement agency to petition for issuance of a provisional license for an officer if the

agency proves that it has a workforce shortage.

(b) Except in an emergency, a peace officer holding a provisional license may not be required to work at the peace officer's employing agency and attend a commission-approved basic preparatory school for more than a total of 40 hours a week.

(c) An agency employing a peace officer who holds a provisional license may contract with the peace officer for reimbursement of the cost of a basic preparatory training course if the peace officer voluntarily resigns from the agency before a date specified in the contract that is not later than the first anniversary of the date the officer is appointed. The contract must state the cost of the course.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.312. DISQUALIFICATION: FELONY CONVICTION OR PLACEMENT ON COMMUNITY SUPERVISION. (a) A person who has been convicted of a felony is disqualified to be an officer, public security officer, telecommunicator, or county jailer, and the commission may not issue a license to, and a law enforcement agency may not appoint or employ, the person.

(b) For purposes of this section and Section 1701.502, a person is convicted of a felony if a court enters an adjudication of guilt against the person on a felony offense under the laws of this or another state or the United States, regardless of whether:

(1) the sentence is subsequently probated and the person is discharged from community supervision;

(2) the accusation, complaint, information, or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(3) the person is pardoned for the offense, unless the pardon is granted expressly for subsequent proof of innocence.

(c) The commission, on receipt of a certified copy of a court's judgment under Article 42.011, Code of Criminal Procedure, shall note on the person's licensing records the conviction or community supervision indicated by the judgment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. [3823](#)), Sec. 6, eff.



September 1, 2011.

Sec. 1701.313. DISQUALIFICATION: CONVICTION OF BARRATRY. (a) A person who has been convicted of barratry under Section 38.12, Penal Code, is disqualified to be an officer, telecommunicator, or county jailer, and the commission may not issue a license to the person.

(b) For purposes of this section and Section 1701.503, a person is convicted of barratry if a court enters an adjudication of guilt against the person regardless of whether:

(1) the sentence is subsequently probated and the person is discharged from community supervision;

(2) the accusation, complaint, information, or indictment against the person is dismissed following community supervision; or

(3) the person is pardoned for the offense, unless the pardon is granted expressly for subsequent proof of innocence.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 7, eff. September 1, 2011.

Sec. 1701.314. EXEMPTION: OFFICER APPOINTED BEFORE SEPTEMBER 1, 1970. A peace officer serving under a permanent appointment before September 1, 1970, is not required to obtain a license as a condition of tenure, continued employment, or promotion unless the officer seeks a new appointment. The officer is eligible to attend peace officer training courses subject to commission rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.315. LICENSE REQUIREMENTS FOR PERSONS WITH MILITARY SPECIAL FORCES TRAINING. (a) In this section, "special forces" means a special forces component of the United States armed forces, including:

(1) the United States Army Special Forces;

(2) the United States Navy SEALs;

(3) the United States Air Force Pararescue;

(4) the United States Marine Corps Force Reconnaissance;  
and

(5) any other component of the United States Special Operations Command approved by the commission.

(b) The commission shall adopt rules to allow an applicant to qualify to take an examination described by Section 1701.304 if the applicant:

(1) has served in the special forces;

(2) has successfully completed a special forces training course and provides to the commission documentation verifying completion of the course;

(3) completes a supplemental peace officer training course;  
and

(4) completes any other training required by the commission after the commission has reviewed the applicant's military training.

(c) Commission rules adopted under Subsection (b) shall include rules:

(1) to determine acceptable forms of documentation that satisfy the requirements of Subsection (b);

(2) under which the commission may waive any other license requirement for an applicant described by Subsection (b) based on other relevant military training the applicant has received, as determined by the commission, including intelligence or medical training; and

(3) to establish an expedited application process for an applicant described by Subsection (b).

(d) The commission shall review the content of the training course for each special forces component described by Subsection (a) and in adopting rules under Subsection (b) specify the training requirements an applicant who has completed that training course must complete and the training requirements from which an applicant who has completed that training course is exempt.

Added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 4, eff. May 18, 2013.

Sec. 1701.316. REACTIVATION OF PEACE OFFICER LICENSE. (a) The commission shall adopt rules establishing requirements for reactivation of a peace officer's license after a break in

employment.

(b) The commission may consider employment as a peace officer in another state in determining whether the person is required to obtain additional training or testing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.3161. REACTIVATION OF PEACE OFFICER LICENSE: RETIRED PEACE OFFICERS. (a) In this section, "retired peace officer" means a person who served as a peace officer in this state who:

(1) is not currently serving as an elected, appointed, or employed peace officer under Article 2.12, Code of Criminal Procedure, or other law;

(2) was eligible to retire from a law enforcement agency in this state or was ineligible to retire only as a result of an injury received in the course of the officer's employment with the law enforcement agency; and

(3) is eligible to receive a pension or annuity for service as a law enforcement officer in this state or is ineligible to receive a pension or annuity only because the law enforcement agency that employed the officer does not offer a pension or annuity to its employees.

(b) The commission shall adopt rules for the reactivation of a retired peace officer's license after a break in employment. The rules must allow a retired peace officer to reactivate the officer's license by completing the continuing education requirements prescribed by Section 1701.351 and completing any other continuing education requirement imposed by law in lieu of successfully completing any examination required by the commission for reactivation.

(c) The commission may waive the reinstatement fee established for the reactivation of a peace officer's license for a retired peace officer who is eligible for reactivation as provided by Subsection (b).

Added by Acts 2007, 80th Leg., R.S., Ch. 878 (H.B. 1955), Sec. 3, eff. June 15, 2007.

Sec. 1701.317. LIMITATION ON INFORMATION REQUIRED FOR LICENSE

RENEWAL. The requirements and procedures adopted by the commission for the renewal of a license issued under this chapter:

(1) may not require an applicant to provide unchanged criminal history information already included in one or more of the applicant's previous applications for licensure or for license renewal filed with the commission; and

(2) may require the applicant to provide only information relevant to the period occurring since the date of the applicant's last application for licensure or for license renewal, as applicable, including information relevant to any new requirement applicable to the license held by the applicant.

Added by Acts 2009, 81st Leg., R.S., Ch. 332 (H.B. 846), Sec. 2, eff. September 1, 2009.

#### **SUBCHAPTER H. CONTINUING EDUCATION AND YEARLY WEAPONS PROFICIENCY**

Sec. 1701.351. CONTINUING EDUCATION REQUIRED FOR PEACE OFFICERS. (a) Each peace officer shall complete at least 40 hours of continuing education programs once every 24 months. The commission may suspend the license of a peace officer who fails to comply with this requirement.

(a-1) As part of the continuing education programs under Subsection (a), a peace officer must complete a training and education program that covers recent changes to the laws of this state and of the United States pertaining to peace officers.

(b) The commission by rule shall provide for waiver of the requirements of this section when mitigating circumstances exist.

(c) The commission shall credit a peace officer with meeting the continuing education requirements of this section if during the relevant 24-month period the peace officer serves on active duty as a member of the United States military for at least 12 months or serves as an elected member of the legislature. Credit for continuing education under this subsection does not affect any requirement to demonstrate continuing weapons proficiency under Section 1701.355.

(d) A peace officer who is second in command to a police chief of a law enforcement agency and who attends a continuing education program for command staff provided by the Bill Blackwood Law Enforcement Management Institute of Texas under Section 96.641, Education Code, is exempt from the continuing education requirements

of this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1157, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1236 (H.B. 1438), Sec. 1, eff. June 18, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 15, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 602 (S.B. 244), Sec. 3, eff. September 1, 2011.

Sec. 1701.352. CONTINUING EDUCATION PROGRAMS. (a) The commission shall recognize, prepare, or administer continuing education programs for officers and county jailers.

(b) The commission shall require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by the commission and consists of:

(1) topics selected by the agency; and

(2) for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:

(A) civil rights, racial sensitivity, and cultural diversity;

(B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments; and

(C) unless determined by the agency head to be inconsistent with the officer's assigned duties:

(i) the recognition and documentation of cases that involve child abuse or neglect, family violence, and sexual assault; and

(ii) issues concerning sex offender characteristics.

(c) A course provided under Subsection (b) may use instructional materials developed by the agency or its trainers or by entities having training agreements with the commission in addition to materials included in curricula developed by the commission.

(d) A peace officer appointed to the officer's first supervisory position must receive in-service training on supervision as part of the course provided for the officer under Subsection (b) during the 24-month period after the date of that appointment.

(e) The commission may require a state, county, special district, or municipal agency that appoints or employs a reserve law enforcement officer, county jailer, or public security officer to provide each of those persons with education and training in civil rights, racial sensitivity, and cultural diversity at least once every 48 months.

(f) Training in documentation of cases required by Subsection (b) shall include instruction in:

(1) making a written account of the extent of injuries sustained by the victim of an alleged offense;

(2) recording by photograph or videotape the area in which an alleged offense occurred and the victim's injuries; and

(3) recognizing and recording a victim's statement that may be admissible as evidence in a proceeding concerning the matter about which the statement was made.

(g) The training and education program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments under Subsection (b)(2)(B) may not be provided as an online course. The commission shall:

(1) determine best practices for interacting with persons with mental impairments, in consultation with the Bill Blackwood Law Enforcement Management Institute of Texas; and

(2) review the education and training program under Subsection (b)(2)(B) at least once every 24 months.

(h) The commission shall require a state, county, special district, or municipal agency that employs telecommunicators to provide each telecommunicator with 24 hours of crisis communications instruction approved by the commission. The instruction must be provided on or before the first anniversary of the telecommunicator's first day of employment.

(i) A state agency, county, special district, or municipality that appoints or employs a telecommunicator shall provide training to the telecommunicator of not less than 20 hours during each 24-month period of employment. The training must be approved by the commission and consist of topics selected by the commission and the employing entity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1157, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 16, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 8, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 8, eff. January 1, 2014.

Sec. 1701.353. CONTINUING EDUCATION PROCEDURES. (a) The commission by rule shall adopt procedures to:

(1) ensure the timely and accurate reporting by agencies and persons licensed under this chapter of information related to training programs offered under this subchapter, including procedures for creating training records for license holders; and

(2) provide adequate notice to agencies and license holders of impending noncompliance with the training requirements of this subchapter so that the agencies and license holders may comply within the 24-month period or 48-month period, as appropriate.

(b) The commission shall require agencies to report to the commission in a timely manner the reasons that a license holder is in noncompliance after the agency receives notice by the commission of the license holder's noncompliance. The commission shall, following receipt of an agency's report or on a determination that the agency has failed to report in a timely manner, notify the license holder by certified mail of the reasons the license holder is in noncompliance and that the commission at the request of the license holder will hold a hearing as provided by this subsection if the license holder fails to obtain the required training within 60 days after the date the license holder receives notice under this subsection. The commission shall conduct a hearing consistent with Section 1701.504 if the license holder claims that:

(1) mitigating circumstances exist; or

(2) the license holder failed to complete the required training because the license holder's employing agency did not provide an adequate opportunity for the license holder to attend the required training course.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1236 (H.B. 1438), Sec. 2, eff. June 18, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1224 (S.B. 542), Sec. 4, eff. September 1, 2011.

Sec. 1701.354. CONTINUING EDUCATION FOR DEPUTY CONSTABLES. (a) If the commission requires a state, county, special district, or municipal agency that employs a deputy constable to provide the deputy constable with a training program under Section 1701.352, the commission shall require the deputy constable to attend at least 20 hours of instruction in civil process.

(b) The commission shall adopt rules and procedures concerning a civil process course, including rules providing for:

- (1) approval of course content and standards; and
- (2) issuance of course credit.

(c) The commission may waive the instruction requirements for a deputy constable under this section:

(1) if a constable requests a waiver for the deputy constable based on a representation that the deputy constable's duty assignment does not involve civil process responsibilities; or

(2) if the deputy constable requests a waiver because of hardship and the commission determines that a hardship exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 735 (H.B. 2574), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 954 (H.B. 1588), Sec. 3, eff. June 18, 2005.

Reenacted by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 12.001, eff. September 1, 2007.

Sec. 1701.3545. INITIAL TRAINING AND CONTINUING EDUCATION FOR CONSTABLES. (a) A public institution of higher education selected by the commission shall establish and offer a program of initial training and a program of continuing education for constables. The



curriculum for each program must relate to law enforcement management and civil process issues. The institution selected under this subsection shall develop the curriculum for the programs. The curriculum must be approved by the commission.

(b) Each constable must complete at least 40 hours of continuing education provided by the selected institution under this section each 48-month period. The commission by rule shall establish a uniform 48-month continuing education training period.

(c) An individual appointed or elected to that individual's first position as constable must complete at least 40 hours of initial training for new constables in accordance with Subsections (d) and (e).

(d) A newly appointed or elected constable shall complete the initial training program for new constables not later than the second anniversary of that individual's appointment or election as constable. The initial training program for new constables is in addition to the initial training required by this chapter. The commission by rule shall establish that the first continuing education training period for an individual under Subsection (b) begins on the first day of the first uniform continuing education training period that follows the date the individual completed the initial training program.

(e) The institution selected under Subsection (a) by rule may provide for the waiver of:

(1) all or part of the required 40 hours of initial training for new constables to the extent the new constable has satisfactorily completed equivalent training during the 24 months preceding the individual's appointment or election; or

(2) the continuing education requirements of Subsection (b) for an individual who has satisfactorily completed equivalent continuing education during the preceding 24 months.

(f) An individual who is subject to the continuing education requirements of Subsection (b) is exempt from other continuing education requirements under this subchapter.

(g) The commission shall establish procedures to annually determine the status of the peace officer license of each elected constable and to ensure that constables comply with this section. The commission shall forward to the attorney general's office documentation for each constable who does not comply with this section. A constable who does not comply with this section forfeits

the office and the attorney general shall institute a quo warranto proceeding under Chapter 66, Civil Practice and Remedies Code, to remove the constable from office.

(h) To the extent of a conflict between this section and any other law, this section controls.

Added by Acts 2005, 79th Leg., Ch. 954 (H.B. 1588), Sec. 2, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 622 (H.B. 487), Sec. 1, eff. June 15, 2007.

Sec. 1701.355. CONTINUING DEMONSTRATION OF WEAPONS PROFICIENCY.

(a) An agency that employs one or more peace officers shall designate a firearms proficiency officer and require each peace officer the agency employs to demonstrate weapons proficiency to the firearms proficiency officer at least annually. The agency shall maintain records of the weapons proficiency of the agency's peace officers.

(b) On request, the commission may waive the requirement that a peace officer demonstrate weapons proficiency on a determination by the commission that the requirement causes a hardship.

(c) The commission by rule shall define weapons proficiency for purposes of this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 222 (S.B. 1303), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 18, eff. September 1, 2009.

Sec. 1701.356. CERTAIN OFFICERS: REACTIVATION AND CONTINUING EDUCATION NOT REQUIRED. (a) An honorably retired commissioned officer of the Department of Public Safety who is a special ranger under Section 411.023, Government Code, may not be required to undergo training under Section 1701.352(b).

(b) An honorably retired commissioned officer of the Department of Public Safety who is a special ranger under Section 411.023,

Government Code, or a retired state employee and who holds a permanent license issued before January 1981 and that was current on January 1, 1995:

(1) has the same rights and privileges as any other peace officer of this state;

(2) holds, notwithstanding Section 1701.316, an active license unless the license is revoked, suspended, or probated by the commission for a violation of this chapter; and

(3) is not subject to Section 1701.351.

(c) An honorably retired commissioned officer of the Department of Public Safety who is a special ranger under Section 411.023, Government Code, or who is a special Texas Ranger under Section 411.024, Government Code, may not be required to undergo training under Section 1701.253(j).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14.009, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 920 (H.B. 2991), Sec. 2, eff. June 19, 2009.

Sec. 1701.357. WEAPONS PROFICIENCY FOR CERTAIN RETIRED PEACE OFFICERS AND FEDERAL LAW ENFORCEMENT OFFICERS AND FOR FORMER RESERVE LAW ENFORCEMENT OFFICERS. (a) This section applies only to:

(1) a peace officer;

(2) a federal criminal investigator designated as a special investigator under Article 2.122, Code of Criminal Procedure;

(3) a qualified retired law enforcement officer who is entitled to carry a concealed firearm under 18 U.S.C. Section 926C and is not otherwise described by Subdivision (1) or (2); and

(4) a former reserve law enforcement officer who served in that capacity not less than a total of 15 years with one or more state or local law enforcement agencies.

(b) The head of a state or local law enforcement agency may allow an honorably retired peace officer an opportunity to demonstrate weapons proficiency if the retired officer provides to the agency a sworn affidavit stating that:

(1) the officer:

(A) honorably retired after not less than a total of 15

years of service as a commissioned officer with one or more state or local law enforcement agencies; or

(B) before completing 15 years of service as a commissioned officer with one or more state or local law enforcement agencies, separated from employment with the agency or agencies and is a qualified retired law enforcement officer, as defined by 18 U.S.C. Section 926C;

(2) the officer's license as a commissioned officer was not revoked or suspended for any period during the officer's term of service as a commissioned officer; and

(3) the officer has no psychological or physical disability that would interfere with the officer's proper handling of a handgun.

(b-1) The head of a state or local law enforcement agency may allow a person who served as a reserve law enforcement officer as described by Subsection (a)(4) an opportunity to demonstrate weapons proficiency if the person provides to the agency a sworn affidavit stating that:

(1) the person served not less than a total of 15 years as a reserve law enforcement officer with one or more state or local law enforcement agencies;

(2) the person's appointment as a reserve law enforcement officer was not revoked or suspended for any period during the person's term of service; and

(3) the person has no psychological or physical disability that would interfere with the person's proper handling of a handgun.

(c) The agency shall establish written procedures for the issuance or denial of a certificate of proficiency under this section. The agency shall issue the certificate to a retired officer who satisfactorily demonstrates weapons proficiency under Subsection (b), provides proof that the officer is entitled to receive a pension or annuity for service with a state or local law enforcement agency or is not entitled to receive a pension or annuity only because the law enforcement agency that employed the retired officer does not offer a pension or annuity to its retired employees, and satisfies the written procedures established by the agency. The agency shall issue the certificate to a person described by Subsection (a)(4) who satisfactorily demonstrates weapons proficiency under Subsection (b-1). The agency shall maintain records of any person who holds a certificate issued under this section.

(c-1) For purposes of Subsection (c), proof that a retired

officer is entitled to receive a pension or annuity or is not entitled to receive a pension or annuity only because the agency that last employed the retired officer does not offer a pension or annuity may include a retired peace officer identification card issued under Subchapter H, Chapter 614, Government Code.

(d) A certificate issued under this section expires on the second anniversary of the date the certificate was issued. A person to whom this section applies may request an annual evaluation of weapons proficiency and issuance of a certificate of proficiency as needed to comply with applicable federal or other laws.

(e) The head of a state or local law enforcement agency may set and collect fees to recover the expenses the agency incurs in performing duties under this section.

(f) The amount of a fee set by a county law enforcement agency under Subsection (e) is subject to the approval of the commissioners court of the county. A county law enforcement agency that collects a fee under Subsection (e) shall deposit the amounts collected to the credit of the general fund of the county.

(g) A county law enforcement agency must obtain approval of the program authorized by this section from the commissioners court of the county before issuing a certificate of proficiency under this section.

(h) The head of a state law enforcement agency may allow an honorably retired federal criminal investigator or a qualified retired law enforcement officer to whom this section applies an opportunity to demonstrate weapons proficiency in the same manner as, and subject to the same requirements applicable to, an honorably retired peace officer as described by this section. The agency shall issue a certificate of proficiency to an honorably retired federal criminal investigator or a qualified retired law enforcement officer who otherwise meets the requirements of this section and shall maintain records regarding the issuance of that certificate.

(i) On request of an honorably retired officer who holds a certificate of proficiency under this section, the head of the state or local law enforcement agency from which the officer retired shall issue to the retired officer identification that indicates that the officer honorably retired from the agency. An identification under this subsection must include a photograph of the retired officer.

(j) On request of a person described by Subsection (a)(4) who holds a certificate of proficiency under this section, the head of

the state or local law enforcement agency at which the person last served as a reserve law enforcement officer shall issue to the person identification that indicates the person's status. An identification under this subsection must include a photograph of the person.

Added by Acts 2003, 78th Leg., ch. 325, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1093 (H.B. 2110), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1179 (S.B. 578), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1187 (H.B. 638), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1187 (H.B. 638), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 428 (H.B. 2068), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1080 (H.B. 3370), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1080 (H.B. 3370), Sec. 3, eff. September 1, 2013.

Sec. 1701.358. INITIAL TRAINING AND CONTINUING EDUCATION FOR POLICE CHIEFS. A police chief shall complete the initial training and continuing education required under Section 96.641, Education Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1224 (S.B. 542), Sec. 5, eff. September 1, 2011.

#### **SUBCHAPTER I. PROFESSIONAL TRAINING AND RECOGNITION**

Sec. 1701.401. PROFESSIONAL ACHIEVEMENT. (a) In this section:

(1) "Professional achievement" includes an instance in which an individual through personal initiative, fixity of purpose, persistence, or endeavor creates a program or system that has a significant positive impact on the law enforcement profession that exceeds the normal expectations of job performance.

(2) "Public service" includes an instance in which an individual through initiative creates or participates in a program or

system that has a significant positive impact on the general population of a community that exceeds the normal expectations of job performance.

(3) "Valor" includes an act of personal heroism or bravery that exceeds the normal expectations of job performance, including placing one's own life in jeopardy to save another person's life, to prevent serious bodily injury to another, or to prevent the consequences of a criminal act.

(b) The commission shall issue certificates that recognize professional achievement. For this purpose the commission shall use the employment records of the employing agency.

(c) The commission shall adopt rules for issuing achievement awards to peace officers, reserve peace officers, jailers, custodial officers, or telecommunicators who are licensed by the commission. The commission's rules shall require recommendations from an elected official of this state or a political subdivision, an administrator of a law enforcement agency, or a person holding a license issued by the commission.

(d) The awards shall be given in the name of this state and presented at the State Capitol during May of each year. At a minimum the award shall consist of a document, an appropriate medal, and a ribbon suitable for wearing on a uniform.

(e) The awards shall be issued in three areas: valor, public service, and professional achievement.

(f) The commission may present awards relating to not more than a total of 20 incidents and accomplishments each year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 174 (H.B. 1492), Sec. 1, eff. May 27, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 9, eff. January 1, 2014.

Sec. 1701.402. PROFICIENCY CERTIFICATES. (a) The commission shall issue certificates that recognize proficiency based on law enforcement training, education, and experience. For this purpose the commission shall use the employment records of the employing agency.

(b) As a requirement for a basic proficiency certificate, the commission shall require completion of local courses or programs of instruction on federal and state statutes that relate to employment issues affecting peace officers, telecommunicators, and county jailers, including:

- (1) civil service;
  - (2) compensation, including overtime compensation, and vacation time;
  - (3) personnel files and other employee records;
  - (4) management-employee relations in law enforcement organizations;
  - (5) work-related injuries;
  - (6) complaints and investigations of employee misconduct;
- and
- (7) disciplinary actions and the appeal of disciplinary actions.

(c) An employing agency is responsible for providing the training required by this section.

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on asset forfeiture established by the commission under Section 1701.253(g).

(e) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(h).

(f) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on identity theft established by the commission under Section 1701.253(i).

(g) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program described by Section 1701.253 regarding de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(h) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on investigative topics established by the commission under Section 1701.253(b).

(i) As a requirement for an intermediate proficiency



certificate, an officer must complete an education and training program on civil rights, racial sensitivity, and cultural diversity established by the commission under Section 1701.253(c).

(j) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2011, an officer must complete the basic education and training program on the trafficking of persons described by Section 1701.258(a).

(k) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2015, an officer must complete an education and training program on missing and exploited children. The commission by rule shall establish the program. The program must:

- (1) consist of at least four hours of training;
- (2) include instruction on reporting an attempted child abduction to the missing children and missing persons information clearinghouse under Chapter 63, Code of Criminal Procedure;
- (3) include instruction on responding to and investigating situations in which the Internet is used to commit crimes against children; and
- (4) include a review of the substance of Chapters 20 and 43, Penal Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 929, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 947, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14.008, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1326, Sec. 9, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 393 (S.B. 1473), Sec. 4, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1002 (H.B. 4009), Sec. 6, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 17, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(48), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 9, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 571 (S.B. 742), Sec. 9, eff.

September 1, 2013.

Sec. 1701.403. INVESTIGATIVE HYPNOSIS. (a) The commission may establish minimum requirements for the training, testing, and certification of peace officers who use investigative hypnosis.

(b) A peace officer may not use a hypnotic interview technique unless the officer:

(1) completes a training course approved by the commission; and

(2) passes an examination administered by the commission that is designed to test the officer's knowledge of investigative hypnosis.

(c) The commission may issue a professional achievement or proficiency certificate to an officer who meets the requirements of Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.404. CERTIFICATION OF OFFICERS FOR MENTAL HEALTH ASSIGNMENTS. (a) The commission by rule may establish minimum requirements for the training, testing, and certification of special officers for offenders with mental impairments.

(b) The commission may certify a sheriff, sheriff's deputy, constable, other peace officer, county jailer, or justice of the peace as a special officer for offenders with mental impairments if the person:

(1) completes a training course in emergency first aid and lifesaving techniques approved by the commission;

(2) completes a training course administered by the commission on mental health issues and offenders with mental impairments; and

(3) passes an examination administered by the commission that is designed to test the person's:

(A) knowledge and recognition of the characteristics and symptoms of mental illness, mental retardation, and mental disabilities; and

(B) knowledge of mental health crisis intervention strategies for people with mental impairments.

(c) The commission may issue a professional achievement or proficiency certificate to an officer, county jailer, or justice of the peace who meets the requirements of Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1131 (H.B. 2093), Sec. 1, eff. September 1, 2009.

Sec. 1701.405. TELECOMMUNICATORS. (a) In this section:

(1) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 855, Sec. 12, eff. September 1, 2011.

(2) "Emergency" means the occurrence or imminent threat of damage, injury, or loss of life or property resulting from an extraordinary natural or man-made cause.

(3) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 855, Sec. 12, eff. September 1, 2011.

(b) This state or a political subdivision of this state may not employ a person to act as a telecommunicator unless the person:

(1) has had at least 40 hours of telecommunicator training as determined by the commission;

(2) is at least 18 years of age;

(3) holds a high school diploma or high school equivalency certificate; and

(4) holds a license to act as a telecommunicator or agrees to obtain the license not later than the first anniversary of the date of employment.

(b-1) A person employed to act as a telecommunicator who has not obtained a license to act as a telecommunicator under this chapter may not continue to act as a telecommunicator after the first anniversary of the date of employment unless the person obtains the license.

(b-2) Notwithstanding this section, an officer is not required to obtain a telecommunicator license to act as a telecommunicator.

(c) The commission shall accredit telecommunicator training programs that fulfill the minimum requirements for a telecommunicator. The commission shall adopt rules providing for the accreditation of telecommunicator training programs developed and taught by the Department of Public Safety, an institution of higher

education, including a junior college, community college, or technical school, or any other entity approved by the commission.

(d) A person who completes an accredited training program under this section may, by letter to the commission, request a written acknowledgment from the commission that the person has met the minimum requirements for a telecommunicator as determined by the commission. The request must be accompanied, in accordance with commission rules, by evidence of satisfactory completion of an accredited telecommunicator training program. On a determination by the commission that the person meets the minimum requirements for a telecommunicator, the commission shall issue the written acknowledgment to the person.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 855, Sec. 12, eff. September 1, 2011.

(f) A person performing the duties of a telecommunicator and serving under permanent appointment on and before September 1, 1987, is not required to meet the requirements of this section as a condition of continued employment.

(g) Notwithstanding this section, a person may be appointed or serve as a telecommunicator on a temporary or probationary basis or may perform the duties of a telecommunicator in an emergency.

(h) A person appointed on a temporary or probationary basis after September 1, 1987, who does not satisfactorily complete an accredited telecommunicator training program before the first anniversary of the date the person is originally appointed shall be removed from the position. The person's temporary or probationary appointment may not be extended for more than one year except that not earlier than the first anniversary of the date the person is removed under this subsection, the employing agency may petition the commission for reinstatement of the person to temporary or probationary employment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. [3823](#)), Sec. 10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. [3823](#)), Sec. 12, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. [1951](#)), Sec. 10, eff. January 1, 2014.

**SUBCHAPTER J. EMPLOYMENT RECORDS**

Sec. 1701.451. PREEMPLOYMENT REQUEST FOR EMPLOYMENT TERMINATION REPORT AND SUBMISSION OF BACKGROUND CHECK CONFIRMATION FORM. (a) Before a law enforcement agency may hire a person licensed under this chapter, the agency head or the agency head's designee must:

(1) make a request to the commission for any employment termination report regarding the person that is maintained by the commission under this subchapter; and

(2) submit to the commission on the form prescribed by the commission confirmation that the agency:

(A) conducted in the manner prescribed by the commission a criminal background check regarding the person;

(B) obtained the person's written consent on a form prescribed by the commission for the agency to view the person's employment records;

(C) obtained from the commission any service or education records regarding the person maintained by the commission; and

(D) contacted each of the person's previous law enforcement employers.

(a-1) A law enforcement agency that obtains a consent form described by Subsection (a)(2)(B) shall make the person's employment records available to a hiring law enforcement agency on request.

(b) The commission by rule shall establish a system for verifying an electronically submitted request required by Subsection (a)(1).

(c) If the commission receives from a law enforcement agency a request that complies with Subsections (a)(1) and (b), the commission employee having the responsibility to maintain any employment termination report regarding the person who is the subject of the request shall release the report to the agency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1298 (H.B. [2677](#)), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1068 (H.B. [2445](#)), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 19, eff. September 1, 2009.

Sec. 1701.452. EMPLOYMENT TERMINATION REPORT. (a) The head of a law enforcement agency or the head's designee shall submit a report to the commission on a form prescribed by the commission regarding a person licensed under this chapter who resigns or retires from employment with the law enforcement agency, whose appointment with the law enforcement agency is terminated, or who separates from the law enforcement agency for any other reason. The report must be submitted by the head or the designee not later than the seventh business day after the date the license holder:

(1) resigns, retires, is terminated, or separates from the agency; and

(2) exhausts all administrative appeals available to the license holder, if applicable.

(b) The head of a law enforcement agency or the head's designee shall include in the report required under Subsection (a) a statement on whether the license holder was honorably discharged, generally discharged, or dishonorably discharged and, as required by the commission, an explanation of the circumstances under which the person resigned, retired, or was terminated. For purposes of this subsection:

(1) "Honorably discharged" means a license holder who, while in good standing and not because of pending or final disciplinary actions or a documented performance problem, retired, resigned, or separated from employment with or died while employed by a law enforcement agency.

(2) "Generally discharged" means a license holder who:

(A) was terminated by, retired or resigned from, or died while in the employ of a law enforcement agency and the separation was related to a disciplinary investigation of conduct that is not included in the definition of dishonorably discharged; or

(B) was terminated by or retired or resigned from a law enforcement agency and the separation was for a documented performance problem and was not because of a reduction in workforce or an at-will employment decision.

(3) "Dishonorably discharged" means a license holder who:

(A) was terminated by a law enforcement agency or

retired or resigned in lieu of termination by the agency in relation to allegations of criminal misconduct; or

(B) was terminated by a law enforcement agency or retired or resigned in lieu of termination by the agency for insubordination or untruthfulness.

(c) The commission by rule may further specify the circumstances that constitute honorably discharged, dishonorably discharged, and generally discharged within the definitions provided by Subsection (b).

(d) The head of the law enforcement agency from which a license holder resigns, retires, is terminated, or separates for reasons other than death, or the head's designee, shall provide to the license holder a copy of the report. The report must be provided to the license holder not later than the seventh business day after the date the license holder:

(1) resigns, retires, is terminated, or separates from the agency; and

(2) exhausts all administrative appeals available to the license holder, if applicable.

(e) If the person who is the subject of the employment termination report is deceased, the head of the law enforcement agency or the head's designee on request shall provide a copy of the report to the person's next of kin not later than the seventh business day after the date of the request.

(f) The head of a law enforcement agency or the head's designee satisfies the obligation to provide the report required under Subsection (d) or (e) by sending by certified mail:

(1) the report required under Subsection (d) to the last known address of the license holder if the license holder is not otherwise available; or

(2) the report required under Subsection (e) to the last known address of the next of kin if the next of kin who requested the report is not otherwise available.

(g) The head of a law enforcement agency or the head's designee must submit a report under this section each time a person licensed under this chapter resigns, retires, is terminated, or separates for any other reason from the agency. The report is an official government document.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1298 (H.B. 2677), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1068 (H.B. 2445), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 399 (S.B. 545), Sec. 1, eff. September 1, 2011.

Sec. 1701.4521. LICENSE SUSPENSION FOR OFFICER DISHONORABLY DISCHARGED. (a) The commission shall suspend the license of an officer licensed under this chapter on notification that the officer has been dishonorably discharged if the officer has previously been dishonorably discharged from another law enforcement agency.

(b) An officer whose license is suspended under this section may appeal the suspension in writing to the commission not later than the 30th day after the date the officer is suspended.

(c) After a commission determination, the commission may revoke or reinstate the officer's license in accordance with rules or procedures adopted by the commission under this chapter related to revocation or reinstatement of a license. The commission shall revoke the officer's license if the officer does not appeal the suspension before the 30th day after the date the officer is suspended.

(d) The commission's decision does not affect:

(1) the employment relationship between an officer licensed under this chapter and a law enforcement agency; or

(2) any disciplinary action taken against an officer licensed under this chapter by a law enforcement agency.

Added by Acts 2007, 80th Leg., R.S., Ch. 1068 (H.B. 2445), Sec. 3, eff. September 1, 2007.

Sec. 1701.4525. PETITION FOR CORRECTION OF REPORT; HEARING.

(a) A person who is the subject of an employment termination report maintained by the commission under this subchapter may contest information contained in the report by submitting to the law enforcement agency and to the commission a written petition on a form prescribed by the commission for a correction of the report not later



than the 30th day after the date the person receives a copy of the report. On receipt of the petition, the commission shall refer the petition to the State Office of Administrative Hearings.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 399, Sec. 6, eff. September 1, 2011.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 399, Sec. 6, eff. September 1, 2011.

(d) A proceeding to contest information in an employment termination report is a contested case under Chapter 2001, Government Code.

(e) In a proceeding to contest information in an employment termination report for a report based on alleged misconduct, an administrative law judge shall determine if the alleged misconduct occurred by a preponderance of the evidence regardless of whether the person who is the subject of the report was terminated or the person resigned, retired, or separated in lieu of termination. If the alleged misconduct is not supported by a preponderance of the evidence, the administrative law judge shall order the commission to change the report. The commission shall send the changed report to the law enforcement agency that prepared the original employment termination report. The law enforcement agency shall replace the original employment termination report with the changed report.

(e-1) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 109, Sec. 3, eff. September 1, 2013.

(f) The commission shall adopt rules for the administration of this section.

(g) The commission is not considered a party in a proceeding conducted by the State Office of Administrative Hearings under this section.

Added by Acts 2005, 79th Leg., Ch. 1298 (H.B. [2677](#)), Sec. 3, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1068 (H.B. [2445](#)), Sec. 4, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. [3389](#)), Sec. 20, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 399 (S.B. [545](#)), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 399 (S.B. [545](#)), Sec. 3, eff.

September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 399 (S.B. 545), Sec. 6, eff.

September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 109 (S.B. 965), Sec. 1, eff.

September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 109 (S.B. 965), Sec. 2, eff.

September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 109 (S.B. 965), Sec. 3, eff.

September 1, 2013.

Sec. 1701.453. MAINTENANCE OF REPORTS AND STATEMENTS. The commission shall maintain a copy of each report and statement submitted to the commission under this subchapter until at least the 10th anniversary of the date on which the report or statement is submitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 21, eff.

September 1, 2009.

Sec. 1701.454. CONFIDENTIALITY. (a) All information submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a commission member or other person may not release information submitted under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 182, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1298 (H.B. 2677), Sec. 4, eff.

September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 399 (S.B. 545), Sec. 4, eff.

September 1, 2011.

Sec. 1701.455. SUBPOENA. Information submitted to the commission under this subchapter is subject to subpoena only in a judicial proceeding.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 399 (S.B. 545), Sec. 5, eff. September 1, 2011.

Sec. 1701.456. IMMUNITY FROM LIABILITY. (a) The commission is not liable for civil damages for providing information contained in a report or statement maintained by the commission under this subchapter if the commission released the information as provided by this subchapter.

(b) A law enforcement agency, agency head, or other law enforcement official is not liable for civil damages for a report made by that agency or person if the report is made in good faith.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1298 (H.B. 2677), Sec. 5, eff. September 1, 2005.

Sec. 1701.457. LIMITATION ON COMMISSION AUTHORITY. This subchapter does not authorize the commission to review disciplinary action taken by a law enforcement agency against a person licensed under this chapter or to issue a subpoena to compel the production of a document prepared or maintained by the agency in connection with a disciplinary matter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.458. VENUE. Venue for the prosecution of an offense under Section 37.10, Penal Code, that arises from a report required under this subchapter lies in the county where the offense occurred or in Travis County.

Added by Acts 2007, 80th Leg., R.S., Ch. 1068 (H.B. 2445), Sec. 5,

eff. September 1, 2007.

#### **SUBCHAPTER K. DISCIPLINARY PROCEDURES**

Sec. 1701.501. DISCIPLINARY ACTION. (a) Except as provided by Subsection (d), the commission shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of:

- (1) this chapter;
- (2) the reporting requirements provided by Articles 2.132 and 2.134, Code of Criminal Procedure; or
- (3) a commission rule.

(b) The commission may establish procedures for the revocation of a license issued under this chapter.

(c) The commission by rule may adopt other necessary enforcement procedures.

(d) The commission may revoke a license issued under this chapter to an officer elected under the Texas Constitution only if the officer is convicted of:

- (1) a felony; or
- (2) a criminal offense directly involving the person's duties as an officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 279 (H.B. 488), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 22, eff. September 1, 2009.

Sec. 1701.502. FELONY CONVICTION OR PLACEMENT ON COMMUNITY SUPERVISION. (a) The commission shall immediately revoke the license of a person licensed under this chapter who is convicted of a felony.

(b) The commission shall immediately suspend the license of a person licensed under this chapter who is charged with a felony and is placed on community supervision regardless of whether the court defers further proceedings without entering an adjudication of guilt.

(c) The commission may reinstate, as provided by commission

rules, a license that is suspended under Subsection (b) when the license holder is released from community supervision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.503. BARRATRY CONVICTION. The commission shall immediately revoke the license of a person licensed under this chapter who is convicted of barratry under Section 38.12, Penal Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.504. HEARING. (a) Except as provided by Sections 1701.502 and 1701.503, if the commission proposes to suspend or revoke a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) If the commission proposes to refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.505. ADMINISTRATIVE PROCEDURE. (a) Proceedings for a disciplinary action are governed by Chapter 2001, Government Code.

(b) Rules of practice adopted by the commission under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.506. APPEAL. (a) A person dissatisfied with an action of the commission may appeal the action under Chapter 2001, Government Code. The court shall set the matter for hearing not earlier than 10 days after written notice of the appeal is given to the commission and the commission's attorney.

(b) The court may suspend an action of the commission pending a hearing. The order suspending the action takes effect when served on

the commission. The commission shall provide its attorney a copy of the petition and order.

(c) The attorney general or the district or county attorney shall represent the commission in the appeal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.507. ADMINISTRATIVE PENALTIES. (a) In addition to other penalties imposed by law, a law enforcement agency or governmental entity that violates this chapter or a rule adopted under this chapter is subject to an administrative penalty in an amount set by the commission not to exceed \$1,000 per day per violation. The administrative penalty shall be assessed in a proceeding conducted in accordance with Chapter 2001, Government Code.

(b) The amount of the penalty shall be based on:

- (1) the seriousness of the violation;
- (2) the respondent's history of violations;
- (3) the amount necessary to deter future violations;
- (4) efforts made by the respondent to correct the

violation; and

- (5) any other matter that justice may require.

(c) The commission by rule shall establish a written enforcement plan that provides notice of the specific ranges of penalties that apply to specific alleged violations and the criteria by which the commission determines the amount of a proposed administrative penalty.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 23, eff. September 1, 2009.

#### **SUBCHAPTER L. CRIMINAL PENALTY**

Sec. 1701.551. CRIMINAL PENALTY FOR APPOINTMENT OR RETENTION OF CERTAIN PERSONS. (a) A person commits an offense if the person appoints or retains another person as an officer, county jailer, or telecommunicator in violation of Section 1701.301, 1701.303, 1701.306, or 1701.405.

(b) An offense under Subsection (a) is a misdemeanor punishable by a fine of not less than \$100 and not more than \$1,000.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 11, eff. January 1, 2014.

Sec. 1701.552. CRIMINAL PENALTY FOR APPOINTMENT OF PERSON NOT CERTIFIED FOR INVESTIGATIVE HYPNOSIS. (a) A person commits an offense if the person appoints or retains another person in violation of Section 1701.403.

(b) An offense under Subsection (a) is a misdemeanor punishable by a fine of not less than \$100 and not more than \$1,000.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.553. CRIMINAL PENALTY FOR APPOINTMENT OR RETENTION OF PERSONS WITH CERTAIN CONVICTIONS. (a) A person commits an offense if the person appoints, employs, or retains an individual as an officer, public security officer, telecommunicator, or county jailer in violation of Section 1701.312 or 1701.313.

(b) An offense under Subsection (a) is a state jail felony.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 11, eff. September 1, 2011.

Sec. 1701.554. VENUE. Venue for the prosecution of an offense that arises from a violation of this chapter or in connection with the administration of this chapter lies in the county where the offense occurred or in Travis County.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 24, eff. September 1, 2009.

#### **SUBCHAPTER M. VISITING RESOURCE OFFICER IN PUBLIC SCHOOL**

Sec. 1701.601. DEFINITION. In this subchapter, "school resource officer" means a peace officer who is assigned by the

officer's employing political subdivision to provide:

- (1) a police presence at a public school;
- (2) safety or drug education to students of a public school; or
- (3) other similar services.

Added by Acts 2001, 77th Leg., ch. 923, Sec. 2, eff. Sept. 1, 2001.

Sec. 1701.602. LICENSE REQUIRED. A peace officer who is a visiting school resource officer in a public school must be licensed as provided by this chapter.

Added by Acts 2001, 77th Leg., ch. 923, Sec. 2, eff. Sept. 1, 2001.

Sec. 1701.603. FIREARMS ACCIDENT PREVENTION PROGRAM. (a) A peace officer who is a visiting school resource officer in a public elementary school shall at least once each school year offer to provide instruction to students in a firearms accident prevention program, as determined by the school district.

(b) A firearms accident prevention program must include the safety message, "Stop! Don't Touch. Leave the Area. Tell an Adult.", and may include instructional materials from the National Rifle Association Eddie Eagle GunSafe Program, including animated videos and activity books.

Added by Acts 2001, 77th Leg., ch. 923, Sec. 2, eff. Sept. 1, 2001.

**CHAPTER 1702. PRIVATE SECURITY**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1702.001. SHORT TITLE. This chapter may be cited as the Private Security Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.551(b), eff. Sept. 1, 2001.

Sec. 1702.002. DEFINITIONS. In this chapter:



(1) "Alarm system" means:

(A) electronic equipment and devices designed to detect or signal:

(i) an unauthorized entry or attempted entry of a person or object into a residence, business, or area monitored by the system; or

(ii) the occurrence of a robbery or other emergency;

(B) electronic equipment and devices using a computer or data processor designed to control the access of a person, vehicle, or object through a door, gate, or entrance into the controlled area of a residence or business; or

(C) a television camera or still camera system that:

(i) records or archives images of property or individuals in a public or private area of a residence or business; or

(ii) is monitored by security personnel or services.

(1-a) For purposes of Subdivision (1), the term "alarm system" does not include a telephone entry system, an operator for opening or closing a residential or commercial gate or door, or an accessory used only to activate a gate or door, if the system, operator, or accessory is not monitored by security personnel or a security service and does not send a signal to which law enforcement or emergency services respond.

(1-b) "Board" means the Texas Private Security Board.

(2) "Branch office" means an office that is:

(A) identified to the public as a place from which business is conducted, solicited, or advertised; and

(B) at a place other than the principal place of business as shown in board records.

(3) "Branch office license" means a permit issued by the board that entitles a person to operate at a branch office as a security services contractor or investigations company.

(4) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1146, Sec. 4.102(1), eff. September 1, 2009.

(5) "Commissioned security officer" means a security officer to whom a security officer commission has been issued by the board.

(5-a) "Department" means the Department of Public Safety of

the State of Texas.

(6) "Detection device" means an electronic device used as a part of an alarm system, including a control, communications device, motion detector, door or window switch, sound detector, vibration detector, light beam, pressure mat, wiring, or similar device.

(6-a) "Electronic access control device" means an electronic, electrical, or computer-based device, including a telephone entry system, that allows access to a controlled area of a business, but that is not monitored by security personnel or services and does not send a signal to which law enforcement or emergency services respond. The term does not include:

(A) a mechanical device, such as a deadbolt or lock; or

(B) an operator for opening or closing a commercial gate or door or an accessory, such as a fixed or portable transmitter, card-reader, or keypad, if the operator or accessory is used only to activate the gate or door and is not connected to an alarm system.

(6-b) "Endorsement" means a permit entitling an individual holding a registration to perform a service regulated by this chapter for an appropriately licensed company.

(7) "Extra job coordinator" means a peace officer who:

(A) is employed full-time by the state or a political subdivision of the state; and

(B) schedules other peace officers to provide guard, patrolman, or watchman services in a private capacity who are:

(i) employed full-time by the state or a political subdivision of the state; and

(ii) not employed by the extra job coordinator.

(8) "Firearm" has the meaning assigned by Section 46.01, Penal Code.

(9) "Insurance agent" means:

(A) a person licensed under Subchapter B, C, D, or E, Chapter 4051, or Chapter 981, Insurance Code;

(B) a salaried, state, or special agent; or

(C) a person authorized to represent an insurance fund or pool created by a local government under Chapter 791, Government Code.

(10) "Investigations company" means a person who performs the activities described by Section 1702.104.

(11) "Letter of authority" means a permit issued by the

board that entitles the security department of a private business or a political subdivision to employ a commissioned security officer.

(12) "License" means a permit issued by the board that entitles a person to operate as a security services contractor or investigations company.

(13) "License holder" means a person to whom the board issues a license.

(14) "Manager" means an officer or supervisor of a corporation or a general partner of a partnership who has the experience required by Section 1702.119 to manage a security services contractor or an investigations company.

(15) "Peace officer" means a person who is a peace officer under Article 2.12, Code of Criminal Procedure.

(16) "Person" includes an individual, firm, association, company, partnership, corporation, nonprofit organization, institution, or similar entity. Section 311.005(2), Government Code, does not apply to this subdivision.

(16-a) "Personal protection officer" means a person who performs the activities described by Section 1702.202.

(17) "Personal protection officer endorsement" means a permit issued by the board that entitles an individual to act as a personal protection officer.

(18) "Private investigator" means an individual who performs one or more services described by Section 1702.104.

(19) "Registrant" means an individual who has registered with the board under Section 1702.221.

(20) "Registration" means a permit issued by the board to an individual described by Section 1702.221.

(20-a) "Security officer" means a person who performs the activities described by Section 1702.222.

(21) "Security officer commission" means an authorization issued by the board that entitles a security officer to carry a firearm.

(22) "Security services contractor" means a person who performs the activities described by Section 1702.102.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.552, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 898, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 936, Sec. 1, eff. Sept. 1, 2003; Acts 2003,

78th Leg., ch. 1276, Sec. 10A.545, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 2.01, eff. Oct. 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.151, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1155 (H.B. 3140), Sec. 1, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(58-a), eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.01, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.102(1), eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.01, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 1, eff. June 14, 2013.

Sec. 1702.004. GENERAL SCOPE OF REGULATION. (a) The board, in addition to performing duties required by other law or exercising powers granted by other law:

(1) licenses investigations companies and security services contractors;

(2) issues commissions to certain security officers;

(3) issues endorsements to certain security officers engaged in the personal protection of individuals;

(4) registers and endorses:

(A) certain individuals connected with a license holder; and

(B) certain individuals employed in a field connected to private investigation or private security; and

(5) regulates license holders, security officers, registrants, and endorsement holders under this chapter.

(b) The board shall adopt rules necessary to comply with Chapter 53. In its rules under this section, the board shall list the specific offenses for each category of regulated persons for which a conviction would constitute grounds for the board to take action under Section 53.021.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.554, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.02, eff. September 1, 2009.

Sec. 1702.005. DEPARTMENT OF PUBLIC SAFETY. (a) The board created under Section 1702.021 is a part of the department. The department shall administer this chapter through the board.

(b) A reference in this chapter or another law to the Texas Commission on Private Security means the board.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 2.02, eff. Oct. 20, 2003.

Sec. 1702.006. FOREIGN ENTITY REGISTRATION. Licensure under this chapter does not exempt a foreign entity from the registration requirements of Chapter 9, Business Organizations Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.04, eff. September 1, 2009.

#### **SUBCHAPTER B. TEXAS PRIVATE SECURITY BOARD**

Sec. 1702.021. BOARD MEMBERSHIP. (a) The Texas Private Security Board consists of seven members appointed by the governor with the advice and consent of the senate as follows:

(1) three public members, each of whom is a citizen of the United States;

(2) one member who is licensed under this chapter as a private investigator;

(3) one member who is licensed under this chapter as an alarm systems company;

(4) one member who is licensed under this chapter as the owner or operator of a guard company; and

(5) one member who is licensed under this chapter as a locksmith.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.556, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1170, Sec. 34.01, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 2.03, eff. Oct. 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.04, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 657 (H.B. 1093), Sec. 1, eff. June 14, 2013.

Sec. 1702.023. ELIGIBILITY OF PUBLIC MEMBERS. The board's public members must be representatives of the general public. A person may not be a public member of the board if the person or the person's spouse:

(1) is registered, commissioned, certified, or licensed by a regulatory agency in the field of private investigations or private security;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.558, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.05, eff. September 1, 2009.

Sec. 1702.024. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In

this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

(b) A person may not be a board member, and may not be a department employee whose primary duties include private security regulation and who is employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of private investigation or private security; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of private investigation or private security.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.559, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.06, eff. September 1, 2009.

Sec. 1702.025. TERMS; VACANCIES. (a) The board members serve staggered six-year terms, with the terms of two or three members expiring on January 31 of each odd-numbered year.

(b) If a vacancy occurs during the term of a board member, the governor shall appoint a new member to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.560(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1170, Sec. 34.02, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 2.04, eff. Oct.

20, 2003.

Sec. 1702.026. OFFICERS. (a) The governor shall designate one board member as presiding officer to serve in that capacity at the will of the governor. The governor shall designate the presiding officer without regard to race, creed, color, disability, sex, religion, age, or national origin.

(b) The board shall elect from among its members an assistant presiding officer and a secretary to serve two-year terms beginning on September 1 of each odd-numbered year.

(c) The presiding officer of the board or, in the absence of the presiding officer, the assistant presiding officer shall preside at each board meeting and perform the other duties prescribed by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.561(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 2.04, eff. Oct. 20, 2003.

Sec. 1702.027. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have the qualifications required by Section 1702.021 at the time of taking office;

(2) does not maintain the qualifications required by Section 1702.021 during service on the board;

(3) is ineligible for membership under Section 1702.023 or 1702.024;

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

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

(c) If the chief administrator has knowledge that a potential



ground for removal exists, the chief administrator shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the chief administrator shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.562, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.07, eff. September 1, 2009.

Sec. 1702.028. PER DIEM; REIMBURSEMENT. (a) A board member is entitled to a per diem as set by legislative appropriation for each day the member engages in the business of the board.

(b) A member is entitled to reimbursement for travel expenses incurred while conducting board business, including expenses for transportation, meals, and lodging, as prescribed by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.563, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.08, eff. September 1, 2009.

Sec. 1702.029. MEETINGS. The board shall meet at regular intervals to be decided by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.564, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.09, eff. September 1, 2009.

Sec. 1702.030. TRAINING. (a) A person who is appointed to and qualifies for office as a board member may not vote, deliberate, or be counted as a member in attendance at a board meeting until the person completes a training program that complies with this section.

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

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

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

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.565(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.10, eff. September 1, 2009.

#### **SUBCHAPTER C. CHIEF ADMINISTRATOR AND PERSONNEL**

Sec. 1702.041. CHIEF ADMINISTRATOR. (a) The chief

administrator is responsible for the administration of this chapter under the direction of the board. The chief administrator shall perform duties as prescribed by the board and the department.

(b) The chief administrator is a full-time employee of the department. A board member may not serve as chief administrator.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.566, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.12, eff. September 1, 2009.

Sec. 1702.042. PERSONNEL; CONFLICT OF INTEREST. An employee of the department whose primary duties include private security regulation may not:

(1) have a financial or business interest, contingent or otherwise, in a security services contractor or investigations company; or

(2) be licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.567, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.13, eff. September 1, 2009.

Sec. 1702.043. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the chief administrator and staff of the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.568, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.14, eff. September 1, 2009.

Sec. 1702.044. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The chief administrator or the chief administrator's designee shall provide to board members and to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.569, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.15, eff. September 1, 2009.

Sec. 1702.047. ADMINISTRATIVE STAFF. The department shall designate a department employee who shall report directly to the board. The employee designated under this section shall provide administrative assistance to the board in the performance of the board's duties.

Added by Acts 2005, 79th Leg., Ch. 1278 (H.B. 2303), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.02, eff. September 1, 2009.

#### **SUBCHAPTER D. POWERS AND DUTIES OF BOARD**

Sec. 1702.061. GENERAL POWERS AND DUTIES OF BOARD. (a) The board shall perform the functions and duties provided by this chapter.

(b) The board shall adopt rules and general policies to guide the agency in the administration of this chapter.

(c) The rules and policies adopted by the board under Subsection (b) must be consistent with this chapter and other board rules adopted under this chapter and with any other applicable law, state rule, or federal regulation.

(d) The board has the powers and duties to:

(1) determine the qualifications of license holders, registrants, endorsement holders, and commissioned security officers;

(2) investigate alleged violations of this chapter and of board rules;

(3) adopt rules necessary to implement this chapter; and

(4) establish and enforce standards governing the safety and conduct of each person licensed, registered, or commissioned under this chapter.

(e) The board shall have a seal in the form prescribed by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.573(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.17, eff. September 1, 2009.

Sec. 1702.0611. RULEMAKING PROCEDURES. (a) The board may only adopt rules under this chapter on the approval of the Public Safety Commission as provided by this section.

(b) Before adopting a rule under this chapter, the board must:

(1) determine the need for the proposed rule;

(2) work with persons who will be affected by the rule to ensure consideration of all relevant issues regarding the proposed rule;

(3) consult with an attorney in the department's regulatory licensing service to draft the rule and ensure that the proposed rule complies with statutory requirements regarding administrative rules; and

(4) submit the proposed rule to the department's general counsel, director, and chief accountant for consideration of the proposed rule's impact on the department and to ensure that the proposed rule is within the board's authority.

(c) On the completion of the required publication and comment periods under Chapter 2001, Government Code, the Public Safety Commission shall:

(1) return the proposed rule to the board if:

(A) the commission identifies a problem with the rule that must be resolved before the rule is approved; or

(B) a comment requiring resolution is received during

the comment period; or

(2) place the rule on the commission's agenda for final approval during the commission's next regularly scheduled meeting.

(d) On approval of the proposed rule by the Public Safety Commission, the department shall comply with the requirements of Chapter 2001, Government Code, for final adoption of the rule.

Added by Acts 2005, 79th Leg., Ch. 1278 (H.B. 2303), Sec. 2, eff. September 1, 2005.

Sec. 1702.0612. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.18, eff. September 1, 2009.

Sec. 1702.062. FEES. (a) The board by rule shall establish reasonable and necessary fees that produce sufficient revenue to administer this chapter. The fees may not produce unnecessary fund balances.

(b) The board may charge a fee each time the board requires a

person regulated under this chapter to resubmit a set of fingerprints for processing by the board during the application process for a license, registration, endorsement, or commission. The board shall set the fee in an amount that is reasonable and necessary to cover the administrative expenses related to processing the fingerprints.

(c) A person whose pocket card has not expired is not eligible to receive from the board another pocket card in the same classification in which the pocket card is held.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.574, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 593, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1278 (H.B. 2303), Sec. 3, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.19, eff. September 1, 2009.

Sec. 1702.063. BOARD USE OF FINES. The fines collected under this chapter may not be used to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.575, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.20, eff. September 1, 2009.

Sec. 1702.0635. RESTRICTIONS ON CERTAIN RULES. The board may not adopt rules or establish unduly restrictive experience or education requirements that limit a person's ability to be licensed as an electronic access control device company or be registered as an electronic access control device installer.

Added by Acts 2003, 78th Leg., ch. 936, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.21, eff. September 1, 2009.

Sec. 1702.064. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the person's use of any medium for advertising;
- (2) restricts the person's personal appearance or use of the person's personal voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.576, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.22, eff. September 1, 2009.

Sec. 1702.0645. PAYMENT OF FEES AND FINES. (a) The board may adopt rules regarding the method of payment of a fee or a fine assessed under this chapter.

(b) Rules adopted under this section may:

- (1) authorize the use of electronic funds transfer or a valid credit card issued by a financial institution chartered by a state or the federal government or by a nationally recognized credit organization approved by the board; and
- (2) require the payment of a discount or a reasonable service charge for a credit card payment in addition to the fee or the fine.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.577(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.23, eff. September 1, 2009.



Sec. 1702.066. SERVICE OF PROCESS; SERVICE OF DOCUMENTS ON BOARD. Legal process and documents required by law to be served on or filed with the board must be served on or filed with the chief administrator at the designated office of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.579, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.24, eff. September 1, 2009.

Sec. 1702.067. BOARD RECORDS; EVIDENCE. An official record of the board or an affidavit by the chief administrator as to the content of the record is prima facie evidence of a matter required to be kept by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.580, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.25, eff. September 1, 2009.

Sec. 1702.068. APPEAL BOND NOT REQUIRED. The board is not required to give an appeal bond in any cause arising under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.581, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.26, eff. September 1, 2009.

#### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 1702.081. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of interest to consumers or recipients of services regulated under this chapter describing the board's regulatory functions and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.583, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.27, eff. September 1, 2009.

Sec. 1702.082. COMPLAINTS. (a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The board shall make information available describing its procedures for complaint investigation and resolution.

(c) The board shall periodically notify the complaint parties of the status of the complaint until final disposition.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1146, Sec. 4.28, eff. September 1, 2009.

(e) On written request, the department shall inform the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the information would jeopardize an ongoing investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.584(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.28, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.03, eff. September 1, 2009.

Sec. 1702.083. PUBLIC PARTICIPATION. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.585, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.29, eff. September 1, 2009.

Sec. 1702.084. PUBLIC ACCESS TO CERTAIN RECORDS OF DISCIPLINARY ACTIONS. (a) The board shall make available to the public through a toll-free telephone number, Internet website, or other easily accessible medium determined by the board the following information relating to a disciplinary action taken during the preceding three years regarding a person regulated by the board:

(1) the identity of the person;

(2) the nature of the complaint that was the basis of the disciplinary action taken against the person; and

(3) the disciplinary action taken by the board.

(b) In providing the information, the board shall present the information in an impartial manner, use language that is commonly understood, and, if possible, avoid jargon specific to the security industry.

(c) The board shall update the information on a monthly basis.

(d) The board shall maintain the confidentiality of information regarding the identification of a complainant.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.586(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.30, eff. September 1, 2009.

Sec. 1702.085. CONFIDENTIALITY OF RECORDS. Records maintained by the department under this chapter on the home address, home telephone number, driver's license number, or social security number of an applicant or a license holder, registrant, or security officer commission holder are confidential and are not subject to mandatory disclosure under Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 2, eff. September 1, 2007.

**SUBCHAPTER F. LICENSING AND DUTIES OF INVESTIGATIONS COMPANIES AND  
SECURITY SERVICES CONTRACTORS**

Sec. 1702.101. INVESTIGATIONS COMPANY LICENSE REQUIRED. Unless the person holds a license as an investigations company, a person may not:

- (1) act as an investigations company;
- (2) offer to perform the services of an investigations company; or
- (3) engage in business activity for which a license is required under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.102. SECURITY SERVICES CONTRACTOR LICENSE REQUIRED; SCOPE OF LICENSE. (a) Unless the person holds a license as a security services contractor, a person may not:

- (1) act as an alarm systems company, armored car company, courier company, guard company, guard dog company, locksmith company, or private security consultant company;
- (2) offer to perform the services of a company in Subdivision (1); or
- (3) engage in business activity for which a license is required under this chapter.

(b) A person licensed only as a security services contractor may not conduct an investigation other than an investigation incidental to the loss, misappropriation, or concealment of property that the person has been engaged to protect.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. [2833](#)), Sec. 3, eff. September 1, 2007.

Sec. 1702.1025. ELECTRONIC ACCESS CONTROL DEVICE COMPANY LICENSE REQUIRED; SCOPE OF LICENSE. (a) Unless the person holds a license as an electronic access control device company, a person may not:

- (1) act as an electronic access control device company;
- (2) offer to perform the services of an electronic access control device company; or
- (3) engage in business activity for which a license is required under this chapter.

(b) A person licensed as an electronic access control device company may not install alarm systems unless otherwise licensed or registered to install alarm systems under this chapter.

Added by Acts 2003, 78th Leg., ch. 936, Sec. 3, eff. Jan. 1, 2004.

Sec. 1702.103. CLASSIFICATION AND LIMITATION OF LICENSES. (a) The license classifications are:

- (1) Class A: investigations company license, covering operations of an investigations company;
- (2) Class B: security services contractor license, covering operations of a security services contractor;
- (3) Class C: covering the operations included within Class A and Class B;
- (4) Class F: level III training school license;
- (5) Class O: alarm level I training school license;
- (6) Class P: private business letter of authority license;
- (7) Class X: government letter of authority license; and
- (8) Class T: telematics license.

(b) A license described by this chapter does not authorize the license holder to perform a service for which the license holder has not qualified. A person may not engage in an operation outside the scope of that person's license. The board shall indicate on the license the services the license holder is authorized to perform. The license holder may not perform a service unless it is indicated on the license.

(c) A license is not assignable unless the assignment is approved in advance by the board.

(d) The board shall prescribe by rule the procedure under which a license may be terminated.

(e) The board by rule may establish other license classifications for activities expressly regulated by this chapter and may establish qualifications and practice requirements consistent with this chapter for those license classifications.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.587, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 936, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.31, eff. September 1, 2009.

Sec. 1702.104. INVESTIGATIONS COMPANY. (a) A person acts as an investigations company for the purposes of this chapter if the person:

(1) engages in the business of obtaining or furnishing, or accepts employment to obtain or furnish, information related to:

(A) crime or wrongs done or threatened against a person, state, or the United States;

(B) the identity, habits, business, occupation, knowledge, efficiency, loyalty, movement, location, affiliations, associations, transactions, acts, reputation, or character of a person;

(C) the location, disposition, or recovery of lost or stolen property; or

(D) the cause or responsibility for a fire, libel, loss, accident, damage, or injury to a person or to property;

(2) engages in the business of securing, or accepts employment to secure, evidence for use before a court, board, officer, or investigating committee;

(3) engages in the business of securing, or accepts employment to secure, the electronic tracking of the location of an individual or motor vehicle other than for criminal justice purposes by or on behalf of a governmental entity; or

(4) engages in the business of protecting, or accepts employment to protect, an individual from bodily harm through the use of a personal protection officer.

(b) For purposes of Subsection (a)(1), obtaining or furnishing information includes information obtained or furnished through the review and analysis of, and the investigation into the content of, computer-based data not available to the public. The repair or maintenance of a computer does not constitute an investigation for purposes of this section and does not require licensing under this chapter if:

- (1) the review or analysis of computer-based data is performed only to diagnose a computer or software problem;
- (2) there is no intent to obtain or furnish information described by Subsection (a)(1); and
- (3) the discovery of any information described by Subsection (a)(1) is inadvertent.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 4, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.32, eff. September 1, 2009.

Sec. 1702.1045. PRIVATE SECURITY CONSULTING COMPANY. A person acts as a private security consulting company for purposes of this chapter if the person:

- (1) consults, advises, trains, or specifies or recommends products, services, methods, or procedures in the security or loss prevention industry;
- (2) provides a service described by Subdivision (1) on an independent basis and without being affiliated with a particular service or product; and
- (3) meets the experience requirements established by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.626(a), eff. Sept. 1, 2001.

Redesignated from Occupations Code, Section 1702.226 and amended by Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 11, eff. September 1, 2007.

Sec. 1702.105. ALARM SYSTEMS COMPANY. (a) A person acts as an alarm systems company for the purposes of this chapter if the person sells, installs, services, monitors, or responds to an alarm system or detection device.

(b) An alarm systems company may sell, install, maintain, or service, or offer to sell, install, maintain, or service, an

electronic access control device or a mechanical security device that is capable of activation through a wireless signal. An alarm systems company may not rekey an electronic access control device or mechanical security device that can be activated by a key. This subsection does not apply to a mechanical security device or electronic access control device installed in a motor vehicle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 2, eff. June 14, 2013.

Sec. 1702.1055. ELECTRONIC ACCESS CONTROL DEVICE COMPANY. A person acts as an electronic access control device company for the purposes of this chapter if the person installs or maintains an electronic access control device.

Added by Acts 2003, 78th Leg., ch. 936, Sec. 5, eff. Sept. 1, 2003.

Sec. 1702.1056. LOCKSMITH COMPANY. (a) A person acts as a locksmith company for the purposes of this chapter if the person:

- (1) sells, installs, services, or maintains, or offers to sell, install, service, or maintain, mechanical security devices, including deadbolts and locks;
- (2) advertises services offered by the company using the term "locksmith"; or
- (3) includes the term "locksmith" in the company's name.

(b) This section does not apply to a hotel, as that term is defined by Section 156.001, Tax Code.

Added by Acts 2003, 78th Leg., ch. 936, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1102 (H.B. 2243), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.05, eff. September 1, 2009.

Sec. 1702.106. ARMORED CAR COMPANY. A person acts as an



armored car company for the purposes of this chapter if the person provides secured and protected transportation of valuables, including money, coins, bullion, securities, bonds, or jewelry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.107. COURIER COMPANY. A person acts as a courier company for purposes of this chapter if the person transports or offers to transport under armed guard an item that requires expeditious delivery, including a document, map, stock, bond, or check.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.108. GUARD COMPANY. A person acts as a guard company for the purposes of this chapter if the person employs an individual described by Section 1702.323(d) or engages in the business of or undertakes to provide a private watchman, guard, or street patrol service on a contractual basis for another person to:

- (1) prevent entry, larceny, vandalism, abuse, fire, or trespass on private property;
- (2) prevent, observe, or detect unauthorized activity on private property;
- (3) control, regulate, or direct the movement of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to ensure the protection of property;
- (4) protect an individual from bodily harm including through the use of a personal protection officer; or
- (5) perform a function similar to a function listed in this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.588, eff. Sept. 1, 2001.

Sec. 1702.109. GUARD DOG COMPANY. A person acts as a guard dog company for the purposes of this chapter if the person places, rents, sells, or trains a dog used to:

- (1) protect an individual or property; or
- (2) conduct an investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.110. APPLICATION FOR LICENSE. (a) An application for a license under this chapter must be in the form prescribed by the board and include:

- (1) the full name and business address of the applicant;
- (2) the name under which the applicant intends to do business;
- (3) a statement as to the general nature of the business in which the applicant intends to engage;
- (4) a statement as to the classification for which the applicant requests qualification;
- (5) if the applicant is an entity other than an individual, the full name and residence address of each partner, officer who oversees the security-related aspects of the business, and director of the applicant, and of the applicant's manager;
- (6) if the applicant is an individual, the fingerprints of the applicant or, if the applicant is an entity other than an individual, of each officer who oversees the security-related aspects of the business and of each partner or shareholder who owns at least a 25 percent interest in the applicant, provided in the manner prescribed by the board;
- (7) a verified statement of the applicant's experience qualifications in the particular classification in which the applicant is applying;
- (8) a report from the department stating the applicant's record of any convictions for a Class B misdemeanor or equivalent offense or a greater offense;
- (9) the social security number of the individual making the application; and
- (10) other information, evidence, statements, or documents required by the board.

(b) An applicant for a license as a security services contractor shall maintain a physical address within this state and provide that address to the board. The board shall adopt rules to enable an out-of-state license holder to comply with this subsection.

(c) The department may return an application as incomplete if the applicant submits payment of a fee that is returned for insufficient funds and the applicant has received notice and an opportunity to provide payment in full.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.589, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.06, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 3, eff. June 14, 2013.

Sec. 1702.111. ISSUANCE OF BRANCH OFFICE LICENSE. (a) A license holder, in accordance with Section 1702.129, shall notify the board in writing of the establishment of a branch office and file in writing with the board the address of the branch office.

(b) On application by a license holder, the board shall issue a branch office license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.590, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.33, eff. September 1, 2009.

Sec. 1702.112. FORM OF LICENSE. The board shall prescribe the form of a license, including a branch office license. The license must include:

- (1) the name of the license holder;
- (2) the name under which the license holder is to operate;
- (3) the license number and the date the license was issued;

and

(4) a photograph of the license holder, affixed to the license at the time the license is issued by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.591, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.07, eff. September 1, 2009.

Sec. 1702.113. GENERAL QUALIFICATIONS FOR LICENSE, CERTIFICATE OF REGISTRATION, OR SECURITY OFFICER COMMISSION. (a) An applicant for a license, certificate of registration, endorsement, or security officer commission or the applicant's manager must be at least 18 years of age and must not:

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1084, Sec. 17, eff. June 14, 2013.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1084, Sec. 17, eff. June 14, 2013.

(1) at the time of application be charged under an information or indictment with the commission of a Class A or Class B misdemeanor or felony offense determined to be disqualifying by board rule;

(2) have been found by a court to be incompetent by reason of a mental defect or disease and not have been restored to competency;

(3) have been dishonorably discharged from the United States armed services, discharged from the United States armed services under other conditions determined by the board to be prohibitive, or dismissed from the United States armed services if a commissioned officer in the United States armed services; or

(4) be required to register in this or any other state as a sex offender, unless the applicant is approved by the board under Section 1702.3615.

(d) For purposes of this section, "convicted" has the meaning provided in Section 1702.371.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1146, Sec. 4.102(7), eff. September 1, 2009.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.592(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 5, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.34, eff.

September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.102(7), eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 4, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 17, eff. June 14, 2013.

Sec. 1702.114. ADDITIONAL QUALIFICATIONS FOR INVESTIGATIONS COMPANY LICENSE. (a) An applicant for a license to engage in the business of an investigations company or the applicant's manager must have, before the date of the application, three consecutive years' experience in the investigative field as an employee, manager, or owner of an investigations company or satisfy other requirements set by the board.

(b) The applicant's experience must be:

- (1) reviewed by the board or the chief administrator; and
- (2) determined to be adequate to qualify the applicant to engage in the business of an investigations company.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.593, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.35, eff. September 1, 2009.

Sec. 1702.115. ADDITIONAL QUALIFICATIONS FOR SECURITY SERVICES CONTRACTOR LICENSE. (a) An applicant for a license to engage in the business of a security services contractor or the applicant's manager must have, before the date of the application, two consecutive years' experience in each security services field for which the person applies as an employee, manager, or owner of a security services contractor or satisfy other requirements set by the board.

(b) The applicant's experience must have been obtained legally and must be:

- (1) reviewed by the board or the chief administrator; and
- (2) determined to be adequate to qualify the applicant to engage in the business of a security services contractor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.594, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.36, eff. September 1, 2009.

Sec. 1702.116. QUALIFICATIONS FOR GUARD DOG COMPANY LICENSE; INSPECTIONS. (a) An applicant for a license to engage in the business of a guard dog company must:

(1) meet the requirements of Sections 1702.113 and 1702.115; and

(2) present evidence satisfactory to the board that the applicant will comply with the rules adopted under this section.

(b) After consulting the Department of State Health Services, the board shall adopt rules to ensure that the areas in which a guard dog company houses, exercises, or trains its animals are securely enclosed by a six-foot chain-link fence or made equally secure.

(c) The board shall conduct regular inspections to ensure compliance with the rules adopted under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.595, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.37, eff. September 1, 2009.

Sec. 1702.117. EXAMINATION. (a) The board shall require an applicant for a license under this chapter or the applicant's manager to demonstrate qualifications in the person's license classification, including knowledge of applicable state laws and board rules, by taking an examination to be determined by the board.

(b) Payment of the application fee entitles the applicant or the applicant's manager to take one examination without additional charge. A person who fails the examination must pay a reexamination fee to take a subsequent examination.

(c) The board shall set the reexamination fee in an amount not to exceed the amount of the renewal fee for the license classification for which application was made.

(d) The board shall develop and provide to a person who applies to take the examination under Subsection (a) material containing all applicable state laws and board rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.596(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.38, eff. September 1, 2009.

Sec. 1702.118. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes a licensing examination under this chapter, the board shall notify the person of the examination results.

(b) If an examination is graded or reviewed by a testing service:

(1) the board shall notify the person of the examination results not later than the 14th day after the date the board receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall notify the person of the reason for the delay before the 90th day.

(c) The board may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails a licensing examination administered under this chapter, the board shall furnish the person with an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.597, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.39, eff. September 1, 2009.

Sec. 1702.1183. RECIPROCAL LICENSE FOR CERTAIN APPLICANTS. (a) The board may waive any prerequisite to obtaining a license for an applicant who holds a license issued by another jurisdiction with

which this state has a reciprocity agreement.

(b) The board may make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

(c) The board shall adopt rules under which the board may waive any prerequisite to obtaining a license for, and credit experience for a license requirement to, an individual who the board determines has acceptable experience gained during service in a branch of the United States armed forces, including the United States Coast Guard.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.598, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.40, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 989 (H.B. 2135), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 989 (H.B. 2135), Sec. 2, eff. September 1, 2013.

Sec. 1702.1186. PROVISIONAL LICENSE. (a) The board may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks an equivalent license in this state and who:

(1) has been licensed in good standing as an investigations company or security services contractor for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the board relating to the practice of private investigations or security services contracting; and

(3) is sponsored by a person licensed by the board under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this chapter to the provisional license holder if:

(1) the provisional license holder is eligible to be



licensed under Section 1702.1183; or

(2) the provisional license holder:

(A) passes the part of the examination under Section 1702.117(a) that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of an investigations company or security services contractor in this state;

(B) is verified by the board as meeting the academic and experience requirements for a license under this chapter; and

(C) satisfies any other licensing requirements under this chapter.

(c) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(d) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.598, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.41, eff. September 1, 2009.

Sec. 1702.119. MANAGER REQUIRED. (a) A license holder's business shall be operated under the direction and control of one manager. A license holder may not apply to designate more than one individual to serve as manager of the license holder's business.

(b) An individual may not act as a manager until the individual has:

(1) demonstrated the individual's qualifications by passing the written examination required by Section 1702.117(a); and

(2) made a satisfactory showing to the department that the individual:

(A) satisfies the requirements of Section 1702.113 and meets all qualification and experience requirements set by rule for a manager of the type of company for which the individual is applying; and

(B) has not engaged in conduct regarding a violation or conviction that is grounds for disciplinary action under Section 1702.361(b) or 1702.3615(a).

(c) If a manager lacks the experience to qualify to manage each category of service included in a license or application, the license holder must designate a supervisor qualified under Subsection (b) who is responsible for each service for which the manager is not qualified.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.599(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 6, eff. September 1, 2007.

Sec. 1702.120. FALSE APPLICATION OF MANAGER. (a) An individual may not:

(1) serve as manager of an investigations company, guard company, alarm systems company, armored car company, courier company, or guard dog company; and

(2) fail to maintain that supervisory position on a daily basis for that company.

(b) An individual may not apply to the board to serve as manager of an investigations company, guard company, alarm systems company, armored car company, courier company, or guard dog company without the intent to maintain that supervisory position on a daily basis for that company.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.600, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.42, eff. September 1, 2009.

Sec. 1702.121. TERMINATION OF MANAGER. (a) A license holder shall notify the board in writing not later than the 14th day after the date a manager ceases to be manager of the license holder's business. The license remains in effect for a reasonable period

after notice is given as provided by board rule pending the board's determination of the qualification of another manager under this subchapter.

(b) A manager shall immediately cease all managerial actions on the effective date of any summary action taken against the manager. Any period of temporary operation authorized under this section or Section 1702.122 begins on the effective date of the summary action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.601, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.08, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 5, eff. June 14, 2013.

Sec. 1702.122. TEMPORARY CONTINUATION OF LICENSE HOLDER'S BUSINESS. Under the terms provided by board rule, a license holder's business may continue for a temporary period if the individual on the basis of whose qualifications a license under this chapter has been obtained ceases to be connected with the license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.602, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.43, eff. September 1, 2009.

Sec. 1702.123. INSURANCE; BOND. (a) A license holder shall maintain on file with the board at all times the surety bond and certificate of insurance required by this chapter.

(b) The board shall immediately suspend the license of a license holder who violates Subsection (a).

(c) The board may rescind the license suspension if the license holder provides proof to the board that the bond or the insurance coverage is still in effect. The license holder must provide the proof in a form satisfactory to the board not later than the 10th day after the date the license is suspended.

(d) After suspension of the license, the board may not

reinstate the license until an application, in the form prescribed by the board, is filed accompanied by a proper bond, insurance certificate, or both. The board may deny the application notwithstanding the applicant's compliance with this section:

- (1) for a reason that would justify suspending, revoking, or denying a license; or
- (2) if, during the suspension, the applicant performs a practice for which a license is required.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.603, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.44, eff. September 1, 2009.

Sec. 1702.124. INSURANCE REQUIREMENT. (a) An applicant is not eligible for a license unless the applicant provides as part of the application:

- (1) a certificate of insurance or other documentary evidence of a general liability insurance policy countersigned by an insurance agent licensed in this state; or
- (2) a certificate of insurance for surplus lines coverage obtained under Chapter 981, Insurance Code, through a licensed Texas surplus lines agent resident in this state.

(b) The general liability insurance policy must be conditioned to pay on behalf of the license holder damages that the license holder becomes legally obligated to pay because of bodily injury, property damage, or personal injury, caused by an event involving the principal, or an officer, agent, or employee of the principal, in the conduct of any activity or service for which the license holder is licensed under this chapter.

(c) The insurance policy must contain minimum limits of:

- (1) \$100,000 for each occurrence for bodily injury and property damage;
- (2) \$50,000 for each occurrence for personal injury; and
- (3) a total aggregate amount of \$200,000 for all occurrences.

(d) A person who is licensed to install and service fire alarms under Article 5.43-2, Insurance Code, complies with the insurance

requirements of this section by complying with the insurance requirement of that article if the insurance held by the applicant complies with the requirements of this section in amounts and types of coverage.

(e) An insurance certificate executed and filed with the department under this chapter remains in effect until the insurer terminates future liability by providing to the department at least 10 days' notice of the intent to terminate liability.

(f) In addition to the requirements of this section, an applicant or license holder shall provide and maintain a certificate of insurance or other documentary evidence of insurance sufficient to cover all of the business activities of the applicant or license holder related to private security.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.604, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 936, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.546, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 7, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 6, eff. June 14, 2013.

Sec. 1702.125. BOND REQUIREMENT. A bond executed and filed with the board under this chapter remains in effect until the surety terminates future liability by providing to the board at least 30 days' notice of the intent to terminate liability.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.605, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.45, eff. September 1, 2009.

Sec. 1702.127. LICENSE HOLDER EMPLOYEES; RECORDS. (a) A license holder may be legally responsible for the conduct in the license holder's business of each employee of the license holder while the employee is performing assigned duties for the license

holder.

(b) A license holder shall maintain a record containing information related to the license holder's employees as required by the board.

(c) A license holder shall maintain for inspection by the department at the license holder's principal place of business or branch office two recent color photographs, of a type required by the board, of each applicant, registrant, commissioned security officer, and employee of the license holder.

(d) A license holder shall maintain records required under this chapter at a physical address within this state and provide that address to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.607, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.09, eff. September 1, 2009.

Sec. 1702.128. POSTING OF LICENSE REQUIRED. A license holder shall at all times post:

- (1) the person's license in a conspicuous place in the principal place of business of the license holder; and
- (2) each branch office license in a conspicuous place in each branch office of the license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.129. NOTICE OF CERTAIN CHANGES; BRANCH OFFICES. (a) A license holder shall notify the board not later than the 14th day after the date of:

- (1) a change of address for the license holder's principal place of business;
- (2) a change of a name under which the license holder does business; or
- (3) a change in the license holder's officers or partners.

(b) A license holder shall notify the board in writing not later than the 14th day after the date a branch office:

- (1) is established;

- (2) is closed; or
- (3) changes address or location.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.608, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.46, eff. September 1, 2009.

Sec. 1702.130. USE OF CERTAIN TITLES, UNIFORMS, INSIGNIA, OR IDENTIFICATIONS PROHIBITED. (a) A license holder, or an officer, director, partner, manager, or employee of a license holder, may not:

(1) use a title, an insignia, or an identification card, wear a uniform, or make a statement with the intent to give an impression that the person is connected with the federal government, a state government, or a political subdivision of a state government; or

(2) use a title, an insignia, or an identification card or wear a uniform containing the designation "police."

(b) Subsection (a) does not prohibit a commissioned security officer employed by a political subdivision of this state from using a title, insignia, or identification card, wearing a uniform, or making a statement indicating the employment of that individual by the political subdivision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.131. ADVERTISING. An advertisement by a license holder soliciting or advertising business must contain the license holder's company name and address as stated in board records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.609, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.47, eff. September 1, 2009.

Sec. 1702.132. REPORTS TO EMPLOYER OR CLIENT. (a) A written

report submitted to a license holder's employer or client may only be submitted by the license holder or manager or a person authorized by a license holder or manager. The person submitting the report shall exercise diligence in determining whether the information in the report is correct.

(b) A license holder or an officer, director, partner, manager, or employee of a license holder may not knowingly make a false report to the employer or client for whom information is obtained.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.133. CONFIDENTIALITY; INFORMATION RELATING TO CRIMINAL OFFENSE. (a) A license holder or an officer, director, partner, or manager of a license holder may not disclose to another information obtained by the person for an employer or client except:

- (1) at the direction of the employer or client; or
- (2) as required by state law or court order.

(b) A license holder or an officer, director, partner, or manager of a license holder shall disclose to a law enforcement officer or a district attorney, or that individual's representative, information the person obtains that relates to a criminal offense. A private investigator who is working under the direct supervision of a licensed attorney satisfies this requirement by disclosing the information to the supervising attorney.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. [2833](#)), Sec. 8, eff. September 1, 2007.

Sec. 1702.134. LICENSE HOLDER EXEMPTIONS FROM CERTAIN LOCAL REGULATIONS. (a) A license holder or an employee of a license holder is not required to obtain an authorization, permit, franchise, or license from, pay another fee or franchise tax to, or post a bond in a municipality, county, or other political subdivision of this state to engage in business or perform a service authorized under this chapter.

(b) A municipality, county, or other political subdivision of this state may not require a payment for the use of municipal,



county, or other public facilities in connection with a business or service provided by a license holder, except that a municipality may impose and collect:

(1) a reasonable charge for the use of a central alarm installation located in a police office that is owned, operated, or monitored by the municipality; and

(2) reasonable inspection and reinspection fees in connection with a device that causes at least five false alarms in a 12-month period.

(c) A municipality may require, until the device is repaired to the satisfaction of the appropriate municipal official, discontinuation of service of an alarm signal device that, because of mechanical malfunction or faulty equipment, causes at least five false alarms in a 12-month period.

(d) For the purposes of Subsection (c), a false alarm caused by human error or an act of God is not considered a mechanical malfunction or faulty equipment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. SECURITY OFFICER COMMISSION REQUIREMENTS**

Sec. 1702.161. SECURITY OFFICER COMMISSION REQUIRED. (a) An individual may not accept employment as a security officer to carry a firearm in the course and scope of the individual's duties unless the individual holds a security officer commission.

(b) An individual employed as a security officer may not knowingly carry a firearm during the course of performing duties as a security officer unless the board has issued a security officer commission to the individual.

(c) A person may not hire or employ an individual as a security officer to carry a firearm in the course and scope of the individual's duties unless the individual holds a security officer commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.610, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.48, eff. September 1, 2009.

Sec. 1702.162. EMPLOYER'S APPLICATION FOR SECURITY OFFICER COMMISSION. The employer of a security officer who applies for a security officer commission for the officer must submit an application to the board on a form provided by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.611, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.49, eff. September 1, 2009.

Sec. 1702.163. QUALIFICATIONS FOR SECURITY OFFICER COMMISSION.

(a) An applicant employed by a license holder is not eligible for a security officer commission unless the applicant submits as part of the application satisfactory evidence that the applicant has:

(1) completed the basic training course at a school or under an instructor approved by the board;

(2) met each qualification established by this chapter and administrative rule;

(3) achieved the score required by the board on the examination under Section 1702.1685; and

(4) demonstrated to the satisfaction of the firearm training instructor that the applicant has complied with other board standards for minimum marksmanship competency with a handgun.

(b) An individual is not eligible for a security officer commission if the individual:

(1) is disqualified by state or federal law from owning or possessing a firearm;

(2) is incapable of exercising sound judgment in the proper use and storage of a handgun;

(3) is a fugitive from justice for a felony or a Class A or Class B misdemeanor;

(4) is a chemically dependent person; or

(5) is currently restricted under a court protective order or subject to a restraining order affecting the spousal relationship, other than a restraining order solely affecting property interests.

(c) An individual who has been convicted twice in the 10-year period preceding the date on which the person applies for a security officer commission of an offense of the grade of Class B misdemeanor

or greater that involves the use of alcohol or a controlled substance as a statutory element of the offense is a chemically dependent person for purposes of this section and is not qualified to receive a security officer commission under this subchapter. This subsection does not preclude the disqualification of an individual for being a chemically dependent person if other evidence exists to demonstrate that the person is a chemically dependent person.

(d) For purposes of Subsection (b)(2), a person is incapable of exercising sound judgment with respect to the proper use and storage of a handgun if the person:

(1) has been diagnosed by a licensed physician as suffering from a psychiatric disorder or condition that causes or is likely to cause substantial impairment in judgment, mood, perception, impulse control, or intellectual ability;

(2) suffers from a psychiatric disorder or condition described by Subdivision (1) that:

(A) is in remission but is reasonably likely to redevelop at a future time; or

(B) requires continuous medical treatment to avoid redevelopment;

(3) has been diagnosed by a licensed physician or declared by a court as incompetent to manage the person's own affairs; or

(4) has entered a plea of not guilty by reason of insanity in a criminal proceeding.

(d-1) For the purposes of determining eligibility under Subsection (b)(2), the department may require the applicant to authorize the release to the department of any relevant medical records.

(e) The following constitutes evidence that a person has a psychiatric disorder or condition described by Subsection (d)(1):

(1) involuntary psychiatric hospitalization in the five years preceding the date of the application;

(2) psychiatric hospitalization in the two years preceding the date of the application;

(3) inpatient or residential substance abuse treatment in the five years preceding the date of the application;

(4) diagnosis in the five years preceding the date of the application by a licensed physician that the person is dependent on alcohol, a controlled substance, or a similar substance; or

(5) diagnosis at any time by a licensed physician that the

person suffers or has suffered from a psychiatric disorder or condition consisting of or relating to:

- (A) schizophrenia or delusional disorder;
- (B) bipolar disorder;
- (C) chronic dementia, whether caused by illness, brain defect, or brain injury;
- (D) dissociative identity disorder;
- (E) intermittent explosive disorder; or
- (F) antisocial personality disorder.

(f) Notwithstanding Subsection (d), a person who has previously been diagnosed as suffering from a psychiatric disorder or condition described by Subsection (d) or listed in Subsection (e) is not because of that disorder or condition incapable of exercising sound judgment with respect to the proper use and storage of a handgun if the person provides the department with a certificate from a licensed physician whose primary practice is in the field of psychiatry stating that the psychiatric disorder or condition is in remission and is not reasonably likely to develop at a future time.

(g) An individual's eligibility under this section is not affected by a relationship or lack of relationship between the nature of a criminal charge or conviction and the regulated occupation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.612, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 1035 (H.B. 1132), Sec. 1.01, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1278 (H.B. 2303), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 9, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.10, eff. September 1, 2009.

Sec. 1702.165. ISSUANCE OF SECURITY OFFICER COMMISSION; POCKET CARD. (a) The board, with the concurrence of the department:

- (1) may issue a security officer commission to an individual employed as a uniformed security officer; and
- (2) shall issue a security officer commission to a

qualified employee of an armored car company that is a carrier conducting the armored car business under a federal or state permit or certificate.

(b) A security officer commission issued under this section must be in the form of a pocket card designed by the board that identifies the security officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.614, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.50, eff. September 1, 2009.

Sec. 1702.167. TERMINATION OF EMPLOYMENT AS COMMISSIONED SECURITY OFFICER; TRANSFER OF COMMISSION. The holder of a security officer commission who terminates employment with one employer may transfer the individual's commission to a new employer if, not later than the 14th day after the date the individual begins the new employment, the new employer notifies the board of the transfer of employment on a form prescribed by the board, accompanied by payment of the employee information update fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.616(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.51, eff. September 1, 2009.

Sec. 1702.1675. TRAINING PROGRAMS. (a) The board shall establish a basic training course for commissioned security officers. The course must include, at a minimum:

- (1) general security officer training issues;
- (2) classroom instruction on handgun proficiency; and
- (3) range instruction on handgun proficiency.

(b) The course must be offered and taught by schools and instructors approved by the board. To receive board approval, a school or an instructor must submit an application to the board on a form provided by the board.

(c) The basic training course approved by the board must consist of a minimum of 30 hours.

(d) The general security officer training portion of the course must include instruction on:

- (1) board rules and applicable state laws;
- (2) field note taking and report writing; and
- (3) any other topics of security officer training curriculum the board considers necessary.

(e) The board shall develop a commissioned security officer training manual that contains applicable state laws and board rules to be used in the instruction and training of commissioned security officers.

(f) The board shall adopt rules necessary to administer the provisions of this section concerning the training requirements of this chapter.

(g) The handgun proficiency course must include at least 10 hours and not more than 15 hours of instruction on:

- (1) the laws that relate to weapons and to the use of deadly force;
- (2) handgun use, proficiency, and safety;
- (3) nonviolent dispute resolution; and
- (4) proper storage practices for handguns, with an emphasis on storage practices that eliminate the possibility of accidental injury to a child.

(h) The range instruction on handgun proficiency must include an actual demonstration by the applicant of the applicant's ability to safely and proficiently use a handgun. The applicant must demonstrate, at a minimum, the degree of proficiency that is required to effectively operate a 9-millimeter or .38-caliber handgun.

(i) The board by rule shall establish minimum standards for handgun proficiency that are at least as stringent as the standards for handgun proficiency developed by the public safety director under Section 411.188, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.617, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.52, eff. September 1, 2009.

Sec. 1702.168. FIREARM REQUIREMENTS. (a) In addition to the requirements of Section 1702.163(a), the board by rule shall establish other qualifications for individuals who are employed in positions requiring the carrying of firearms. The qualifications may include:

- (1) physical and mental standards;
- (2) standards of good moral character; and
- (3) other requirements that relate to the competency and reliability of individuals to carry firearms.

(b) The board shall prescribe appropriate forms and adopt rules by which evidence is presented that the requirements are fulfilled.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.618, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.53, eff. September 1, 2009.

Sec. 1702.1685. HANDGUN PROFICIENCY EXAMINATION. (a) The proficiency examination required to obtain or renew a security officer commission must include:

- (1) a written section on the subjects listed in Section 1702.1675(g); and
- (2) a physical demonstration of handgun proficiency that meets the minimum standards established under Section 1702.1675(h) or (i).

(b) Only a board-approved instructor may administer the handgun proficiency examination.

(c) An applicant for a security officer commission must demonstrate the required proficiency within the 90-day period before the date the security officer commission is issued.

(d) The school shall maintain the records of the required proficiency and make the records available for inspection by the board.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.619, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.54, eff. September 1, 2009.

Sec. 1702.169. FIREARM RESTRICTIONS. A commissioned security officer other than a person acting as a personal protection officer may not carry a firearm unless:

- (1) the security officer is:
  - (A) engaged in the performance of duties as a security officer; or
  - (B) traveling to or from the place of assignment;
- (2) the security officer wears a distinctive uniform indicating that the individual is a security officer; and
- (3) the firearm is in plain view.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1048 (H.B. 2101), Sec. 1, eff. September 1, 2007.

Sec. 1702.170. NONAPPLICABILITY OF FIREARM RESTRICTIONS. Sections 1702.161, 1702.169, and 1702.206 do not apply to the holder of a temporary security officer commission who:

- (1) is in uniform;
- (2) possesses only one firearm; and
- (3) is performing the individual's duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.171. SECURITY OFFICER COMMISSION RECORDS. The board shall adopt rules for the maintenance of records relating to an individual to whom the board has issued a security officer commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.620, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.55, eff. September 1, 2009.



**SUBCHAPTER H. EMPLOYMENT OF COMMISSIONED SECURITY OFFICER BY CERTAIN PERSONS; LETTER OF AUTHORITY REQUIREMENTS**

Sec. 1702.181. LETTER OF AUTHORITY REQUIRED. The security department of a private business or a political subdivision may not employ a commissioned security officer unless the security department holds a letter of authority.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.182. SECURITY DEPARTMENT OF PRIVATE BUSINESS. (a) A security department acts as the security department of a private business if it:

(1) has as its general purpose the protection and security of its own property and grounds; and

(2) does not offer or provide security services to another person.

(b) For purposes of this subchapter, a hospital licensed under Chapter 241 or 577, Health and Safety Code, may provide security services to:

(1) buildings, grounds, and tenants located on the hospital's property or campus, regardless of who owns the building; and

(2) a parent entity or member entity of the hospital or hospital corporation, or an affiliated entity or business with whom the hospital shares common ownership or control.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1278 (H.B. [2303](#)), Sec. 5, eff. September 1, 2005.

Sec. 1702.183. APPLICATION FOR LETTER OF AUTHORITY. A security department of a private business or of a political subdivision that applies for a security officer commission for an individual employed by the security department must submit an application to the board for a letter of authority on a form provided by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.621, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.56, eff. September 1, 2009.

Sec. 1702.184. LOCAL REGULATION OF CERTAIN SECURITY SERVICES FOR PRIVATE BUSINESSES. (a) Except as provided by Subsection (b), a political subdivision of this state may not require a private business to contract with or employ a peace officer to provide security services for the business.

(b) This section does not apply to:

- (1) a requirement that a private business contract with or employ a peace officer to:
  - (A) provide security services for a public event;
  - (B) provide security services for a private event held at a public facility that is owned or leased by a political subdivision of this state;
  - (C) conduct a public escort; or
  - (D) direct traffic on a public roadway; or
- (2) an order or determination made by a court under Chapter 125, Civil Practice and Remedies Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 408 (S.B. 949), Sec. 1, eff. June 15, 2007.

#### **SUBCHAPTER I. PERSONAL PROTECTION OFFICER ENDORSEMENT REQUIREMENTS**

Sec. 1702.201. PERSONAL PROTECTION OFFICER ENDORSEMENT REQUIRED. An individual may not act as a personal protection officer unless the individual holds a personal protection officer endorsement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.11, eff. September 1, 2009.

Sec. 1702.202. PERSONAL PROTECTION OFFICER. An individual acts as a personal protection officer if the individual, while carrying a firearm, provides to another individual personal protection from

bodily harm.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.12, eff. September 1, 2009.

Sec. 1702.203. APPLICATION FOR PERSONAL PROTECTION OFFICER ENDORSEMENT. An applicant for a personal protection officer endorsement must submit a written application on a form prescribed by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.622, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.58, eff. September 1, 2009.

Sec. 1702.204. PERSONAL PROTECTION OFFICER ENDORSEMENT; QUALIFICATIONS. (a) An applicant for a personal protection officer endorsement must be at least 21 years of age and must provide:

(1) a certificate of completion of the basic security officer training course;

(2) proof that the applicant:

(A) has been issued a security officer commission;

(B) is employed at the time of application by an investigations company or guard company licensed by the board; and

(C) has completed the required training in nonlethal self-defense or defense of a third person; and

(3) proof of completion and the results of the Minnesota Multiphasic Personality Inventory psychological testing.

(b) The board by rule shall require an applicant for a personal protection officer endorsement to complete the Minnesota Multiphasic Personality Inventory test. The board may use the results of the test to evaluate the applicant's psychological fitness.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.623, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.59, eff. September 1, 2009.

Sec. 1702.205. PERSONAL PROTECTION OFFICER TRAINING. (a) The board shall establish a 15-hour course for a personal protection officer consisting of training in nonlethal self-defense or defense of a third person.

(b) The training required by this section is in addition to the basic training course for security officers.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.624, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.60, eff. September 1, 2009.

Sec. 1702.206. LIMITED AUTHORITY TO CARRY FIREARMS. (a) An individual acting as a personal protection officer may not carry a firearm unless the officer:

(1) is either:

(A) engaged in the exclusive performance of the officer's duties as a personal protection officer for the employer under whom the officer's personal protection officer endorsement is issued; or

(B) traveling to or from the officer's place of assignment; and

(2) carries the officer's security officer commission and personal protection officer endorsement on the officer's person while performing the officer's duties or traveling as described by Subdivision (1) and presents the commission and endorsement on request.

(b) An individual who is acting as a personal protection officer and is wearing the uniform of a security officer, including any uniform or apparel described by Section 1702.323(d), may not conceal any firearm the individual is carrying and shall carry the firearm in plain view. An individual who is acting as a personal protection officer and is not wearing the uniform of a security officer shall conceal the firearm.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1048 (H.B. 2101), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.13, eff. September 1, 2009.

**SUBCHAPTER J. REGISTRATION AND ENDORSEMENT REQUIREMENTS; DUTIES OF REGISTRANT AND ENDORSEMENT HOLDER**

Sec. 1702.221. REGISTRATION AND ENDORSEMENT REQUIRED. (a) To perform any activity regulated by this chapter, the individual must:

- (1) register in accordance with the requirements of this chapter and related administrative rules;
- (2) obtain the proper endorsement under Subsection (b); and
- (3) be employed by a company licensed under this chapter.

(b) An individual must obtain the appropriate endorsement in accordance with the requirements of this chapter and related administrative rules if the individual:

- (1) is employed as:
  - (A) an alarm instructor;
  - (B) an alarm systems installer;
  - (C) an alarm systems monitor;
  - (D) an electronic access control device installer;
  - (E) a level 3 classroom or firearm instructor;
  - (F) a locksmith;
  - (G) a dog trainer;
  - (H) a manager or branch office manager;
  - (I) a noncommissioned security officer;
  - (J) a level 4 personal protection instructor;
  - (K) a private investigator;
  - (L) a private security consultant;
  - (M) a security salesperson; or
  - (N) an individual whose duties include performing another activity for which an endorsement is required under Subsection (e); or
- (2) is an owner who oversees the security-related aspects of the business, officer, partner, or shareholder of a license holder.

(c) Registration and endorsement under this chapter does not

preclude an individual from performing additional duties or services authorized by the individual's employer that are not regulated by this chapter. An individual who performs more than one of the services that require an endorsement under this section must obtain an endorsement for each service.

(d) In addition to the services listed in Subsection (b), a person holding a security officer commission must also obtain an endorsement for personal protection if the individual performs the services described by Section 1702.202.

(e) The board by rule may require a person to hold an endorsement for performing other activity expressly regulated by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.625, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 936, Sec. 7, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 10, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.61, eff. September 1, 2009.

Sec. 1702.222. SECURITY OFFICER. An individual acts as a security officer for purposes of this chapter if the individual is:

- (1) employed by a security services contractor or the security department of a private business; and
- (2) employed to perform the duties of an alarm systems response runner who responds to the first signal of entry, a security guard, security watchman, security patrolman, armored car guard, or courier guard.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.2226. ELECTRONIC ACCESS CONTROL DEVICE INSTALLER.

(a) An individual acts as an electronic access control device installer for purposes of this chapter if the individual installs, maintains, or repairs an electronic access control device.

(b) A person registered as an electronic access control device installer may not install alarm systems unless the person holds an

endorsement under this chapter as an alarm systems installer.

Added by Acts 2003, 78th Leg., ch. 936, Sec. 9, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. [2730](#)), Sec. 4.62, eff. September 1, 2009.

Sec. 1702.2227. LOCKSMITH. (a) An individual acts as a locksmith for the purposes of this chapter if the person:

(1) sells, installs, services, or maintains mechanical security devices, including deadbolts and locks; or

(2) advertises or offers services to the public or represents to the public that the person is a locksmith.

(b) This section does not apply to a hotel, as that term is defined by Section 156.001, Tax Code.

Added by Acts 2003, 78th Leg., ch. 936, Sec. 9, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1102 (H.B. [2243](#)), Sec. 2, eff. September 1, 2005.

Sec. 1702.223. ALARM SYSTEMS INSTALLER. (a) An individual acts as an alarm systems installer for purposes of this chapter if the individual installs, maintains, or repairs an alarm system or detection device.

(b) An alarm systems installer may sell, install, maintain, repair, or service an electronic access control device or a mechanical security device that is capable of activation through a wireless signal. An alarm systems installer may not rekey an electronic access control device or mechanical security device that can be activated by a key. This subsection does not apply to a mechanical security device or electronic access control device installed in a motor vehicle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 936, Sec. 11, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. [3433](#)), Sec. 7, eff. June 14, 2013.

Sec. 1702.224. ALARM SYSTEMS MONITOR. (a) An individual acts as an alarm systems monitor for purposes of this chapter if the individual monitors an alarm system or detection device.

(b) This section does not apply to an individual employed exclusively and regularly by an employer, other than a license holder, in connection with the affairs of that employer and with whom the individual has an employee-employer relationship.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.225. DOG TRAINER. An individual acts as a dog trainer for purposes of this chapter if the individual, as the employee of a licensed guard dog company or investigations company, trains a dog used to protect persons or property or to conduct investigations.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.227. SECURITY SALESPERSON. An individual acts as a security salesperson for purposes of this chapter if the individual is employed by a security services contractor to sell services offered by the contractor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.228. EMPLOYEE OF LICENSE HOLDER; REGISTRATION PERMITTED. An employee of a license holder who is employed in a capacity that is not subject to mandatory registration under this subchapter may register with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.627, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. [2730](#)), Sec. 4.64, eff. September 1, 2009.



Sec. 1702.229. QUALIFICATIONS FOR REGISTRATION. (a) An applicant for registration must meet the qualifications required under Section 1702.113 for a license applicant.

(b) In accordance with the requirements of Section 1702.0611, the board by rule may adopt additional qualifications for an individual to be registered under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.628, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 12, eff. September 1, 2007.

Sec. 1702.230. APPLICATION FOR REGISTRATION OR ENDORSEMENT.

(a) An application for registration or endorsement must be verified and include:

(1) the applicant's full name, residence address, residence telephone number, date and place of birth, and social security number;

(2) a statement that:

(A) lists each name used by the applicant, other than the name by which the applicant is known at the time of application, and an explanation stating each place where each name was used, the date of each use, and a full explanation of the reasons the name was used; or

(B) states that the applicant has never used a name other than the name by which the applicant is known at the time of application;

(3) the name and address of the applicant's employer and, if applicable, the applicant's consulting firm;

(4) the date the employment commenced;

(5) a letter from the license holder requesting that the applicant be registered or endorsed;

(6) the title of the position occupied by the applicant and a description of the applicant's duties; and

(7) any other information, evidence, statement, or document required by the board.

(b) The employer of the applicant shall make a reasonable attempt to verify the information required under Subsection (a)(1)

before the earlier of:

- (1) the date the application is submitted; or
- (2) the date the applicant begins to perform the duties of employment that require registration.

(c) An applicant must submit an application that substantially meets the requirements of this section before employment in a capacity for which registration is required.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.629, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.65, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.66, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.14, eff. September 1, 2009.

Sec. 1702.2305. PROVISIONAL REGISTRATION. (a) The board may issue a provisional registration to an applicant currently registered in another jurisdiction who seeks an equivalent registration in this state and who:

(1) has been registered in good standing in the field in which the registration is sought for at least two years in another jurisdiction, including a foreign country, that has registration requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the board relating to practice in the field in which the registration is sought; and

(3) is employed by a person licensed by the board under this chapter with whom the provisional registration holder will practice during the time the person holds a provisional registration.

(b) A provisional registration is valid until the date the board approves or denies the provisional registration holder's application for a registration. The board shall issue a registration under this chapter to the provisional registration holder if the provisional registration holder is eligible to be registered under this chapter.

(c) The board must approve or deny a provisional registration holder's application for a registration not later than the 180th day after the date the provisional registration is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(d) The board may establish a fee for provisional registration in an amount reasonable and necessary to cover the cost of issuing the registration.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.630(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.67, eff. September 1, 2009.

Sec. 1702.232. POCKET CARDS. (a) The board shall issue a pocket card for each registrant under this chapter. A pocket card for an owner, officer, partner, or shareholder of a license holder shall be issued to the license holder.

(b) The board shall determine the size, design, and content of the pocket card.

(c) The pocket card must:

(1) state the name of the registrant;

(2) contain a color photograph, affixed to the pocket card by the board at the time the card is issued, and the signature of the registrant;

(3) state the date the card was issued and the card's expiration date; and

(4) state each endorsement held by the registrant and the date the endorsement expires.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.632, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.68, eff. September 1, 2009.

Sec. 1702.233. DURATION OF POCKET CARDS. A pocket card issued for a registrant is valid for two years and expires on the date the

registration expires under Section 1702.301(d), (e), or (f).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.633, eff. Sept. 1, 2001.

Sec. 1702.234. REGISTRATION AND ENDORSEMENT TRANSFER. A registrant may transfer the registrant's registration and endorsements from one employer to another employer if, not later than the 14th day after the date the registrant begins the new employment, the new employer notifies the board of the transfer of employment on a form prescribed by the board accompanied by payment of the employee information update fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.634(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.69, eff. September 1, 2009.

Sec. 1702.235. PREEMPLOYMENT CHECK FOR NONCOMMISSIONED SECURITY OFFICERS. A person may not hire a noncommissioned security officer unless the person conducts a preemployment check as required by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.635, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.70, eff. September 1, 2009.

Sec. 1702.236. EXAMINATION AND TRAINING REQUIREMENTS FOR ELECTRONIC ACCESS CONTROL DEVICE INSTALLERS. (a) The board shall require an individual who applies for an endorsement as an electronic access control device installer to pass an examination given by the board or a person approved by the board. The examination must cover material related to access control.

(b) On and after September 1, 2005, the board by rule may allow

an electronic access control device installer to obtain or renew an endorsement by fulfilling the requirements of a board-approved, industry-based educational training program.

Added by Acts 2003, 78th Leg., ch. 936, Sec. 10, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.71, eff. September 1, 2009.

Sec. 1702.239. TRAINING REQUIREMENTS FOR ALARM SYSTEMS INSTALLER AND SECURITY SALESPERSON; EXAMINATION. (a) The board may require that an individual employed as an alarm systems installer or security salesperson hold a certification by a board-approved training program to renew an endorsement. The board may approve only nationally recognized training programs that consist of at least 16 hours of classroom study in the areas of work allowed by the endorsement. To be approved, a training program must offer at least two certification programs each year, sufficient to complete the requirements of this subsection, within 100 miles of each county in the state that has a population of more than 500,000.

(b) The board may require an individual who has completed a training program under Subsection (a) to pass an examination given by the board or by a person approved by the board. The board may approve examinations in conjunction with training programs approved under Subsection (a). The individual's performance on the examination must demonstrate the individual's qualifications to perform the duties allowed by the individual's endorsement.

(c) An individual who holds a registration on September 30, 1993, is not required to comply with requirements adopted under Subsections (a) and (b) during the time the individual maintains the registration with the individual's current license holder.

(d) If the board requires certification or examination under this section, the board shall implement rules to require that to renew an endorsement, an individual who is employed as an alarm systems installer or a security salesperson and who has already once renewed the endorsement must obtain continuing education credits related to the line of work for which the individual is licensed. If the board requires the continuing education, the chief administrator must approve classes offered by nationally recognized organizations,

and participants in the classes must qualify according to board rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.639, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 936, Sec. 12, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.72, eff. September 1, 2009.

Sec. 1702.240. REGISTRATION EXEMPTIONS FOR UNDERCOVER AGENT.

(a) For the purposes of this section, "undercover agent" means an individual hired by a person to perform a job in or for that person, and while performing that job, to act as an undercover agent, an employee, or an independent contractor of a license holder, but supervised by a license holder.

(b) An employee of a license holder who is employed exclusively as an undercover agent is not required to register with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.640, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.73, eff. September 1, 2009.

Sec. 1702.241. JURISPRUDENCE EXAMINATION. (a) The board may develop and administer at least twice each calendar year a jurisprudence examination to determine the knowledge that an applicant for an endorsement has of this chapter, board rules, and any other applicable laws of this state affecting the applicant's activities regulated under this chapter.

(b) Before the board may administer a jurisprudence examination under this section, the board shall adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results. The board may design different examinations for different types of endorsements.

Added by Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.74, eff. September 1, 2009.

**SUBCHAPTER L. GENERAL PROVISIONS APPLICABLE TO REGULATED PERSONS**

Sec. 1702.282. CRIMINAL HISTORY CHECK. (a) The board shall conduct a criminal history check, including a check of any criminal history record information maintained by the Federal Bureau of Investigation, in the manner provided by Subchapter F, Chapter 411, Government Code, on each applicant for a license, registration, security officer commission, letter of approval, permit, endorsement, or certification. As part of its criminal history check, the board may request that the applicant provide certified copies of relevant court documents or other records. The failure to provide the requested records within a reasonable time as determined by the board may result in the application being considered incomplete. An applicant is not eligible for a license, registration, commission, letter of approval, permit, endorsement, or certification if the check reveals that the applicant has committed an act that constitutes grounds for the denial of the license, registration, commission, letter of approval, permit, endorsement, or certification. Except as provided by Subsection (d), each applicant shall submit at the time of application, including an application for the renewal of a license, registration, commission, letter of approval, permit, endorsement, or certification, fingerprints in the manner prescribed by the board accompanied by the fee set by the board.

(b) Before beginning employment as a commissioned security officer, the applicant must be approved by the board based on the results of the check under Subsection (a). To continue employment in a capacity regulated under this chapter other than as a commissioned security officer, the applicant must be approved by the board based on the results of the check under Subsection (a) not later than the 120th day after the date the applicant begins employment in that capacity.

(c) A license, registration, security officer commission, letter of approval, permit, endorsement, or certification issued by the board is conditional on the board's receipt of criminal history record information.

(d) An applicant who is a peace officer is not required to

submit fingerprints with the applicant's application. On request, the law enforcement agency or other entity that employs the peace officer or the entity that maintains the peace officer's fingerprints shall provide the fingerprints for the peace officer to the board. The applicant shall provide sufficient information to the board to enable the board to obtain the fingerprints under this subsection.

(e) On receipt of notice that a check of the applicant's criminal record has uncovered an unresolved and potentially disqualifying arrest that occurred before the 10th anniversary of the date the application is filed, the applicant must provide a letter of reference from the county sheriff, prosecuting attorney, or judge of the county in which the applicant was arrested stating that a record of a disposition related to the arrest does not exist, and to the best of the county sheriff's, prosecuting attorney's, or judge's knowledge the applicant is free of any disqualifying convictions. If the applicant fails to provide either the letter of reference or documentary proof of the final disposition of the arrest, the application is considered incomplete and the applicant may not be issued a license, commission, endorsement, or certificate of registration under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.645(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1035 (H.B. 1132), Sec. 1.02, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1278 (H.B. 2303), Sec. 6, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 13, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.75, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.15, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 8, eff. June 14, 2013.

Sec. 1702.283. CRUELTY TO ANIMALS. A person who has been



convicted of cruelty to animals under Section 42.09 or 42.092, Penal Code:

(1) is ineligible for a license as a guard dog company or for endorsement as a dog trainer; and

(2) may not be employed to work with dogs as a security officer by a security services contractor or security department of a private business that uses dogs to protect individuals or property or to conduct investigations.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 886 (H.B. 2328), Sec. 6, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.76, eff. September 1, 2009.

Sec. 1702.284. ALARM SYSTEMS RECORDS CONFIDENTIAL. (a) Information contained in alarm systems records maintained by a governmental body that concerns the location of an alarm system, the name of the occupant of an alarm system location, or the type of alarm system used is confidential and may be disclosed only to the board, to the alarm company to which the confidential records relate, or as otherwise required by state law or court order.

(b) Information described by Subsection (a) may be used by the governmental body to inform the occupant of:

(1) the governmental body's alarm system response policy and any proposed change to that policy; and

(2) the option of the occupant to contract with a security services provider to respond to the occupant's alarm.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.646, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 232 (H.B. 1784), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 14, eff. September 1, 2007.

Sec. 1702.285. FALSE REPRESENTATION. A person may not

represent falsely that the person:

- (1) is employed by a license holder; or
- (2) is licensed, registered, endorsed, or commissioned

under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.77, eff. September 1, 2009.

Sec. 1702.286. DUTIES OF ALARM SYSTEMS COMPANY. (a) On the installation or activation of an alarm system, an alarm systems company shall distribute to the occupant of the alarm system location information summarizing:

- (1) the applicable law relating to false alarms, including the potential for penalties and revocation or suspension of a permit;
- (2) how to prevent false alarms; and
- (3) how to operate the alarm system.

(b) An alarm systems company shall notify the municipality in which the alarm system is located of an installation or activation of an alarm system not later than the 30th day after the date of the installation or activation. The alarm systems company shall provide to the municipality:

- (1) the alarm systems company name;
- (2) the alarm systems company license number;
- (3) the name of the occupant of the alarm system location;
- (4) the address of the alarm system location; and
- (5) the date of installation or activation.

(c) Information provided to a governmental body under this section is confidential and subject to disclosure only as provided under Section 1702.284.

(d) An alarm systems company commits an offense if the company violates Subsection (a) or (b). An offense under this subsection is a Class C misdemeanor.

(e) The duties imposed by this section on an alarm systems company do not apply to the installation or activation of a personal emergency response system, as defined under Section 1702.331.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 7, eff. September 1, 2005.

Sec. 1702.2865. CUSTOMER AUTHORIZATION REQUIRED FOR CERTAIN LOCKSMITH SERVICES. (a) A locksmith company or locksmith may not perform services for a customer who seeks entry to a structure, motor vehicle, or other property unless the customer, in the course of the transaction:

(1) shows the locksmith company or locksmith a government-issued identification; and

(2) provides a signed authorization stating that the customer owns or is otherwise entitled to legal access to the structure, motor vehicle, or other property.

(b) A locksmith company or locksmith is exempt from Subsection (a) if the locksmith is requested to perform services in a case of imminent threat to a person or property.

Added by Acts 2005, 79th Leg., Ch. 1102 (H.B. 2243), Sec. 3, eff. September 1, 2005.

Renumbered from Occupations Code, Section 1702.286 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(73), eff. September 1, 2009.

Renumbered from Occupations Code, Section 1702.286 by Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.16, eff. September 1, 2009.

Sec. 1702.287. DETECTION DEVICE CONTROL PANELS; MINIMUM STANDARDS. An alarm systems company may not install any alarm system on or after January 1, 2007, that includes a detection device control panel unless the control panel meets or exceeds the standards of the American National Standards Institute for false alarm reduction.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 7, eff. September 1, 2005.

Sec. 1702.288. NOTICE OF CERTAIN INFORMATION TO RECIPIENT OF ALARM SYSTEM SERVICES. (a) The board shall adopt rules in accordance with this section that require a license holder acting as an alarm systems company under this chapter to inform each of the license holder's clients that the client is entitled to receive a written contract for alarm system services that contains the client's

fee arrangement and other relevant information about services to be rendered.

(b) The rules shall require that a written contract for alarm system services shall be furnished to a client in accordance with Subsection (a) not later than the seventh day after the date the client requests the written contract.

(c) The rules shall require that the written contract for services shall be dated and signed by the owner or manager of an alarm systems company or a person expressly authorized by the owner or manager to sign written contracts on behalf of the company.

(d) The rules shall require that, not later than the seventh day after the date of entering into a contract for services regulated by the board with another alarm systems company or alarm systems monitor, an alarm systems company shall:

(1) notify the recipient of those services of the name, address, and telephone number and individual to contact at the company that purchased the contract;

(2) notify the recipient of services at the time the contract is negotiated that another licensed company may provide any of the services requested by subcontracting or outsourcing those services; and

(3) if any of the services are subcontracted or outsourced to a licensed third party, notify the recipient of services, by mail, of the name, address, phone number, and license number of the company providing those services.

(e) The rules shall require that notice provided to a recipient of services under Subsection (d) shall:

(1) be mailed to the recipient in a written form that emphasizes the required information; and

(2) include stickers or other materials to be affixed to an alarm system indicating the alarm systems company's or alarm systems monitor's new telephone number.

(f) A license holder acting as an alarm systems company does not have to provide the notice required under Subsection (d) if the contact information, including the address and the telephone numbers for the alarm systems company, has not changed.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 7, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 9, eff. June 14, 2013.

Sec. 1702.289. INSPECTIONS. (a) An employee or agent of the department or board, as applicable, who enters the place of business of a person regulated under this chapter for the purpose of conducting an inspection or audit must:

(1) notify the manager or owner of the business of the presence of the person conducting the inspection or audit; and

(2) present the manager or owner of the business with credentials that identify the person conducting the inspection or audit as an employee or agent of the department or board.

(b) This section does not prohibit the department or board from conducting an undercover investigation or covert audit in order to determine compliance with this chapter or a rule adopted under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 10, eff. June 14, 2013.

#### **SUBCHAPTER M. EXPIRATION; RENEWAL**

Sec. 1702.301. EXPIRATION. (a) A license is valid for one year from the date of issuance. A license expires at midnight on the last day of the 11th month after the month in which it is issued.

(b) A security officer commission expires on the second anniversary of the date the commission is issued.

(c) A personal protection officer endorsement expires on the expiration date of the security officer commission under which the individual's endorsement is issued.

(d) Endorsement as a private investigator, manager, branch office manager, alarm systems installer, security consultant, security salesperson, alarm systems monitor, or dog trainer expires on the second anniversary of the date of endorsement.

(e) Endorsement as an owner, officer, partner, or shareholder of a license holder expires on the second anniversary of the date of endorsement.

(f) Endorsement as a noncommissioned security officer expires on the second anniversary of the date of endorsement.

(g) A letter of authority, or a school approval or school instructor approval letter issued by the board, expires on the first anniversary of the date of issuance.

(h) A license, registration, or endorsement issued under this chapter, other than one specified in this section, expires on the date specified by this chapter or by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.647(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.78, eff. September 1, 2009.

Sec. 1702.302. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for longer than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) Not later than the 30th day before the date a person's license is scheduled to expire, the board shall send written notice of the impending expiration to the person at the person's last known address according to the board's records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.648, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.79, eff. September 1, 2009.

Sec. 1702.303. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date the person applies for renewal may obtain a new license without reexamination. The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.649(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.80, eff. September 1, 2009.

Sec. 1702.304. STAGGERED RENEWAL; PRORATION OF LICENSE FEE. The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the expiration date of a license is changed, the board shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.650(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.81, eff. September 1, 2009.

Sec. 1702.305. EFFECT OF LICENSE RENEWAL ON DISCIPLINARY ACTION. Renewal of a license does not prohibit the bringing of disciplinary proceedings for an act committed before the effective date of the renewal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.306. EFFECT OF SUSPENSION ON LICENSE RENEWAL REQUIREMENTS. A suspended license expires on the license's expiration date and may be renewed as provided by this chapter, but the renewal does not entitle the license holder, while the license remains suspended and until the license is reinstated, to engage in the licensed activity or in conduct in violation of the order or judgment by which the license was suspended.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.307. REGISTRATION RENEWAL. (a) An individual who is otherwise eligible to renew a registration may renew an unexpired registration by paying the required renewal fee to the board before the expiration date of the registration. An individual whose registration has expired may not engage in activities that require a registration until the registration has been renewed.

(b) An individual whose registration has been expired for 90 days or less may renew the registration by paying to the board a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) An individual whose registration has been expired for more than 90 days but less than one year may renew the registration by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(d) An individual whose registration has been expired for one year or more may not renew the registration. The individual may obtain a new registration by complying with the requirements and procedures, including any examination required by the board, for obtaining an original registration.

(e) An individual who was registered in this state, moved to another state, and is currently registered and has been in practice in the other state for the two years preceding the date of application may obtain a new registration without reexamination. The individual must pay to the board a fee that is equal to two times the normally required renewal fee for the registration.

(f) Not later than the 30th day before the expiration date of an individual's registration, the board shall send written notice of



the impending expiration to the individual at the individual's last known address according to board records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.651(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.82, eff. September 1, 2009.

Sec. 1702.308. CONTINUING EDUCATION. (a) This section does not apply to a noncommissioned security officer.

(b) The board shall recognize, prepare, or administer continuing education programs for license holders, commissioned security officers, and endorsement holders. The board shall set the minimum number of hours that must be completed and the types of programs that may be offered.

(c) A license holder, commissioned security officer, or endorsement holder must participate in the programs to the extent required by the board to keep the person's license, commission, or endorsement. A license holder, commissioned security officer, or endorsement holder shall submit evidence of compliance with the board's continuing education requirements in a manner prescribed by the board.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.652(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.83, eff. September 1, 2009.

Sec. 1702.309. SECURITY OFFICER COMMISSION RENEWAL. (a) The board by rule shall develop a continuing education course required for renewal of a security officer commission. Only a board-approved instructor may administer the continuing education course. The course must include at least six hours of instruction determined by the chief administrator of the board.

(b) A commissioned security officer must demonstrate the proficiency required under Section 1702.1685 within the 90-day period

before the date the commission is renewed.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.652(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 593, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.84, eff. September 1, 2009.

#### **SUBCHAPTER N. EXCEPTIONS**

Sec. 1702.321. GOVERNMENT EMPLOYEES. (a) Except as provided by this section, this chapter does not apply to an officer or employee of the United States, this state, or a political subdivision of this state while the employee or officer is performing official duties.

(b) The provisions of this chapter relating to security officer commissions apply to a person employed by a political subdivision whose duties include serving as a security guard, security watchman, or security patrolman on property owned or operated by the political subdivision if the governing body of the political subdivision files a written request with the board for the board to issue a commission to the political subdivision's employees with those duties.

(c) The board may not charge a fee for issuing a commission to an officer under Subsection (b). The board shall issue to the officer a pocket card designating the political subdivision that employs the officer.

(d) The commission expires at the time the officer's employment as a security officer by the political subdivision is terminated.

(e) The board may approve a security officer training program conducted by the political subdivision in accordance with Sections 1702.1675 and 1702.168.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.653, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.85, eff. September 1, 2009.

Sec. 1702.322. LAW ENFORCEMENT PERSONNEL. This chapter does

not apply to:

(1) a person who has full-time employment as a peace officer and who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, extra job coordinator, or watchman if the officer:

(A) is employed in an employee-employer relationship or employed on an individual contractual basis:

(i) directly by the recipient of the services; or

(ii) by a company licensed under this chapter;

(B) is not in the employ of another peace officer;

(C) is not a reserve peace officer; and

(D) works as a peace officer on the average of at least 32 hours a week, is compensated by the state or a political subdivision of the state at least at the minimum wage, and is entitled to all employee benefits offered to a peace officer by the state or political subdivision;

(2) a reserve peace officer while the reserve officer is performing guard, patrolman, or watchman duties for a county and is being compensated solely by that county;

(3) a peace officer acting in an official capacity in responding to a burglar alarm or detection device; or

(4) a person engaged in the business of electronic monitoring of an individual as a condition of that individual's community supervision, parole, mandatory supervision, or release on bail, if the person does not perform any other service that requires a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.654, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.17, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1247 (S.B. 1600), Sec. 1, eff. June 17, 2011.

Sec. 1702.323. SECURITY DEPARTMENT OF PRIVATE BUSINESS. (a) Except as provided by Subsections (b) and (d), this chapter does not apply to an individual employed in an employee-employer relationship exclusively and regularly by one employer in connection with the

affairs of the employer.

(b) An individual described by Subsection (a) who carries a firearm in the course of employment must obtain a private security officer commission under this chapter.

(c) The security department of a private business may not hire or employ an individual to perform a duty described by Section 1702.222 if the individual has been convicted of a crime that would otherwise preclude the individual from being registered under this chapter. The private business shall maintain the individual's criminal history record on file at the business and shall make the record available for inspection by the Department of Public Safety.

(c-1) Although the security department of a private business that hires or employs an individual as a private security officer to possess a firearm in the course and scope of the individual's duties is required to apply for a security officer commission for the individual under this chapter, the security department of a private business is not required to apply to the board for any license under this chapter.

(d) This chapter applies to an individual described by Subsection (a) who in the course of employment:

(1) comes into contact with the public;

(2) wears:

(A) a uniform commonly associated with security personnel or law enforcement;

(B) any type of badge commonly associated with security personnel or law enforcement; or

(C) a patch or apparel containing the word "security" or a substantially similar word that is intended to or is likely to create the impression that the individual is performing security services; and

(3) performs a duty described by Section 1702.108 or 1702.222.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.655, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 593, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 65 (H.B. [1393](#)), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 663 (H.B. [1241](#)), Sec. 1, eff.

September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 15, eff.  
September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 17.003, eff.  
September 1, 2009.

Sec. 1702.324. CERTAIN OCCUPATIONS. (a) For the purposes of this section, "landman" means an individual who, in the course and scope of the individual's business:

(1) acquires or manages petroleum or mineral interests; or  
(2) performs title or contract functions related to the exploration, exploitation, or disposition of petroleum or mineral interests.

(b) This chapter does not apply to:

(1) a manufacturer or a manufacturer's authorized distributor while selling equipment intended for resale;

(2) a person engaged exclusively in the business of obtaining and providing information to:

(A) determine creditworthiness;

(B) collect debts; or

(C) ascertain the reliability of information provided by an applicant for property, life, or disability insurance or an indemnity or surety bond;

(3) a person engaged exclusively in the business of repossessing property that is secured by a mortgage or other security interest;

(4) a person who is engaged in the business of psychological testing or other testing and interviewing services, including services to determine attitudes, honesty, intelligence, personality, and skills, for preemployment purposes;

(5) a person who:

(A) is engaged in obtaining information that is a public record under Chapter 552, Government Code, regardless of whether the person receives compensation;

(B) is not a full-time employee, as defined by Section 61.001, Labor Code, of a person licensed under this chapter; and

(C) does not perform any other act that requires a license under this chapter;

(6) a licensed engineer practicing engineering or directly

supervising engineering practice under Chapter 1001, including forensic analysis, burglar alarm system engineering, and necessary data collection;

(7) an employee of a cattle association who inspects livestock brands under the authority granted to the cattle association by the Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture;

(8) a landman performing activities in the course and scope of the landman's business;

(9) an attorney while engaged in the practice of law;

(10) a person who obtains a document for use in litigation under an authorization or subpoena issued for a written or oral deposition;

(11) an admitted insurer, insurance adjuster, agent, or insurance broker licensed by the state, performing duties in connection with insurance transacted by that person;

(12) a person who on the person's own property or on property owned or managed by the person's employer:

(A) installs, changes, or repairs a mechanical security device;

(B) repairs an electronic security device; or

(C) cuts or makes a key for a security device;

(13) security personnel, including security contract personnel, working at a commercial nuclear power plant licensed by the United States Nuclear Regulatory Commission;

(14) a person or firm licensed as an accountant or accounting firm under Chapter 901, an owner of an accounting firm, or an employee of an accountant or accounting firm while performing services regulated under Chapter 901;

(15) a retailer, wholesaler, or other person who sells mechanical security devices, including locks and deadbolts, but who does not:

(A) service mechanical security devices for the public outside of the person's premises; or

(B) claim to act as a locksmith;

(16) an employee while performing investigative services that would otherwise be subject to this chapter for an entity regulated by the:

(A) Texas Department of Insurance;

(B) Office of Thrift Supervision;

- (C) Securities and Exchange Commission;
- (D) Federal Deposit Insurance Corporation; or
- (E) Financial Industry Regulatory Authority;

(17) a social worker who holds a license issued under Chapter 505 who is engaged in the practice of social work;

(18) persons licensed under Chapter 1101, an association thereof, their authorized agents, or a multiple listing service, engaged in the business of selling, maintaining, repairing, programming, or placing lockboxes used for accessing real property; or

(19) an automobile club that holds a certificate of authority under Chapter 722, Transportation Code, its subcontractor, or a business that provides similar services, that unlocks a vehicle at the request of the owner or operator of the vehicle and that does not otherwise perform a locksmith service.

(c) The exemptions provided by Subsection (b) apply only to a person described in that subsection while the person is performing services directly related to and dependent on the provision of the exempted service that does not otherwise require licensing under this chapter. The exemptions do not apply to activities or services that are independent of the service or profession that is the basis for the exemption.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.656, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 936, Sec. 13, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1237, Sec. 2, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.801, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 518 (H.B. 808), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 1102 (H.B. 2243), Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1155 (H.B. 3140), Sec. 2, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 16, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.86, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 509 (H.B. 1779), Sec. 1, eff.

June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 11, eff. June 14, 2013.

Sec. 1702.325. COMMON CARRIERS. This chapter does not apply to:

(1) a common carrier by rail engaged in interstate commerce, regulated by state and federal authorities, and transporting commodities essential to the national defense and to the general welfare and safety of the community; or

(2) an officer, employee, or agent of a common carrier, as defined by Section 153 of the federal Communications Act of 1934 (47 U.S.C. Section 153), and its subsequent amendments, while protecting the carrier or a user of the carrier's long-distance services from a fraudulent, unlawful, or abusive use of those long-distance services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.657, eff. Sept. 1, 2001.

Sec. 1702.326. MEDICAL ALERT SERVICES. (a) This chapter does not apply to an entity that:

(1) provides medical alert services for persons who are sick or disabled;

(2) does not provide any other service that requires a license under this chapter; and

(3) is:

(A) a hospital or a wholly owned subsidiary or an affiliate of a hospital licensed under Chapter 241, Health and Safety Code; or

(B) a charitable or a nonprofit entity that provides the services in the manner required by Subsection (b) and that is exempt from the payment of federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 and its subsequent amendments by being listed as an exempt entity under Section 501(c)(3) of that code.

(b) A charitable or nonprofit entity that provides medical alert services must provide those services through a licensed person, licensed nurse, licensed physician assistant or by a hospital,



subsidiary, or affiliate described by Subsection (a)(3)(A).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.327. NONPROFIT AND CIVIC ORGANIZATIONS. This chapter does not apply to:

(1) a nonprofit business or civic organization that:

(A) employs a peace officer who meets the qualifications of Section 1702.322(1) as a patrolman, guard, or watchman;

(B) provides the services of the peace officer only to:

(i) the organization's members; or

(ii) if the organization does not have members, the members of the communities served by the organization as described in the organization's articles of incorporation or other organizational documents;

(C) devotes the net receipts from all charges for the services exclusively to the cost of providing the services or to the costs of other services for the enhancement of the security or safety of:

(i) the organization's members; or

(ii) if the organization does not have members, the members of the communities served by the organization as described in the organization's articles of incorporation or other organizational documents; and

(D) does not perform any other service that requires a license under this chapter; or

(2) a charitable, nonprofit organization that maintains a system of records to aid in the location of missing children and that:

(A) is exempt from the payment of federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 and its subsequent amendments by being listed as an exempt entity under Section 501(c)(3) of that code;

(B) exclusively provides services related to locating missing children; and

(C) does not perform any other service that requires a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.328. SECURITY SYSTEMS SALES AND INSTALLATION. This chapter does not apply to:

(1) a person who owns and installs a burglar detection or alarm device on the person's own property or, if the person does not charge for the device or the installation, installs the device for the protection of the person's personal property located on another person's property and does not, as a normal business practice, install the devices on the property of another;

(2) a person in the business of building construction that installs electrical wiring and devices that may include in part the installation of a burglar alarm or detection device if:

(A) the person is a party to a contract that provides that:

(i) the installation will be performed under the direct supervision of, and inspected and certified by, a person licensed to install and certify the alarm or detection device; and

(ii) the license holder assumes full responsibility for the installation of the alarm or detection device; and

(B) the person does not service or maintain alarm systems, electronic access control devices, locks, or detection devices;

(3) a person who sells or installs automobile burglar alarm devices and who does not perform any other act that requires a license under this chapter; or

(4) a person who sells exclusively by e-commerce, over the counter transactions, or mail order, alarm systems, electronic access control devices, locks, or detection devices.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 936, Sec. 14, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1155 (H.B. [3140](#)), Sec. 3, eff. June 18, 2005.

Sec. 1702.329. FIRE ALARM AND DETECTION SALES AND INSTALLATION. This chapter does not apply to:

(1) a person whose activities are regulated under Article

5.43-2, Insurance Code, except to the extent those activities are specifically regulated under this chapter; or

(2) a person who holds a license or other credential issued by a municipality to practice as an electrician and who installs fire or smoke detectors only in single-family or multifamily residences.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.330. SECURITY PERSONNEL OF PRIVATE INSTITUTION OF HIGHER EDUCATION. This chapter does not apply to:

(1) a person who is employed full-time by and is commissioned as a campus security personnel employee by a private institution of higher education under Section 51.212, Education Code; or

(2) a peace officer commissioned by an incorporated municipality who is hired under Section 51.212, Education Code, on a regular basis by a private institution of higher education while that peace officer is operating within the scope of the peace officer's employment with the institution of higher education.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.658(a), eff. Sept. 1, 2001.

Sec. 1702.331. PERSONAL EMERGENCY RESPONSE SYSTEMS. (a) In this section, "personal emergency response system" means an alarm system that is:

(1) installed in the residence of a person;

(2) monitored by an alarm systems company;

(3) designed only to permit the person to signal the occurrence of a medical or personal emergency on the part of the person so that the company may dispatch appropriate aid; and

(4) not part of a combination of alarm systems that includes a burglar alarm or fire alarm.

(b) This chapter does not apply to:

(1) an alarm systems company that sells, installs, services, monitors, or responds to only personal emergency response systems;

(2) an alarm systems installer who installs, maintains, or repairs only personal emergency response systems;

(3) a manager or branch office manager of an alarm systems company described by Subdivision (1);

(4) a security salesperson who is employed by an alarm systems company described by Subdivision (1) to sell services offered by the company; and

(5) an owner, officer, partner, or shareholder of an alarm systems company described by Subdivision (1).

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 8, eff. September 1, 2005.

Sec. 1702.332. TELEMATICS SERVICE PROVIDERS. (a) In this section, "telematics service" means:

(1) a service that:

(A) is provided to owners, operators, and occupants of consumer vehicles or commercial fleet vehicles through the remote access of in-vehicle data that may rely on global positioning system satellite data to fix the exact location of the vehicle, including:

- (i) location-specific emergency and roadside vehicle breakdown assistance;
- (ii) automatic collision notification;
- (iii) real-time traffic and navigation information;
- (iv) remote vehicle diagnostics; and
- (v) stolen vehicle recovery;

(B) is enabled through the two-way communication of voice or data, often with an interactive voice response technology interface, between a service subscriber's vehicle and a telematics company's response center; and

(C) is provided to:

- (i) enhance vehicle service, safety, and convenience while driving for vehicle owners;
- (ii) enable automakers and automobile dealerships to achieve greater service and customer management efficiencies and to increase customer retention; and
- (iii) enable fleet operators to remotely manage their vehicles and other mobile assets; and

(2) a related service provided to consumers, automakers, automobile dealerships, and commercial fleet operators by a telematics company as part of the emerging technology industry that

delivers telematics services on a national basis to service subscribers.

(b) Except as otherwise provided by this section, this chapter does not apply to a person who provides a telematics service in this state.

(c) To qualify for the exemption provided by Subsection (b), a telematics service provider shall:

(1) establish business practices and procedures that are at least as stringent as the guidelines established by the Association of Public Safety Communications Officials International regarding the communication of information from telematics service providers to public safety agencies; and

(2) pay an annual fee of \$2,500 to the department.

(d) The department may adopt rules necessary to carry out the purposes of this section, including rules to determine whether a telematics service provider is complying with Subsection (c).

Added by Acts 2005, 79th Leg., Ch. 207 (H.B. 1531), Sec. 1, eff. September 1, 2005.

Renumbered from Occupations Code, Section 1702.331 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(59), eff. September 1, 2007.

#### **SUBCHAPTER O. PROHIBITED PRACTICES AND GROUNDS FOR DENIAL AND DISCIPLINARY ACTION**

Sec. 1702.361. DENIAL AND DISCIPLINARY ACTIONS; GROUNDS. (a) The department, for conduct described by Subsection (b), may:

(1) deny an application or revoke, suspend, or refuse to renew a license, registration, endorsement, or security officer commission;

(2) reprimand a license holder, registrant, or commissioned security officer; or

(3) place on probation a person whose license, registration, endorsement, or security officer commission has been suspended.

(b) The department shall take disciplinary action described by Subsection (a) on proof:

(1) that the applicant, license holder, manager or majority owner of a license holder, registrant, endorsement holder, or

commissioned security officer has:

(A) violated this chapter or a rule adopted under this chapter;

(B) become ineligible for licensure, registration, or endorsement under Section 1702.113, or a commission under Section 1702.163, if applicable, other than an action for which the department has taken summary action under Section 1702.364;

(C) engaged in fraud, deceit, or misrepresentation;

(D) made a material misstatement in an application for or renewal of a license, registration, endorsement, or commission;

(E) failed to pay in full an administrative penalty assessed under Subchapter Q, for which the board has issued a final order;

(F) performed any service for which an endorsement is required under this chapter and either:

(i) was not employed with a company licensed under this chapter at the time the service was performed; or

(ii) performed the service for a company licensed under this chapter that was not listed on the individual's registration without informing the board of the individual's employment with the company within a reasonable period; or

(G) failed to qualify a new manager within the time required by board rule following the termination of a manager; or

(2) that the license holder of a registrant or commissioned security officer has submitted to the department sufficient evidence that the registrant or commissioned security officer:

(A) engaged in fraud or deceit while employed by the license holder; or

(B) committed theft while performing work as a registrant or commissioned security officer.

(c) The department may place on probation a person whose license is suspended. If a person's suspension of a license is probated, the department may require the person:

(1) to report regularly to the department on matters that are the basis of the suspension;

(2) to limit practice to the areas prescribed by the department; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(d) The department may revoke a license, certificate, registration, endorsement, or commission if the person holding that credential under this chapter submits payment of a fee or penalty that is returned for insufficient funds and the person has received notice and an opportunity to provide payment in full.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.659, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 17, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.87, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.18, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 12, eff. June 14, 2013.

Sec. 1702.3615. DIRECT APPEAL IN LIMITED CASES. (a) An applicant may appeal directly to the board the denial of a license, registration, or security officer commission application if:

(1) the sole basis of the denial is the applicant's status as a registered sex offender;

(2) the applicant's status as a sex offender is not based on a criminal conviction that would make the applicant ineligible under Section 1702.113 or 1702.163; and

(3) the applicant waives the applicant's right to a hearing before the State Office of Administrative Hearings.

(b) A proceeding under Subsection (a) is governed by Chapter 2001, Government Code. A hearing must be held at a regular meeting of the board.

(c) In a proceeding held as provided by Subsection (a), the board may approve the application if the board determines the circumstances surrounding the applicant's registration as a sex offender warrant approval based on factors previously established by rule.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.660(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 18, eff. September 1, 2007.

Sec. 1702.362. FAILURE TO FILE REQUIRED NOTICE. The board may suspend or revoke a license if the license holder fails to notify the board as required by Section 1702.121 that a manager has ceased to be the manager of the license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.661, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.88, eff. September 1, 2009.

Sec. 1702.363. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. Except as provided by Sections 1702.3615(b) and 1702.364, a person regulated under this chapter against whom the board has taken action is entitled to a hearing before the State Office of Administrative Hearings. A proceeding under this section is a contested case that is governed by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.662, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.89, eff. September 1, 2009.

Sec. 1702.364. SUMMARY ACTIONS. (a) On receiving written notice from a law enforcement agency that a person has been charged with or convicted of an offense that would make the person ineligible for a license, certificate of registration, endorsement, or security officer commission under Section 1702.113 or 1702.163, or a rule adopted under Section 1702.004(b), the department shall:

(1) summarily deny the person's application for a license, registration, endorsement, or security officer commission;

(2) in the event of pending charges, summarily suspend the person's license, certificate of registration, endorsement, or security officer commission; or



(3) in the event of a conviction, summarily revoke the person's license, certificate of registration, endorsement, or security officer commission.

(b) To initiate a proceeding to take action under Subsection (a), the department must serve notice to the person. The notice must:

(1) inform the person of the right to a preliminary hearing before the department;

(2) state the basis for the summary action; and

(3) be personally served on the person or the person's authorized representative, or sent to the person by certified or registered mail, return receipt requested, to the person's mailing address as it appears in the department's records.

(c) The action is effective at the time notice is served. The person shall immediately surrender to the department any certificate of registration, security officer commission, pocket card, or other form of identification issued by the department.

(d) At a preliminary hearing, the person must show cause why:

(1) the application should not have been denied;

(2) the registration, license, endorsement, or security officer commission should not have been suspended; or

(3) the registration, license, endorsement, or commission should not have been revoked.

(e) Chapter 2001, Government Code, does not apply to the department's initial action under this section or to a preliminary hearing before the department under this section.

(f) The dismissal of a complaint, information, or indictment or an acquittal releases the person from automatic grounds for a summary denial of an application or summary suspension of a registration, endorsement, or security officer commission under this section. A conviction for the offense giving rise to a summary suspension is automatic grounds for immediate, summary revocation.

(g) The results of the preliminary hearing may be appealed by requesting, in writing, a hearing before an administrative law judge of the State Office of Administrative Hearings. On receipt of the request, the department shall set a hearing and give written notice of the hearing to the person.

(h) The administrative law judge shall make findings of fact and conclusions of law regarding the person's eligibility for a license, registration, or endorsement under this section and promptly

issue to the board a proposal for a decision.

(i) At its earliest possible quarterly meeting, the board shall consider the proposal for decision and promptly issue a final order.

(j) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1146, Sec. 4.102(8), eff. September 1, 2009.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.663, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 19, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.90, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.102(8), eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 13, eff. June 14, 2013.

Sec. 1702.365. ABDUCTION OF CHILD. The board shall revoke a person's license, registration, endorsement, or security officer commission or deny a person's application for, or renewal of, a license, registration, endorsement, or security officer commission on proof that the person or an agent of the person has, after the date of application for a license, registration, endorsement, or security officer commission, abducted or attempted to abduct by force or the threat of force or by misrepresentation, stealth, or unlawful entry a child who at the time of the abduction or attempt is under the care and control of a person who:

(1) has custody or physical possession of the child under a court order; or

(2) is exercising the care and control with the consent of a person who has custody or physical possession of the child under a court order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.664, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.91, eff. September 1, 2009.

## Sec. 1702.367. COMPLAINT INVESTIGATION; SUBPOENA; WITNESS.

(a) For an investigation conducted under this chapter, if necessary to enforce this chapter or the board's rules, the department may issue an administrative subpoena to any person in this state compelling:

- (1) the production of information or documents; or
- (2) the attendance and testimony of a witness.

(b) A witness is not privileged to refuse to testify to a fact or to produce a record or document with respect to which the witness is properly examined by the hearings officer.

(c) A person required to testify or to produce a record or document on any matter properly under inquiry by the board who refuses to testify or to produce the record or document on the ground that the testimony or the production of the record or document would incriminate or tend to incriminate the person is nonetheless required to testify or to produce the record or document. A person who is required to testify or to produce a record or document under this subsection is not subject to indictment or prosecution for a transaction, matter, or thing concerning which the person truthfully testifies or produces evidence.

(d) If a witness refuses to obey a subpoena or to give evidence relevant to proper inquiry by the board, the board may petition a district court of the county in which the hearing is held to compel the witness to obey the subpoena or to give the evidence. The court shall immediately issue process to the witness and shall hold a hearing on the petition as soon as possible.

(e) An investigator employed by the board may take statements under oath in an investigation of a matter covered by this chapter.

(f) A person licensed or otherwise regulated under this chapter who fails without good cause to comply with a subpoena issued under this section may be subject to suspension of a license under Section 1702.361.

(g) If a subpoena issued under this section relates to an ongoing criminal investigation by the department and the department determines that disclosure could significantly impede the investigation, the subpoena may provide that the person to whom the subpoena is directed may not:

- (1) disclose that the subpoena has been issued;
- (2) identify or describe any records requested by the subpoena; or

(3) disclose whether records have been furnished in response to the subpoena.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.666, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.92, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.19, eff. September 1, 2009.

Sec. 1702.368. NOTIFICATION OF CONVICTION FOR CERTAIN OFFENSES. The department shall notify the board and the police department of the municipality and the sheriff's department of the county in which a person licensed, registered, or commissioned under this chapter resides of the conviction of the person for a Class B misdemeanor or equivalent offense or a greater offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.667(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.93, eff. September 1, 2009.

Sec. 1702.369. NO REINSTATEMENT AFTER REVOCATION. A revoked license may not be reinstated.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.370. EFFECT OF SUSPENSION; MONITORING OF EXISTING ALARM CONTRACTS. Subject to expiration of the license under Section 1702.306, a license holder may continue to monitor under an existing alarm contract or contract to monitor under an existing alarm contract for 30 days after the date of suspension of the person's license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.3705. PROHIBITION AGAINST CERTAIN POLITICAL SUBDIVISIONS ACTING AS ALARM SYSTEMS COMPANY. (a) Except as provided by Subsection (b), a political subdivision may not offer residential alarm system sales, service, installation, or monitoring unless it has been providing monitoring services to residences within the boundaries of the political subdivision as of September 1, 1999. Any fee charged by the political subdivision may not exceed the cost of the monitoring.

(b) A political subdivision may:

(1) offer service, installation, or monitoring for property owned by the political subdivision or another political subdivision;

(2) allow for the response of an alarm or detection device by a law enforcement agency or by a law enforcement officer acting in an official capacity;

(3) offer monitoring in connection with a criminal investigation; or

(4) offer monitoring to a financial institution, as defined by Section 59.301, Finance Code, that requests, in writing, that the political subdivision provide monitoring service to the financial institution.

(c) The limitations of Subsection (a) do not apply to a political subdivision in a county with a population of less than 80,000 or in a political subdivision where monitoring is not otherwise provided or available.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.668(a), eff. Sept. 1, 2001.

Sec. 1702.371. CONVICTION OF CERTAIN CRIMES. For purposes of this chapter, a person is considered to be convicted of an offense if a court enters a judgment against the person for committing an offense under the laws of this state, another state, or the United States, including a conviction:

(1) in which a person is placed on and subsequently discharged from community supervision;

(2) that has been set aside or dismissed following the completion of probation; or

(3) for which a person is pardoned, unless the pardon was granted for reasons relating to a wrongful conviction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.669(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 20, eff. September 1, 2007.

Sec. 1702.372. RECUSAL OF BOARD MEMBER. (a) A board member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint:

(1) may not vote on the matter at a board meeting related to the complaint; and

(2) shall state at the meeting the reason for which the member is prohibited from voting on the matter.

(b) A statement under Subsection (a)(2) shall be entered into the minutes of the meeting.

Added by Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.94, eff. September 1, 2009.

#### **SUBCHAPTER P. PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 1702.381. CIVIL PENALTY. (a) A person who is not licensed under this chapter, who does not have a license application pending, and who violates this chapter may be assessed a civil penalty to be paid to the state not to exceed \$10,000 for each violation.

(b) A person who contracts with or employs a person who is required to hold a license, registration, endorsement, or security officer commission under this chapter knowing that the person does not hold the required license, registration, endorsement, or commission or who otherwise, at the time of contract or employment, is in violation of this chapter may be assessed a civil penalty to be paid to the state in an amount not to exceed \$10,000 for each violation.

(c) A civil penalty under this section may be assessed against a person on proof that the person has received at least 30 days'

notice of the requirements of this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.670, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 21, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.95, eff. September 1, 2009.

Sec. 1702.382. INJUNCTION. (a) An attorney for the department, the attorney general's office, or any criminal prosecutor in this state may institute an action against a person to enjoin a violation by the person of this chapter or an administrative rule.

(b) An injunction action instituted under this section does not require an allegation or proof that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation to sustain an action under this section. A bond is not required for an injunction action instituted under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.671, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 22, eff. September 1, 2007.

Sec. 1702.383. ACTION FOR CIVIL PENALTY OR INJUNCTION. If a person has violated a provision of this chapter for which a penalty is imposed under Section 1702.381, an attorney for the department, the attorney general's office, or any criminal prosecutor in this state may institute a civil suit in a Travis County district court or in a district court in the county in which the violation occurred for injunctive relief under Section 1702.382 or for assessment and recovery of the civil penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.672, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 23, eff. September 1, 2007.

Sec. 1702.3835. DECEPTIVE TRADE PRACTICE. (a) A person who performs or offers to perform an activity regulated under this chapter, but who is not licensed or otherwise authorized under this chapter to perform the activity, commits a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code.

(b) A public or private right or remedy under Chapter 17, Business & Commerce Code, may be used to enforce this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.20, eff. September 1, 2009.

Sec. 1702.384. FALSIFICATION OF CERTAIN DOCUMENTS; OFFENSE.

(a) A person commits an offense if the person knowingly falsifies fingerprints or photographs submitted under Section 1702.110.

(b) An offense under this section is a felony of the third degree.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.3841. INSUFFICIENT INSURANCE COVERAGE; OFFENSE. (a)

A person commits an offense if the person is subject to Section 1702.124 and knowingly fails to provide and maintain a certificate of insurance or other documentary evidence of insurance sufficient to cover all of the business activities of the person related to private security. A person is presumed to have acted knowingly for purposes of this subsection if the person received reasonable notice from the department and an opportunity to provide or maintain the documentation required by Section 1702.124 and failed to do so.

(b) An offense under this section is a Class A misdemeanor.

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



Sec. 1702.385. NEGLECT BY GUARD DOG COMPANY; OFFENSE. (a) A license holder commits an offense if the license holder:

- (1) operates a guard dog company; and
- (2) fails to provide necessary food, care, or shelter for an animal used by the guard dog company.

(b) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.386. UNAUTHORIZED EMPLOYMENT; OFFENSE. (a) A person commits an offense if the person contracts with or employs a person who is required to hold a license, registration, endorsement, or commission under this chapter knowing that the person does not hold the required license, registration, endorsement, or commission or who otherwise, at the time of contract or employment, is in violation of this chapter.

(b) An offense under Subsection (a) is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.96, eff. September 1, 2009.

Sec. 1702.3863. UNAUTHORIZED CONTRACT WITH BAIL BOND SURETY; OFFENSE. (a) A person commits an offense if the person contracts with or is employed by a bail bond surety as defined by Chapter 1704 to secure the appearance of a person who has violated Section 38.10, Penal Code, unless the person is:

- (1) a peace officer;
- (2) an individual endorsed or licensed as a private investigator or the manager of a licensed investigations company; or
- (3) a commissioned security officer employed by a licensed guard company.

(b) An offense under Subsection (a) is a state jail felony.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.673(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.97, eff.

September 1, 2009.

Sec. 1702.3867. EXECUTION OF CAPIAS OR ARREST WARRANT;  
OFFENSE. (a) A private investigator executing a capias or an arrest  
warrant on behalf of a bail bond surety may not:

(1) enter a residence without the consent of the occupants;  
(2) execute the capias or warrant without written  
authorization from the surety;

(3) wear, carry, or display any uniform, badge, shield, or  
other insignia or emblem that implies that the private investigator  
is an employee, officer, or agent of the federal government, the  
state, or a political subdivision of the state; or

(4) notwithstanding Section 9.51, Penal Code, use deadly  
force.

(b) Notwithstanding Subsection (a)(3), a private investigator  
may display identification that indicates that the person is acting  
on behalf of a bail bond surety.

(c) A private investigator executing a capias or an arrest  
warrant on behalf of a bail bond surety shall immediately take the  
person arrested to:

(1) if the arrest is made in the county in which the capias  
or warrant was issued:

(A) the county jail for that county if:

(i) the offense is a Class A or Class B misdemeanor  
or a felony; or

(ii) the offense is a Class C misdemeanor and the  
capias or warrant was issued by a magistrate of that county; or

(B) the municipal jail for the appropriate municipality  
if the offense is a Class C misdemeanor and the capias or warrant was  
issued by a magistrate of the municipality; or

(2) if the arrest is made in a county other than the county  
in which the capias or warrant was issued, the county jail for the  
county in which the arrest is made.

(d) A person commits an offense if the person violates this  
section. An offense under this section is a state jail felony.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.674(a), eff. Sept.  
1, 2001.

Sec. 1702.387. FAILURE TO SURRENDER CERTAIN DOCUMENTS; OFFENSE. (a) A person commits an offense if the person fails to surrender or immediately return to the board the person's registration, commission, pocket card, or other identification issued to the person by the board on notification of a summary suspension or summary denial under Section 1702.364.

(b) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.675, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.98, eff. September 1, 2009.

Sec. 1702.3875. IMPERSONATING SECURITY OFFICER; OFFENSE. (a) A person commits an offense if the person:

(1) impersonates a commissioned or noncommissioned security officer with the intent to induce another to submit to the person's pretended authority or to rely on the person's pretended acts of a security officer; or

(2) knowingly purports to exercise any function that requires registration as a noncommissioned security officer or a security officer commission.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 822, Sec. 1, eff. Sept. 1, 2001.

Sec. 1702.388. VIOLATION OF CHAPTER; OFFENSE. (a) A person commits an offense if the person violates a provision of this chapter for which a specific criminal penalty is not prescribed.

(b) An offense under this section is a Class A misdemeanor, except that the offense is a felony of the third degree if the person has previously been convicted under this chapter of failing to hold a license, registration, endorsement, certificate, or commission that the person is required to hold under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.99, eff.

September 1, 2009.

Sec. 1702.389. VENUE. An offense under this chapter may be prosecuted in Travis County or in the county in which the offense occurred.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER Q. ADMINISTRATIVE PENALTY**

Sec. 1702.401. IMPOSITION OF PENALTY. In addition to any other disciplinary action taken by the department, and subject to the board's final order in a hearing under this subchapter, the department may impose an administrative penalty on a person licensed, commissioned, or registered under this chapter who violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.676(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 24, eff. September 1, 2007.

Sec. 1702.402. AMOUNT OF PENALTY. (a) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The amount of each separate violation may not exceed \$5,000.

(b) The amount of a violation shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm to property or the public caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) The board by rule shall develop a standardized penalty schedule based on the criteria listed in Subsection (b).

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.676(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 25, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.100, eff. September 1, 2009.

Sec. 1702.403. NOTICE OF VIOLATION AND PENALTY. (a) If the department determines that a violation has occurred, the department shall give written notice to the person.

(b) The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.676(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 26, eff. September 1, 2007.

Sec. 1702.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person in writing may:

- (1) accept the determination and recommended penalty; or
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty, the person shall pay the penalty in a timely manner.

(c) The department may initiate suspension proceedings under Section 1702.361 against a person who, before the 21st day after the day the person receives the notice, either:

- (1) accepts the penalty but fails to pay; or
- (2) fails to respond to the notice.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.676(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 27, eff. September 1, 2007.

Sec. 1702.405. HEARING. (a) If the person requests a hearing, the department shall set a hearing and give written notice of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.676(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 28, eff. September 1, 2007.

Sec. 1702.406. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may:

- (1) find that a violation occurred and impose a penalty; or
- (2) find that a violation did not occur.

(b) The notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order. Judicial review is under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code.

(c) If the person does not file a petition in the appropriate civil court for judicial review of the board's order not later than the 30th day after the date of the order, the board's order is final for purposes of Section 1702.361.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.676(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 29, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.101,

eff. September 1, 2009.

Sec. 1702.413. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.676(a), eff. Sept. 1, 2001.

**CHAPTER 1703. POLYGRAPH EXAMINERS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1703.001. SHORT TITLE. This chapter may be cited as the Polygraph Examiners Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1703.002. LIBERAL CONSTRUCTION. This chapter shall be liberally construed to regulate:

- (1) a person who claims to be able to use an instrument to detect deception or verify the truth of a statement; and
- (2) the instrument used by that person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1703.003. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(1-a) "Committee" means the Polygraph Advisory Committee.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Instrument" means a device used to test a subject to detect deception or verify the truth of a statement including by recording visually, permanently, and simultaneously a subject's cardiovascular and respiratory patterns. The term includes a lie detector, polygraph, deceptograph, or any other similar or related device used to detect deception or verify the truth of a statement.

(4) "Polygraph examiner" means a person licensed under this

chapter to use an instrument to detect deception or verify the truth of a statement.

(5) "Polygraph examiner internship" means a course of study of polygraph examinations and of the administration of polygraph examinations by a trainee under the personal supervision and control of a polygraph examiner as prescribed by the department at the beginning of the internship.

(6) "Trainee" means a person who holds a polygraph examiner internship license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 1, eff. May 27, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 544 (S.B. 562), Sec. 1, eff. September 1, 2013.

Sec. 1703.004. EFFECT OF CHAPTER. This chapter may not be interpreted to permit the results of a truth or polygraph examination to be introduced or admitted as evidence in court.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. POLYGRAPH ADVISORY COMMITTEE**

Sec. 1703.051. COMMITTEE MEMBERSHIP. (a) The Polygraph Advisory Committee consists of five members appointed by the presiding officer of the commission, with the approval of the commission, as follows:

(1) two polygraph examiner members who are qualified polygraph examiners for a governmental law enforcement agency;

(2) two polygraph examiner members who are qualified polygraph examiners in the commercial field; and

(3) one member who represents the public.

(b) A member must have been a United States citizen and a resident of this state for at least two years before the date of appointment.

(c) A polygraph examiner member must be actively engaged as a polygraph examiner on the date of appointment.

(d) Two committee members may not be employed by the same



person.

(e) Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 32.01, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 3, eff. May 27, 2009.

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 4, eff. May 27, 2009.

Sec. 1703.054. TERMS; VACANCY. (a) Committee members serve staggered six-year terms.

(b) If a vacancy occurs on the committee, the presiding officer of the commission, with the commission's approval, shall appoint a successor to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 5, eff. May 27, 2009.

Sec. 1703.055. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, shall appoint a member of the committee to serve as presiding officer of the committee for a two-year term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 6, eff. May 27, 2009.

Sec. 1703.058. COMMITTEE DUTIES. The committee shall advise the commission on:

- (1) educational requirements for a polygraph examiner;
- (2) the contents of a licensing examination;

- (3) technical issues related to a polygraph examination;
- (4) the specific offenses for which a conviction would constitute grounds for the department to take action under Section 53.021; and
- (5) administering and enforcing this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 7, eff. May 27, 2009.

#### **SUBCHAPTER E. LICENSE REQUIREMENTS**

Sec. 1703.201. LICENSE REQUIRED. (a) A person may not use or offer to use, for compensation or for a law enforcement purpose, an instrument, including a polygraph, to detect deception or verify the truth of a statement unless the person is licensed under this chapter.

(b) A person may not represent that the person is a polygraph examiner or refer to the person by another title that indicates or is intended to indicate that the person is qualified to use an instrument to detect deception or verify the truth of a statement unless the person is licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 544 (S.B. 562), Sec. 2, eff. September 1, 2013.

Sec. 1703.202. LICENSE APPLICATION. An application for a polygraph examiner license must:

- (1) be made to the department on a form prescribed by the department;
- (2) be accompanied by the required nonrefundable fee; and
- (3) include any information the department considers necessary to evaluate the applicant's qualifications.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 8, eff. May 27, 2009.

Sec. 1703.203. QUALIFICATIONS FOR LICENSE. (a) A person is qualified for a polygraph examiner license if the person:

(1) has not been convicted of an offense that directly relates to the duties and responsibilities of a polygraph examiner;

(2) either:

(A) holds a baccalaureate degree from a college or university accredited by an organization designated by the department that the department determines has accreditation standards ensuring a high level of student scholarship; or

(B) has active investigative experience during the five years preceding the date of application;

(3) has completed an acceptable polygraph examiner course of study taught by a school recognized by the department and has satisfactorily completed at least six months of a polygraph examiner internship; and

(4) has passed an examination conducted by, under the supervision of, or approved by the department to determine the person's competency for a license.

(b) The commission by rule shall establish:

(1) the specific offenses that disqualify an applicant under Subsection (a)(1); and

(2) the criteria by which the department evaluates an applicant's compliance with the active investigative experience requirement established by Subsection (a)(2)(B).

(c) The department shall provide for an examination under this chapter to be administered in three-month intervals.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 9, eff. May 27, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 544 (S.B. 562), Sec. 3, eff. September 1, 2013.

Sec. 1703.205. ISSUANCE OF LICENSE; SURETY BOND OR INSURANCE POLICY REQUIREMENT. (a) Before a polygraph examiner license is issued, the person to whom the license is to be issued must provide to the department evidence of a surety bond or insurance policy that:

(1) is in the amount of \$5,000; and

(2) requires the obligor on the bond or policy to pay, to the extent of the face amount of the bond or policy, all judgments recovered against the license holder for any wrongful or illegal act committed by the license holder in the course of administering a polygraph examination.

(b) Each license must be issued by the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 10, eff. May 27, 2009.

Sec. 1703.206. NONRESIDENT APPLICANT FOR LICENSE. (a) An applicant for the issuance or renewal of a polygraph examiner license who is not a resident of this state, in addition to meeting all other requirements for a license, must file with the department an irrevocable consent to have:

(1) an action against the applicant filed in a court of a county or municipality of this state in which:

(A) the plaintiff resides; or

(B) a part of the transaction out of which the alleged cause of action arose occurred; and

(2) process in the action served on the applicant by leaving two copies of the process with the department.

(b) The consent must stipulate that service of process in the manner described by Subsection (a)(2) is binding for all purposes.

(c) The department shall immediately send by registered or certified mail a copy of the process to the applicant at the address shown on department records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 11, eff. May 27, 2009.

Sec. 1703.207. WAIVER OF LICENSE REQUIREMENTS FOR APPLICANT WITH OUT-OF-STATE LICENSE OR OTHER RECOGNIZED EDUCATION OR EXPERIENCE. The executive director may waive any license requirement for an applicant who:

(1) holds a license from another state that has license requirements substantially equivalent to those of this state;

(2) has verified service, training, or experience in using an instrument to detect deception or verify the truth of a statement while serving in the military;

(3) has verified service, training, or experience in using an instrument to detect deception or verify the truth of a statement while employed by the federal government; or

(4) has a combination of education and experience the executive director determines to be substantially equivalent to that required under Section 1703.203.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 12, eff. May 27, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 544 (S.B. 562), Sec. 4, eff. September 1, 2013.

Sec. 1703.208. POLYGRAPH EXAMINER INTERNSHIP LICENSE. (a) A person who holds a polygraph examiner internship license may engage in a polygraph examiner internship.

(b) The department may issue a polygraph examiner internship license to an applicant who applies for the license and pays the required fee. The application must contain any information required by the department.

(c) A polygraph examiner internship license expires on the first anniversary of the date of issuance and may be renewed once.

(d) After the expiration of the original term of a polygraph examiner internship license and any extension or renewal of that license granted by the department, a trainee may not hold another internship license before the first anniversary of the date the trainee's previous internship license expired.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 13, eff. May 27, 2009.

**SUBCHAPTER F. LICENSE RENEWAL**

Sec. 1703.251. ANNUAL RENEWAL REQUIRED. A polygraph examiner license is issued for a one-year term and may be renewed annually.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1703.252. LICENSE EXPIRATION DATE. (a) The commission by rule may adopt a system under which polygraph examiner licenses expire on various dates during the year.

(b) For a year in which the license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that the license holder pays only the portion of the fee that is allocable to the number of months the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 14, eff. May 27, 2009.

Sec. 1703.254. LICENSE RENEWAL RELATED TO MILITARY SERVICE.

(a) A person may renew an expired polygraph examiner license without submitting to reexamination if:

(1) the license expired while the person was engaged in:

- (A) active duty with a United States military service;
- (B) service or training with the national guard; or
- (C) training or education under the supervision of the United States, before induction into a United States military service; and

(2) termination of the service, training, or education occurred under an honorable condition.

(b) A person eligible for license renewal under Subsection (a) must, before the second anniversary of the date the service, training, or education terminates, pay to the department the required renewal fee and certify to the department that:

(1) the person was engaged in the service, training, or education; and

(2) termination of the service, training, or education

occurred under an honorable condition.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 15, eff. May 27, 2009.

Sec. 1703.255. CONTINUING EDUCATION. (a) The department may recognize, prepare, or implement continuing education programs for polygraph examiners.

(b) Participation in a continuing education program is mandatory.

(c) The commission by rule shall provide continuing education requirements for license holders.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 16, eff. May 27, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 544 (S.B. 562), Sec. 5, eff. September 1, 2013.

#### **SUBCHAPTER G. PRACTICE BY LICENSE HOLDER**

Sec. 1703.301. LICENSE HOLDER INFORMATION. A polygraph examiner shall notify the department in writing of a change in the examiner's principal business location not later than the 30th day after the date the change is made.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 17, eff. May 27, 2009.

Sec. 1703.302. REGISTRATION WITH COUNTY CLERK. (a) A polygraph examiner shall register with the county clerk of the county in which the examiner maintains a business address.

(b) The county clerk of each county shall maintain a list of each polygraph examiner registered in the county.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1703.303. DISPLAY OF LICENSE. A polygraph examiner or trainee shall prominently display the person's license at the person's place of business or place of internship, as appropriate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1703.304. LICENSE REQUIRED TO MAINTAIN ACTION OR COUNTERCLAIM. A person may not maintain an action or counterclaim in a court in this state with respect to an agreement for or the performance of a service for which a license is required by this chapter, including the recovery of any compensation under the agreement or for the service, unless the person alleges and proves that the person was licensed at the time of making the agreement or performing the service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1703.305. INSTRUMENTS AND MINIMUM INSTRUMENTATION REQUIREMENTS. (a) An instrument used by a polygraph examiner, in addition to recording visually, permanently, and simultaneously a subject's cardiovascular and respiratory patterns, may also record patterns of other physiological changes. The commission may adopt rules to identify other instruments and instrumentation requirements that are acceptable for use in this state.

(b) A polygraph examiner who uses an instrument that does not comply with the instrumentation requirements of Subsection (a) or commission rule is subject to penalties and may be enjoined in the manner provided by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 544 (S.B. [562](#)), Sec. 6, eff. September 1, 2013.

Sec. 1703.306. CONFIDENTIALITY OF EXAMINATION RESULTS. (a) A



polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The department or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 18, eff. May 27, 2009.

Sec. 1703.307. INFORMATION INCLUDED IN CONTRACT FOR SERVICES AND WAIVER OF LIABILITY. A written contract for a polygraph examiner's services and a waiver of liability signed by the subject of a polygraph examination must:

- (1) inform the subject of the procedures to file a complaint against the examiner with the department; and
- (2) contain the name, mailing address, and telephone number of the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 19, eff. May 27, 2009.

#### **SUBCHAPTER H. LICENSE DENIAL AND DISCIPLINARY PROCEDURES**

Sec. 1703.351. LICENSE DENIAL AND DISCIPLINARY ACTION. (a) The department may take action authorized under Subsection (b)

against an applicant or license holder who:

- (1) wilfully violates this chapter or a rule adopted under this chapter;
- (2) violates Section 1703.306(a);
- (3) wilfully aids or abets another to violate this chapter or a rule adopted under this chapter;
- (4) allows the person's license issued under this chapter to be used by an unlicensed person in violation of this chapter;
- (5) makes a material misstatement in an application for the issuance or renewal of a license;
- (6) makes a wilful misrepresentation or false promise or causes the printing of a false or misleading advertisement to directly or indirectly obtain business or trainees;
- (7) fails to inform a subject to be examined:
  - (A) of the nature of the examination; and
  - (B) that the subject's participation in the examination is voluntary;
- (8) fails to inform the subject of an examination of the examination results on request;
- (9) violates Section 51.151, Family Code;
- (10) wilfully makes a false report concerning an examination for polygraph examination purposes;
- (11) fails to provide within a reasonable time information requested by the department as the result of a formal complaint to the department alleging a violation of this chapter;
- (12) demonstrates unworthiness or incompetency to act as a polygraph examiner;
- (13) is convicted of an offense that directly relates to the duties and responsibilities of a polygraph examiner; or
- (14) is found to be incapacitated as provided by the Probate Code.

(b) On determining that an applicant or license holder has engaged in an act listed in Subsection (a), the department shall:

- (1) deny a license to the applicant;
- (2) revoke or suspend the person's license; or
- (3) reprimand the person.

(c) The department may probate a license suspension.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 20, eff. May 27, 2009.

Sec. 1703.353. SURRENDER OF LICENSE. A license holder whose license is suspended or revoked shall immediately surrender the license to the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 21, eff. May 27, 2009.

Sec. 1703.354. EFFECT OF VIOLATION ON EMPLOYER. If a polygraph examiner or trainee engages in an unlawful act or a violation of this chapter, the department may not revoke the license of the polygraph examiner who employed the examiner or trainee unless the department is satisfied that the employer wilfully or negligently aided or abetted the examiner or trainee in the unlawful act or violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 22, eff. May 27, 2009.

Sec. 1703.355. ADMINISTRATIVE PROCEDURE. The administrative procedures under Sections 51.310, 51.353, and 51.354 apply to a disciplinary action taken under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 23, eff. May 27, 2009.

Sec. 1703.356. APPEAL. (a) An appeal of a department action under this chapter is governed by Chapter 2001, Government Code.

(b) The standard of review is under the substantial evidence rule.

Added by Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 24, eff. May 27, 2009.

#### SUBCHAPTER I. PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1703.401. INJUNCTION. (a) If a person violates this chapter, the department, through the attorney general, shall apply in the state's name in district court for an order to enjoin the violation of or to enforce compliance with this chapter.

(b) On a finding by a district court in which a verified petition is filed that a person has violated this chapter, the court may issue, without notice or bond, a temporary injunction enjoining a continued violation of this chapter. If it is established at a hearing on the matter that the person has violated or is violating this chapter, the court may issue a permanent injunction to enjoin the violation of or to enforce compliance with this chapter.

(c) A proceeding under this section is in addition to any other remedy or penalty provided by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 213 (S.B. 1005), Sec. 25, eff. May 27, 2009.

Sec. 1703.402. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person:

- (1) violates this chapter other than Section 1703.306; or
- (2) falsely represents that the person:
  - (A) has been or is a polygraph examiner or trainee; or
  - (B) is qualified to use an instrument to detect

deception or verify the truth of a statement.

(b) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not less than \$100 or more than \$1,000;
- (2) confinement in county jail for a term not to exceed six months; or
- (3) both the fine and confinement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1703.403. VIOLATION OF CONFIDENTIALITY; OFFENSE. A person commits an offense if the person, with criminal negligence, violates Section 1703.306. An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## CHAPTER 1704. REGULATION OF BAIL BOND SURETIES

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1704.001. DEFINITIONS. In this chapter:

(1) "Bail bond" means a cash deposit, or similar deposit or written undertaking, or a bond or other security, given to guarantee the appearance of a defendant in a criminal case.

(2) "Bail bond surety" means a person who:

(A) executes a bail bond as a surety or cosurety for another person; or

(B) for compensation deposits cash to ensure the appearance in court of a person accused of a crime.

(3) "Board" means a county bail bond board.

(4) "Bonding business" or "bail bond business" means the solicitation, negotiation, or execution of a bail bond by a bail bond surety.

(4-a) "Final judgment" means a judgment that disposes of all issues and parties in a case.

(5) "Person" means an individual or corporation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 6, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 316 (S.B. 624), Sec. 1, eff. September 1, 2005.

Sec. 1704.002. APPLICATION OF CHAPTER. This chapter applies only in a county with a population of:

(1) 110,000 or more; or

(2) less than 110,000 in which a board is created.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER B. COUNTY BAIL BOND BOARDS**

Sec. 1704.051. MANDATORY CREATION OF BOARD. A board is created in each county with a population of 110,000 or more.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.052. DISCRETIONARY CREATION OF BOARD. A board may be created in a county with a population of less than 110,000 if:

(1) a majority of the persons who would serve as members of the board under Section 1704.053, or who would designate the persons who would serve as members of the board, determine to create a board; and

(2) the commissioners court approves the creation of the board by a majority vote.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 923 (H.B. 3003), Sec. 1, eff. June 19, 2009.

Sec. 1704.053. BOARD COMPOSITION. A board consists of:

(1) the sheriff or a designee from the sheriff's office who must be the sheriff's administrator or a deputy sheriff of the rank of at least sergeant;

(2) a district judge of the county having jurisdiction over criminal matters and designated by the presiding judge of the administrative judicial district or a designee of the district judge who is approved by the presiding judge;

(3) the county judge, a member of the commissioners court designated by the county judge, or a designee approved by the commissioners court;

(4) a judge of a county court or county court at law in the county having jurisdiction over criminal matters and designated by the commissioners court or a designee of the judge who is approved by the commissioners court;

(5) the district attorney or an assistant district attorney designated by the district attorney;

(6) a licensed bail bond surety or agent for a corporate surety in the county elected under Section 1704.0535, or a bail bond surety or agent for a corporate surety licensed in the county who is designated by the elected surety or agent;

(7) a justice of the peace;

(8) the district clerk or the clerk's designee;

(9) the county clerk or the clerk's designee, if the county clerk has responsibility over criminal matters;

(10) if appointed by the board, a presiding judge of a municipal court in the county;

(11) if the county's principal municipality designates a presiding judge in the municipal court system, the presiding judge or a municipal judge from the system designated by the presiding judge;

(12) the county treasurer or the treasurer's designee or, if appointed by the commissioners court in a county that does not have a county treasurer, the person designated by the county commissioners court to perform the duties of the county treasurer; and

(13) a criminal defense attorney practicing in the county and elected by other attorneys whose principal places of business are located in the county and who are not legally prohibited from representing criminal defendants or the designee of the criminal defense attorney.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.503(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 7, eff. June 20, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 353 (S.B. 235), Sec. 1, eff. September 1, 2007.

Sec. 1704.0535. ELECTION OF BAIL BOND SURETY BOARD MEMBER. (a) The board shall annually conduct a secret ballot election to elect the member of the board who serves as the representative of licensed bail bond sureties by electing a licensed bail bond surety or agent for a corporate surety board member.

(b) Each individual licensed in the county as a bail bond surety or agent for a corporate surety is entitled to cast one vote for each license held.

Added by Acts 2003, 78th Leg., ch. 942, Sec. 8, eff. June 20, 2003.

Sec. 1704.054. PRESIDING OFFICER. (a) A board shall initially elect one of its members as presiding officer.

(b) The presiding officer shall preside over board meetings.

(c) The presiding officer may vote on any board matter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 9, eff. June 20, 2003.

Sec. 1704.055. MEETINGS. (a) A board shall hold its initial meeting not later than the 60th day after the date the board is created.

(b) Except as provided by Subsection (c), a board shall meet:

(1) at least once a month; and

(2) at other times at the call of the presiding officer.

(c) A board in a county with a population of less than 50,000 shall meet at least four times each year during the months of January, April, July, and October at the call of the presiding officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 899 (H.B. 383), Sec. 1, eff. June 19, 2009.

Sec. 1704.056. QUORUM; MAJORITY VOTE. (a) Four members of a board constitute a quorum.

(b) A board may take action only on a majority vote of the board members present.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. BOARD POWERS AND DUTIES**

Sec. 1704.101. ADMINISTRATIVE AUTHORITY. A board shall:

(1) exercise powers incidental or necessary to the administration of this chapter;



(2) deposit fees collected under this chapter in the general fund of the county or in a separate county fund established for this purpose;

(3) supervise and regulate each phase of the bonding business in the county;

(4) adopt and post rules necessary to implement this chapter;

(5) conduct hearings and investigations and make determinations relating to the issuance, denial, or renewal of licenses;

(6) issue licenses to qualified applicants;

(7) deny licenses to unqualified applicants;

(8) employ persons necessary to assist in board functions;

and

(9) conduct board business, including maintaining records and minutes.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 921 (H.B. 1442), Sec. 1, eff. June 14, 2013.

Sec. 1704.102. ENFORCEMENT AUTHORITY. (a) A board shall:

(1) enforce this chapter in the county;

(2) conduct hearings and investigations and make determinations relating to license suspension and revocation;

(3) suspend or revoke a license for a violation of this chapter or a rule adopted by the board under this chapter; and

(4) require a record and transcription of each board proceeding.

(b) A board may:

(1) compel the appearance before the board of an applicant or license holder; and

(2) during a hearing conducted by the board, administer oaths, examine witnesses, and compel the production of pertinent records and testimony by a license holder or applicant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.103. DISBURSEMENTS FROM COUNTY FUND. (a) Fees deposited in the general fund of a county or in a separate county fund under Section 1704.101(2) may be used only to administer and enforce this chapter, including reimbursement for:

(1) reasonable expenses incurred by the board in enforcing this chapter; and

(2) actual expenses incurred by a board member in serving on the board.

(b) For purposes of this section, serving on a board is an additional duty of a board member's office. A board member may not receive compensation for serving on a board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 921 (H.B. 1442), Sec. 2, eff. June 14, 2013.

Sec. 1704.104. POSTING OF BOARD RULE OR ACTION. A board shall post a rule adopted or an action taken by the board in an appropriate place in the county courthouse for the 10 days preceding the date the rule or action takes effect.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.105. LICENSED BAIL BOND SURETY LIST. (a) A board shall post in each court having criminal jurisdiction in the county, and shall provide to each local official responsible for the detention of prisoners in the county, a current list of each licensed bail bond surety and each licensed agent of a corporate surety in the county.

(b) A list of each licensed bail bond surety and each licensed agent of a corporate surety in a county must be displayed at each location where prisoners are examined, processed, or confined.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 10, eff. June 20, 2003.

Sec. 1704.107. NOTIFICATION OF LICENSE SUSPENSION OR

REVOICATION. A board shall immediately notify each court and each local official responsible for the detention of prisoners in the county of:

- (1) the suspension or revocation of a license issued under this chapter; and
- (2) the revocation of the authority of a license holder's agent.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.108. NOTIFICATION OF DEFAULT BY CORPORATION. A board shall promptly notify the Texas Department of Insurance if a corporation fails to pay a judgment of forfeiture as provided by Section 1704.204(a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 11, eff. June 20, 2003.

#### Validity

This section has been declared unconstitutional. See *Pruett v. Harris County Bail Bond Bd.*, 400 F. Supp. 2d 967 (S.D. Tex. 2005).

Sec. 1704.109. SOLICITATION AND ADVERTISEMENT. (a) A board by rule may regulate solicitations or advertisements by or on behalf of bail bond sureties to protect:

- (1) the public from:
  - (A) harassment;
  - (B) fraud;
  - (C) misrepresentation; or
  - (D) threats to public safety; or
- (2) the safety of law enforcement officers.

(b) A bail bond surety, an agent of a corporate surety, or an employee of the surety or agent may not make, cause to be made, or benefit from unsolicited contact:

- (1) through any means, including in person, by telephone, by electronic methods, or in writing, to solicit bonding business related to an individual with an outstanding arrest warrant that has not been executed, unless the bail bond surety or agent for a corporate surety has an existing bail bond on the individual; or

(2) in person or by telephone to solicit bonding business:

(A) that occurs between the hours of 9 p.m. and 9 a.m.;

or

(B) within 24 hours after:

(i) the execution of an arrest warrant on the individual; or

(ii) an arrest without a warrant on the individual.

(c) This section does not apply to a solicitation or unsolicited contact related to a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1262, Sec. 2, eff. Sept. 1, 2001.  
Amended by Acts 2003, 78th Leg., ch. 942, Sec. 12, eff. June 20, 2003.

#### **SUBCHAPTER D. LICENSING REQUIREMENTS**

Sec. 1704.151. LICENSE REQUIRED. Except as provided by Section 1704.163, a person may not act as a bail bond surety or as an agent for a corporate surety in the county unless the person holds a license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 13, eff. June 20, 2003.

Sec. 1704.152. ELIGIBILITY. (a) To be eligible for a license under this chapter, an individual, including an agent designated by a corporation in an application, must:

(1) be a resident of this state and a citizen of the United States;

(2) be at least 18 years of age;

(3) possess the financial resources required to comply with Section 1704.160, unless the individual is acting only as agent for a corporation holding a license under this chapter; and

(4) submit documentary evidence that, in the two years preceding the date a license application is filed, the individual:

(A) has been continuously employed by a person licensed under this chapter for at least one year and for not less than 30 hours per week, excluding annual leave, and has performed duties that encompass all phases of the bonding business; and

(B) completed in person at least eight hours of

continuing legal education in criminal law courses or bail bond law courses that are approved by the State Bar of Texas and that are offered by an accredited institution of higher education in the state.

(b) To be eligible for a license under this chapter, a corporation must be:

(1) chartered or admitted to do business in this state;

and

(2) qualified to write fidelity, guaranty, and surety bonds under the Insurance Code.

(c) Subsection (a)(4) does not apply to the issuance of an original license:

(1) in a county before the first anniversary of the date a board is created in the county; or

(2) to an individual who applies to operate the bail bond business of a license holder who has died if the individual is related to the decedent within the first degree by consanguinity or is the decedent's surviving spouse.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 14, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 316 (S.B. 624), Sec. 2, eff. September 1, 2005.

Sec. 1704.153. INELIGIBILITY BECAUSE OF CRIMINAL CONVICTION. A person is not eligible for a license under this chapter if, after August 27, 1973, the person commits and is finally convicted of a misdemeanor involving moral turpitude or a felony.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.154. APPLICATION REQUIREMENTS. (a) To be licensed under this chapter, a person must apply for a license by filing a sworn application with the board.

(b) The application must:

(1) be in a form and contain the information prescribed by the board;

(2) state:

(A) the applicant's name, age, and address;

(B) if the applicant is a corporation, whether the applicant is:

(i) chartered or admitted to do business in this state; and

(ii) qualified to write fidelity, guaranty, and surety bonds under the Insurance Code;

(C) the name under which the bail bond business will be conducted, including a bail bond business that is conducted by an agent of a corporation;

(D) each place, including the street address and municipality, at which the business will be conducted; and

(E) the amount of cash or the cash value of a certificate of deposit or cashier's check that the applicant intends to deposit with the county treasurer if the applicant's application is approved or, if the applicant is an individual intending to execute nonexempt real property in trust to the board, the value of the real property;

(3) if the applicant is an individual, be accompanied by a list, as required by Section 1704.155, of nonexempt real property owned by the applicant that the applicant intends to execute in trust to the board if the applicant's application is approved; and

(4) be accompanied by:

(A) the applicant's complete, sworn financial statement;

(B) the applicant's declaration that the applicant will comply with this chapter and the rules adopted by the board;

(C) three letters of recommendation, each from a person who:

(i) is reputable; and

(ii) has known the applicant or, if the applicant is a corporation, the agent designated by the corporation in the application for at least three years;

(D) a \$500 filing fee;

(E) a photograph of the applicant or, if the applicant is a corporation, of the agent designated by the corporation in the application;

(F) a set of fingerprints of the applicant or, if the applicant is a corporation, of the agent designated by the

corporation in the application taken by a law enforcement officer designated by the board;

(G) if the applicant is or has been licensed under this chapter in another county:

(i) a list of each county in which the applicant holds a license; and

(ii) a statement by the applicant, as of the date of the application, of any final judgments that have been unpaid for more than 30 days and that arose directly or indirectly from a bail bond executed by the applicant as a surety or as an agent for a surety; and

(H) if the applicant is a corporation, a statement by the designated agent, as of the date of the application, of any final judgments that have been unpaid for more than 30 days and that arose directly or indirectly from any bond executed by the agent as a surety or as an agent for a surety.

(c) A letter of recommendation submitted under Subsection (b)(4)(C) must:

(1) state that the applicant or, if the applicant is a corporation, the agent designated by the corporation in the application has a reputation for honesty, truthfulness, fair dealing, and competency; and

(2) recommend that the board issue the license.

(d) Until payment of the final judgment, an unpaid final judgment disclosed under Subsection (b)(4)(G)(ii) or (b)(4)(H) bars licensure for the applicant unless the applicant has deposited with the court cash or a supersedeas bond in the amount of the final judgment pending:

(1) a ruling on a timely filed motion for a new trial; or

(2) an appeal.

(e) A corporation must file a separate corporate application for each agent the corporation designates in the county.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 15, eff. June 20, 2003.

Sec. 1704.155. REAL PROPERTY LIST. A list of nonexempt real property required under Section 1704.154(b)(3) must, for each parcel

listed, include:

- (1) a legal description of the property that would be sufficient to convey the property by general warranty deed;
- (2) a current statement from each taxing unit authorized to impose taxes on the property showing that there is no outstanding tax lien against the property;
- (3) at the option of the applicant, either the property's:
  - (A) net value according to a current appraisal made by a real estate appraiser who is a member in good standing of a nationally recognized professional appraiser society or trade organization that has an established code of ethics, educational program, and professional certification program; or
  - (B) value according to a statement from the county from the county's most recent certified tax appraisal roll;
- (4) a statement by the applicant that, while the property remains in trust, the applicant:
  - (A) agrees to pay the taxes on the property;
  - (B) will not further encumber the property unless the applicant notifies the board of the applicant's intent to encumber the property and the board permits the encumbrance; and
  - (C) agrees to maintain insurance on any improvements on the property against damage or destruction in the full amount of the value claimed for the improvements;
- (5) a statement of whether the applicant is married; and
- (6) if the applicant is married, a sworn statement from the applicant's spouse agreeing to transfer to the board, as a part of the trust, any right, title, or interest that the spouse may have in the property.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 16, eff. June 20, 2003.

Sec. 1704.156. REAPPRAISAL OF REAL PROPERTY. (a) An appraisal district may not reappraise real property solely because the property owner is a license holder or an applicant for a license under this chapter.

(b) An appraisal district is not prohibited from reappraising real property in connection with the appraisal of real property in



the same general area or if the reappraisal is requested by the board, a license holder, or an applicant for a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.157. PRELIMINARY DETERMINATIONS. Before a hearing on an application, a board or a board's authorized representative shall determine whether the applicant:

- (1) possesses the financial resources to comply with Section 1704.160; and
- (2) satisfies the other requirements of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.158. HEARING ON APPLICATION. (a) After making the determinations required by Section 1704.157, a board shall conduct a hearing on the application.

(b) During the hearing:

- (1) the board may submit to the applicant or the applicant's agent any questions relevant to the board's decision on the application; and
- (2) the applicant may present oral and documentary evidence.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.159. DECISION ON APPLICATION; BOARD ORDER. (a) After the hearing under Section 1704.158, the board shall enter an order conditionally approving the application unless the board determines that a ground exists to deny the application. If the board determines that a ground exists to deny the application, the board shall enter an order denying the application.

(b) An order issued under Subsection (a) conditionally approving an application becomes final on the date the applicant complies with the security requirements of Section 1704.160.

(c) A board shall give written notice to an applicant of the board's decision on the application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 17, eff. June 20, 2003.

Sec. 1704.160. SECURITY REQUIREMENTS. (a) On receipt of notice under Section 1704.159 that an application has been conditionally approved, the applicant, not later than the 90th day after the date of receipt of the notice, must:

(1) if the applicant is an individual:

(A) subject to Subsection (b), deposit with the county treasurer a cashier's check, certificate of deposit, or cash in the amount stated on the application under Section 1704.154(b)(2)(E); or

(B) subject to Subsections (c)-(f), execute in trust to the board each deed to the property listed on the application under Section 1704.154(b)(3); or

(2) if the applicant is a corporation, subject to Subsection (b), deposit with the county treasurer a cashier's check, certificate of deposit, or cash in the amount stated on the application under Section 1704.154(b)(2)(E).

(b) A deposit made under Subsection (a)(1)(A) or (a)(2) may not be less than \$50,000. A corporation must make a separate deposit for each license granted to it in a county. A deposit made to a county with a population of less than 250,000 shall be placed in a fund known as a bail security fund.

(c) At the option of the applicant, the property executed in trust under Subsection (a)(1)(B) must be valued in the amount indicated by:

(1) an appraisal by a real estate appraiser who is a member in good standing of a nationally recognized professional appraiser society or trade organization that has an established code of ethics, educational program, and professional certification program; or

(2) the county's most recent certified tax appraisal roll.

(d) The total value of the property executed in trust under Subsection (a)(1)(B) may not be less than \$50,000.

(e) A trust created under Subsection (a)(1)(B) is subject to the condition that the property executed in trust may, after notice is provided and under the conditions required by the Code of Criminal Procedure, be sold to satisfy a final judgment on a forfeiture on a bail bond executed by the applicant.

(f) If an applicant is married, the applicant's spouse must

execute each deed of trust under Subsection (a)(1)(B) that involves community property.

(g) A board shall file each deed of trust in the records of each county in which the property is located. The applicant shall pay the filing fee.

(h) The certificate of authority to do business in this state issued under Section 861.102, Insurance Code, to an applicant that is a corporation is conclusive evidence of:

- (1) the sufficiency of the applicant's security; and
- (2) the applicant's solvency and credits.

(i) A license holder must maintain the amount of security required by this section during the time the person holds the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.504, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 18, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.547, eff. Sept. 1, 2003.

Sec. 1704.161. LICENSE FORM. (a) Each license issued under this chapter must show on its face the license expiration date and the license number.

(b) The same license number must appear on each subsequent renewal license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.162. LICENSE EXPIRATION AND RENEWAL. (a) A license issued or renewed under this chapter expires on the second anniversary after the date the license is issued or is to expire, as appropriate, if the license:

- (1) has been issued for less than eight consecutive years; or
- (2) has been suspended.

(b) To renew a license, a license holder must file with the board an application for renewal not later than the 31st day before the license expiration date.

(c) An application for renewal must comply with the

requirements for an original license application under Section 1704.154, including the \$500 filing fee requirement.

(d) A board shall approve an application for renewal if:

- (1) the applicant's current license is not suspended or revoked;
- (2) the application complies with the requirements of this chapter; and
- (3) the board does not determine that a ground exists to deny the application.

(e) A person who applies to renew a license that has been held by the person for at least eight consecutive years without having been suspended or revoked under this chapter and who complies with the requirements of this chapter may renew the license for a period of 36 months from the date of expiration if the board:

- (1) knows of no legal reason why the license should not be renewed; and
- (2) determines that the applicant has submitted an annual financial report to each county bail bond board before the anniversary date of the issuance of the applicant's license.

(f) A license renewed under Subsection (e) may be renewed subsequently each 36 months in a similar manner.

(g) The board may disapprove an application only by entering an order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.505(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 19, eff. June 20, 2003.

Sec. 1704.163. ATTORNEY EXEMPTION. (a) Except as provided by this section, a person not licensed under this chapter may execute a bail bond or act as a surety for another person in any county in this state if the person:

- (1) is licensed to practice law in this state; and
- (2) at the time the bond is executed or the person acts as a surety, files a notice of appearance as counsel of record in the criminal case for which the bond was executed or surety provided or submits proof that the person has previously filed with the court in which the criminal case is pending the notice of appearance as counsel of record.

(b) A person executing a bail bond or acting as a surety under this section may not engage in conduct involved with that practice that would subject a bail bond surety to license suspension or revocation. If the board determines that a person has violated this subsection, the board may suspend or revoke the person's authorization to post a bond under this section or may bar the person from executing a bail bond or acting as a surety under this section until the person has remedied the violation.

(c) A person executing a bail bond or acting as a surety under this section is not relieved of liability on the bond solely because the person is later replaced as attorney of record in the criminal case.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 7, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 316 (S.B. 624), Sec. 3, eff. September 1, 2005.

#### **SUBCHAPTER E. BONDING BUSINESS**

Sec. 1704.201. ACCEPTANCE OF LICENSE HOLDER BAIL BONDS. A sheriff shall accept or approve a bail bond executed by a license holder in the county in which the license holder is licensed if:

- (1) the bond is for a county or district case;
- (2) the bond is executed in accordance with this chapter and the rules adopted by the board; and
- (3) a bail bond is required as a condition of release of the defendant for whom the bond is executed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.202. RECORD REQUIREMENTS. (a) A license holder shall maintain:

- (1) a record of each bail bond executed by the license holder; and
- (2) a separate set of records for each county in which the license holder is licensed.

(b) The records required to be maintained under this section must include for each bail bond executed and enforced:

(1) the style and number of the case and the court in which the bond is executed;

(2) the name of the defendant released on bond;

(3) the amount of bail set in the case;

(4) the amount and type of security held by the license holder; and

(5) a statement of:

(A) whether the security held by the license holder is:

(i) for the payment of a bail bond fee; or

(ii) to assure the principal's appearance in court;

and

(B) the conditions under which the security will be returned.

(c) Repealed by Acts 2003, 78th Leg., ch. 942, Sec. 28.

(d) The records required under this section shall be:

(1) made available for inspection and copying at the board's expense on demand by the board or an authorized representative of the board;

(2) maintained at the license holder's office location in the county; and

(3) maintained for not less than four years after the conclusion of the case for which the bond was given.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 20, 28, eff. June 20, 2003.

Sec. 1704.203. BAIL BOND LIMIT; ADDITIONAL SECURITY. (a) Except as provided by Subsection (d), a license holder who holds a license originally issued before September 1, 1999, may not execute, and a person may not accept from the license holder, a bail bond that, in the aggregate with other bail bonds executed by the license holder in that county, results in a total amount that exceeds 10 times the value of the security deposited or executed by the license holder under Section 1704.160.

(b) A county officer or an employee designated by the board shall maintain for each license holder the total amount of the license holder's current liability on bail bonds.

(c) A license holder may not execute a bail bond if the amount of the license holder's current total liability on judgments nisi in

that county equals or exceeds twice the amount of security deposited or executed by the license holder under Section 1704.160.

(d) A license holder, at any time, may increase the limits prescribed by this section by depositing or executing additional security.

(e) This section does not apply to a license holder that is a corporation.

(f) A bail bond surety who holds a license originally issued on or after September 1, 1999, and who:

(1) has been licensed for fewer than two years or has had a license under this chapter suspended or revoked may not execute, and a person may not accept from the license holder, bail bonds that in the aggregate exceed 10 times the value of property held as security under Section 1704.160(a)(1)(A) plus five times the value of property held in trust under Section 1704.160(a)(1)(B);

(2) has been licensed for at least two years and fewer than four years may not execute, and a person may not accept from the license holder, bail bonds that in the aggregate exceed 10 times the value of property held as security under Section 1704.160(a)(1)(A) plus six times the value of property held in trust under Section 1704.160(a)(1)(B);

(3) has been licensed for at least four years and fewer than six years may not execute, and a person may not accept from the license holder, bail bonds that in the aggregate exceed 10 times the value of property held as security under Section 1704.160(a)(1)(A) plus eight times the value of property held in trust under Section 1704.160(a)(1)(B); or

(4) has been licensed for at least six years may not execute, and a person may not accept from the license holder, bail bonds that in the aggregate exceed 10 times the value of property held as security under Section 1704.160(a)(1)(A) plus 10 times the value of property held in trust under Section 1704.160(a)(1)(B).

(g) If a bail bond surety is subject to Subsection (f)(1) because the person has had a license under this chapter suspended or revoked and is also subject to Subsection (f)(2), (3), or (4), the prohibition imposed by Subsection (f)(1) controls.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.506(a), eff. Sept. 1, 2001.

Sec. 1704.204. PAYMENT OF FINAL JUDGMENT. (a) A person shall pay a final judgment on a forfeiture of a bail bond executed by the person not later than the 31st day after the date of the final judgment unless a timely motion for a new trial has been filed. If a timely motion for a new trial or a notice of appeal has been filed, the person shall:

(1) pay the judgment not later than the 31st day after the date the motion is overruled, if the motion is overruled; or

(2) deposit with the court cash or a supersedeas bond in the amount of the final judgment, if an appeal is filed.

(b) If a license holder fails to pay a final judgment as required by Subsection (a), the judgment shall be paid from the security deposited or executed by the license holder under Section 1704.160.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 21, eff. June 20, 2003.

Sec. 1704.205. BAIL BOND SETTLEMENT. Before a final judgment on a forfeiture of a bail bond:

(1) the prosecuting attorney may recommend to the court a settlement in an amount less than the amount stated in the bond; or

(2) the court may, on its own motion, approve a settlement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.206. REPLACEMENT OF SECURITY. If a final judgment on a forfeiture of a bail bond is paid from the security deposited or executed by a license holder under Section 1704.160, the license holder shall deposit or execute additional security in an amount sufficient to comply with that section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.207. SURRENDER OF PRINCIPAL; CONTEST. (a) A person executing a bail bond may surrender the principal for whom the bond



is executed by:

(1) if the principal is represented by an attorney, notifying the principal's attorney of the person's intention to surrender the principal in a manner provided by Rule 21a, Texas Rules of Civil Procedure; and

(2) filing an affidavit with the court or magistrate before which the prosecution is pending that states:

(A) the person's intention to surrender the principal;

(B) the court and cause number of the case;

(C) the name of the defendant;

(D) the offense with which the defendant is charged;

(E) the date of the bond;

(F) the reason for the intended surrender; and

(G) that notice of the person's intention to surrender the principal has been provided as required by this subsection.

(b) If a principal is surrendered under Subsection (a) and the principal or an attorney representing the state or an accused in the case determines that a reason for the surrender was without reasonable cause, the person may contest the surrender in the court that authorized the surrender.

(c) If the court finds that a contested surrender was without reasonable cause, the court may require the person who executed the bond to refund to the principal all or part of the fees paid for execution of the bond. The court shall identify the fees paid to induce the person to execute the bond regardless of whether the fees are described as fees for execution of the bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 8, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 22, eff. June 20, 2003.

Sec. 1704.208. BOND LIABILITY. (a) A person executing a bail bond is relieved of liability on the bond on the date of disposition of the case for which the bond is executed.

(b) For purposes of this section, disposition of a case occurs on the date the case is dismissed or the principal is acquitted or convicted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.209. BOND DISCHARGED ON APPEAL. (a) A bail bond shall be discharged if:

(1) the principal appeals the case for which the bond is executed; and

(2) the person who executed the bond does not agree to continue during the appeal as surety.

(b) A court may not require a person who executes a bail bond to continue as surety while the principal appeals the case for which the bond is executed unless the person agrees to continue during the appeal as surety.

(c) This section does not prohibit a principal from obtaining an appeal bond under the Code of Criminal Procedure.

(d) This section prevails over any provision contained in the bail bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.210. WITHDRAWAL OF SECURITY. (a) A license holder may withdraw the security or a portion of the security deposited or executed under Section 1704.160, and the security shall be returned to the license holder or the license holder's heirs or assigns, if the person requesting the withdrawal is:

(1) a license holder in good standing and the amount of the security remaining after the withdrawal is:

(A) at least the minimum amount required by Section 1704.160; and

(B) an amount sufficient to maintain the ratios required by Section 1704.203; or

(2) a former license holder who has ceased to engage in the bonding business, or a former license holder's heir or assign, and the amount of the security remaining after the withdrawal is sufficient to:

(A) pay any outstanding judgments; and

(B) secure any unexpired obligation on a bail bond executed by the former license holder.

(b) The board may adopt rules to limit the number of times in a year security may be returned to a license holder under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1143 (H.B. 1822), Sec. 1, eff. September 1, 2011.

Sec. 1704.211. CORPORATE POWER OF ATTORNEY. (a) A corporation shall, before executing any bail bond, file with the county clerk of the county in which the corporation intends to execute the bond a power of attorney designating an agent of the corporation authorized to execute bail bonds on behalf of the corporation.

(b) An agent designated by a power of attorney under Subsection (a) for a corporation holding a license under this chapter must be designated by the corporation in the corporation's application for a license.

(c) An agent designated by a power of attorney under Subsection (a) is not required under this chapter to obtain a general property and casualty agent license under Chapter 4051, Insurance Code.

(d) A corporation may limit the authority of an agent designated under Subsection (a) by specifying the limitation in the power of attorney that is filed with the county clerk and the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 9, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.152, eff. September 1, 2005.

Sec. 1704.212. EFFECT OF DEFAULT BY CORPORATION; NOTICE REQUIRED. (a) A corporation may not act as a bail bond surety in a county in which the corporation is in default on five or more bail bonds.

(b) If a corporation defaults on a bail bond, the clerk of the court in which the corporation executed the bond shall deliver a written notice of the default to:

- (1) the sheriff;
- (2) the chief of police; or
- (3) another appropriate peace officer.

(c) For purposes of this section:

(1) a corporation is considered in default on a bail bond beginning on the 11th day after the date the trial court enters a

final judgment on the scire facias and ending on the date the judgment is satisfied, set aside, or superseded; and

(2) a corporation is not considered in default on a bail bond if, pending appeal, the corporation deposits cash or a supersedeas bond in the amount of the final judgment with the court in which the bond is executed.

(d) A deposit made under Subsection (c)(2) shall be applied to the payment of a final judgment in the case.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 10, eff. Sept. 1, 2001.

Sec. 1704.213. OFFICE LOCATION. (a) A license holder shall maintain an office in the county in which the license holder holds a license.

(b) Not later than the seventh day after the date a license holder opens a new office or moves an office to a new location, the license holder shall notify the board of the location of the office.

Added by Acts 2001, 77th Leg., ch. 1262, Sec. 11, eff. Sept. 1, 2001.

#### **SUBCHAPTER F. ENFORCEMENT PROVISIONS**

Sec. 1704.251. INVESTIGATION. (a) A board, on its own motion, may investigate an action of or a record maintained by a license holder that relates to a complaint that the license holder has violated this chapter.

(b) A board shall investigate an action of or a record maintained by a license holder if:

(1) the board receives a sworn complaint providing reasonable cause to believe that a violation of this chapter has occurred; or

(2) a court requests an investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.252. DISCRETIONARY LICENSE SUSPENSION OR REVOCATION: GROUNDS. After notice and hearing, a board may revoke or suspend a license if the license holder:

- (1) violates this chapter or a rule adopted by the board under this chapter;
- (2) fraudulently obtains a license under this chapter;
- (3) makes a false statement or misrepresentation:
  - (A) in an application for an original or renewal license; or
  - (B) during a hearing conducted by the board;
- (4) refuses to answer a question submitted by the board during a hearing relating to the license holder's license, conduct, or qualifications;
- (5) is finally convicted under the laws of this state, another state, or the United States of an offense that:
  - (A) is a misdemeanor involving moral turpitude or a felony; and
  - (B) is committed after August 27, 1973;
- (6) is found by a court to be bankrupt or is insolvent;
- (7) is found by a court to be mentally incompetent;
- (8) fails to pay a judgment in accordance with Section 1704.204;
- (9) pays commissions or fees to or divides commissions or fees with, or offers to pay commissions or fees to or divide commissions or fees with, a person or business entity not licensed under this chapter;
- (10) solicits bonding business in a building in which prisoners are processed or confined;
- (11) recommends to a client the employment of a particular attorney or law firm in a criminal case;
- (12) falsifies or fails to maintain a record required under this chapter;
- (13) fails to promptly permit the board, or a representative or an agent of the board, of the county in which the license holder is licensed to inspect a record required under this chapter;
- (14) acts as a bail bond surety under a suspended or expired license;
- (15) fails two or more times to maintain the amount of security required by Section 1704.160; or
- (16) misrepresents to an official or an employee of the official the amount for which the license holder may execute a bail bond for purposes of obtaining the release of a person on bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.253. MANDATORY LICENSE SUSPENSION OR REVOCATION: GROUNDS. (a) A board shall immediately suspend a license if the license holder fails to maintain the amount of security required by Section 1704.160. A board is not required to provide notice or a hearing before suspending a license under this subsection. A license suspended under this subsection shall be immediately reinstated if the license holder deposits or executes the amount of security required by Section 1704.160.

(b) After notice and hearing as provided by Section 1704.254, a board shall revoke a license if:

(1) the license holder fails to pay a judgment in accordance with Section 1704.204; and

(2) the amount of security maintained by the license holder under Section 1704.160 is insufficient to pay the judgment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.2535. FAILURE TO PAY FINAL JUDGMENT BY BAIL BOND SURETY. (a) The board or its authorized representative shall immediately notify the sheriff if a bail bond surety fails to pay a final judgment of forfeiture as provided by Section 1704.204(a).

(b) After receiving notification, the sheriff may not accept any bonds from the bail bond surety until the surety pays the judgment.

(c) The bail bond surety's privilege to post bonds is reinstated when the bail bond surety pays the judgment.

(d) A board is not required to provide notice or a hearing before making the notification required by this section.

Added by Acts 2003, 78th Leg., ch. 942, Sec. 23, eff. June 20, 2003.

Sec. 1704.254. NOTICE AND HEARING. (a) Notice of a hearing to suspend or revoke a license under this chapter must:

(1) be sent by certified mail to the last known address of the license holder not later than the 11th day before the date of the hearing;

(2) state each alleged violation of this chapter; and  
 (3) include a copy of any written complaint on which the hearing will be based.

(b) The hearing is limited to each alleged violation stated in the notice.

(c) During the hearing, the license holder:

- (1) is entitled to an opportunity to be heard; and
- (2) may present and cross-examine witnesses.

(d) The hearing must be recorded. A license holder may obtain a copy of the record on request and payment of the reasonable costs of transcription.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 24, eff. June 20, 2003.

Sec. 1704.255. APPEAL; VENUE. (a) An applicant or a license holder may appeal an order of a board denying an application for a license or renewal of a license, or suspending or revoking a license, by filing a petition in a district court in the county not later than the 30th day after the date the person receives notice of the denial, suspension, or revocation.

(b) An appeal filed under this section is an action against the board. An applicant or a license holder may not bring the action against an individual board member.

(c) The board may not assert a reason on appeal for an action by the board that differs from the reasons specified in the board's notice of hearing under Section 1704.254.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 25, eff. June 20, 2003.

Sec. 1704.256. STANDARD OF JUDICIAL REVIEW. Judicial review of an appeal filed under Section 1704.255 is by trial de novo in the same manner as an appeal from a justice court to a county court.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.257. EFFECT OF BOARD ORDER. (a) A board order

denying an application for a license or renewal of a license, or suspending or revoking a license, becomes final on the 31st day after the date the applicant or license holder receives notice of the order unless the applicant or license holder files an appeal under Section 1704.255.

(b) A board order appealed under Section 1704.255 has full force and effect pending determination of the appeal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. PROHIBITED CONDUCT AND CRIMINAL PENALTIES**

Sec. 1704.301. RETURN OF SECURITY. A bail bond surety may not hold security for the payment of a bail bond fee or to assure the principal's appearance in court for more than 30 days after the date on which the owner of the security:

- (1) requests return of the security in writing; and
- (2) submits to the bail bond surety written evidence of the conclusion of:
  - (A) the payment agreement; or
  - (B) all of the criminal cases for which the security was given.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 26, eff. June 20, 2003.

Sec. 1704.302. PROHIBITED REFERRALS OF OR EMPLOYMENTS WITH BONDING BUSINESS; OFFENSE. (a) A person in the bonding business may not directly or indirectly give, donate, lend, or contribute, or promise to give, donate, lend, or contribute, money or property to an attorney, police officer, sheriff, deputy, constable, jailer, or employee of a law enforcement agency for the referral of bonding business.

(b) A person may not accept or receive from a license holder money, property, or any other thing of value as payment for the referral of bonding business unless the records of the board show that the person is an agent or employee of the license holder.

(c) A person may not accept or receive from a license holder money, property, or any other thing of value as payment for employment with a bonding business if, within the preceding 10 years,



the person has been convicted of a misdemeanor involving moral turpitude or of a felony.

(d) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 13, eff. Sept. 1, 2001.

Sec. 1704.303. BAIL BOND SURETY ACTIVITY; OFFENSE. (a) A person required to be licensed under this chapter may not execute a bail bond unless the person holds a license issued under this chapter.

(b) A person may not advertise as a bail bond surety in a county unless the person holds a license issued under this chapter by a bail bond board in that county. A person does not violate this subsection if the person places an advertisement that appears in more than one county and:

(1) the advertisement clearly indicates the county or counties in which the person holds a license issued under this chapter; and

(2) any local telephone number in the advertisement is a local number only for a county in which the person holds a license issued under this chapter.

(c) A person commits an offense if the person violates this section. An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 14, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1461, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 27, eff. June 20, 2003.

Sec. 1704.304. PROHIBITED RECOMMENDATIONS OR SOLICITATIONS; OFFENSE. (a) A bail bond surety or an agent of a bail bond surety may not recommend or suggest to a person for whom the bail bond surety executes a bond the employment of an attorney or law firm in connection with a criminal offense.

(b) The following persons may not recommend a particular bail bond surety to another person:

(1) a police officer, sheriff, or deputy;

(2) a constable, jailer, or employee of a law enforcement agency;

(3) a judge or employee of a court;

(4) another public official; or

(5) an employee of a related agency.

(c) A bail bond surety or an agent of a bail bond surety may not solicit bonding business in a police station, jail, prison, detention facility, or other place of detainment for persons in the custody of law enforcement.

(d) A person may not place a device in a place of detention, confinement, or imprisonment that dispenses a bail bond in exchange for a fee.

(e) A person commits an offense if the person violates this section. An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 15, eff. Sept. 1, 2001.

Sec. 1704.305. BAIL BOND RECEIPT AND INSPECTION; OFFENSE. (a) A bail bond surety or an agent of a bail bond surety may not receive money or other consideration or thing of value from a person for whom the bail bond surety executes a bond unless the bail bond surety or agent issues a receipt to the person as provided by Subsection (b).

(b) The receipt must state:

(1) the name of the person who pays the money or transfers the consideration or thing of value;

(2) the amount of money paid or the estimated amount of value transferred;

(3) if the person transfers consideration or a thing of value, a brief description of the consideration or thing of value;

(4) the style and number of the case and the court in which the bond is executed; and

(5) the name of the person receiving the money, consideration, or thing of value.

(c) A bail bond surety or an agent of a bail bond surety shall retain a duplicate copy of a receipt issued under Subsection (a). The copy of the receipt shall be made available for inspection by:

(1) a representative of the board in any county in which the bail bond surety is licensed; and

(2) an appointed representative of a court in which the bail bond surety agrees to execute bail bonds.

(e) A person commits an offense if the person violates this section. An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.306. RECORDS; OFFENSE. (a) A person commits an offense if the person falsifies a record required to be maintained under this chapter.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## **TITLE 11. REGULATION OF SALES AND SOLICITATION**

### **CHAPTER 1801. COMMISSION MERCHANTS**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1801.001. DEFINITIONS. In this chapter:

(1) "Commission merchant" means a person engaged in the business of selling any goods on consignment and for a commission.

(2) "Goods" includes produce, wares, merchandise, sugar, and cotton.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.002. APPLICATION OF CHAPTER. A commission merchant shall meet the requirements of this chapter except to the extent that the person's business as a commission merchant is regulated by another provision of law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. BOND**

Sec. 1801.051. BOND REQUIRED. A commission merchant shall file a bond with the county judge of each county in which the commission merchant maintains an office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.052. BOND TERMS AND CONDITIONS. (a) A bond filed under this subchapter must:

- (1) be in the amount of \$3,000;
- (2) be conditioned on the commission merchant performing duties required by Subchapter C, except Sections 1801.103(a), (c), and (d); and
- (3) be payable to the county judge of each county in which the commission merchant maintains an office as trustee for any person who may be entitled to recover under the bond.

(b) The bond must be made with:

- (1) a solvent surety company doing business in this state;
- or
- (2) two or more good and sufficient sureties, each of whom:
    - (A) is a resident of this state; and
    - (B) makes an affidavit stating that the surety has assets, not subject to exemption, that are at least equal to the amount of the bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.053. BOND APPROVAL. The bond must be approved by the county judge of each county in which the commission merchant maintains an office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.054. RECORDING OF BOND. The county judge shall file the bond with the county clerk in the same manner as an instrument to perfect a security interest under Chapter 9, Business & Commerce Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.055. SUIT ON BOND. (a) A person damaged by a breach of a condition of the bond may bring suit and recover under the bond.

(b) The suit shall be filed in the county in which the bond is filed.

(c) A bond is not void on first recovery and may be sued on until the total amount is exhausted.

(d) If the amount of the bond is reduced to \$1,500 or less, the commission merchant shall file a new bond in an amount equal to \$3,000. The new bond is liable for all future contracts entered into by the commission merchant and a consignor.

(e) A commission merchant who does not file a new bond under Subsection (d) may not do business in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. COMMISSION MERCHANT DUTIES**

Sec. 1801.101. CONTRACT PERFORMANCE. A commission merchant shall perform all contracts with a consignor of goods.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.102. SALE OF GOODS. On shipment of a consignment, a commission merchant shall promptly receive and sell the goods under the terms of the consignment contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.103. STATEMENTS AND RECEIPTS REGARDING CONSIGNMENT.

(a) A person who consigns goods to a commission merchant shall send to the commission merchant a written statement stating the quantity, the quality or class, and the condition of the consigned goods.

(b) On receipt of the statement, the commission merchant shall promptly notify the consignor of any objection the commission merchant has to the stated class, quality, or quantity and the condition of the consigned goods. If the commission merchant fails to object, the statement is prima facie evidence of the class, quality, or quantity and the condition of the consigned goods.

(c) On receipt by the commission merchant of the goods, the commission merchant shall give to the agent of the carrier delivering the goods a receipt for the goods. The receipt must state the

quality, quantity, grade, and condition of the goods.

(d) The agent of the carrier shall keep the receipt on file in the carrier's office for six months from the date of receiving the receipt. The receipt may be inspected by a person interested in the shipment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.104. ACCOUNTING. (a) As soon as the goods are sold, the commission merchant shall send to the consignor a complete itemized account of the sale.

(b) The itemized account must include the price received and the date of the sale.

(c) If the commission merchant sells cotton, sugar, or other produce by weight, the itemized account must:

(1) include the weight of the cotton, sugar, or other produce in gross and the tare allowed; and

(2) be accompanied by the certificate or memorandum of the weight and condition of the cotton, sugar, or other produce required by law, signed by the weigher who weighed the cotton, sugar, or other produce.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.105. REMITTANCE OF SALE PROCEEDS. Not later than the fifth day after the date of the sale of consigned goods, a commission merchant shall send to the consignor the total amount received from the sale less the commission merchant's commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. ACTIONS AGAINST COMMISSION MERCHANTS**

Sec. 1801.151. REQUIREMENT TO OBTAIN WRITTEN LICENSE. (a) A commission merchant must obtain the express written license from the owner or consignor of goods, or a person authorized by the owner or consignor, before the commission merchant may, directly or indirectly, purchase or reserve an interest in the consigned goods in the merchant's name or in the name or through the instrumentality of

another, for the merchant's benefit or for the benefit of another, or as an agent of any other person.

(b) On violation by a commission merchant of Subsection (a), the owner of the goods is entitled to recover from the commission merchant a penalty in an amount equal to half of the value of the goods.

(c) An action for a penalty under Subsection (b) must be brought in the county in which:

- (1) the sale took place; or
- (2) the commission merchant resides.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.152. FALSE CHARGES. (a) A commission merchant may not charge for mending or patching, roping bales, cooperage or repairing bales, labor, hauling, cartage, storage, or marking or weighing unless the work is actually done.

(b) A charge specifically describing work performed must be made on a bill regardless of any contrary usage or custom to make the charge by rate or average.

(c) A person who violates this section is subject to a penalty of not less than \$100 or more than \$500. The owner or consignor may recover the penalty by filing suit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.153. SALE WITHOUT BOND. A person who sells any consigned goods for commission without first making and filing the bond required by Section 1801.051 shall be fined not less than \$100 or more than \$500.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.154. CONSIGNOR'S REMEDIES. (a) If a commission merchant fails to comply with a provision of Subchapter C, except Section 1801.103(a), (c), or (d), the commission merchant and the surety company or sureties required by Section 1801.052 are:

- (1) liable for all actual damages incurred by the consignor

resulting from the failure; and

(2) subject to a penalty of not less than \$100 or more than \$500.

(b) The consignor may recover the damages and penalty by filing suit for the actual damages and penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## CHAPTER 1802. AUCTIONEERS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1802.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Auctioneer Education Advisory Board.

(2) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1048, Sec. 17, eff. June 14, 2013.

(3) "Auction" means the sale of property by competitive bid using any method, format, or venue.

(4) "Auction company" means a person who engages in the business of arranging, managing, sponsoring, advertising, or conducting auctions.

(5) "Auctioneer" means any person who:

(A) sells or offers to sell property at auction, with or without receiving consideration; or

(B) solicits, negotiates, or executes an auction listing contract.

(6) "Commission" means the Texas Commission of Licensing and Regulation.

(7) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 4.019(1); Acts 2003, 78th Leg., ch. 1276, Sec. 14A.351(a).

(8) "Department" means the Texas Department of Licensing and Regulation.

(8-a) "Executive director" means the executive director of the department.

(9) "Fund" means the auctioneer education and recovery fund.

(10) "Personal property" means any property other than real property, including all tangible and intangible types of property.

(11) "Real property" means land, including improvements, fixtures, and other property appurtenant to or used in connection



with the land, and any other estate, interest, or legal or equitable right in the land, improvement, fixture, or appurtenant property.

(12) "Recurring basis" means more than once every 24 months.

(13) "Sealed bid auction" means a sealed bidding procedure that incorporates or allows for the competitive increasing or decreasing of bids after the opening of sealed bids.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.001, 4.019(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14.010, 14A.351, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 17, eff. June 14, 2013.

Sec. 1802.002. APPLICABILITY. (a) This chapter does not apply to:

(1) a sale conducted by order of a United States court under Title 11, United States Code;

(2) a sale conducted by an employee of the United States, this state, or a political subdivision of this state in the course and scope of employment;

(3) a sale conducted by a charitable, religious, or civic organization, including an organization having a tax exempt status under Section 501(c), Internal Revenue Code of 1986, or organized as a nonprofit entity, if the person organizing, arranging, or conducting the auction receives no compensation;

(4) a sale conducted by any person of the person's property if the person is not engaged in the business of selling property at auction on a recurring basis;

(5) a foreclosure sale of real property personally conducted by a trustee under a deed of trust;

(6) a foreclosure sale of personal property personally conducted by:

(A) a person who holds a security interest in the property, including a mortgage; or

(B) an employee or agent of a person described by Paragraph (A) acting in the course and scope of employment, if:

(i) the employee or agent is not otherwise engaged in the auction business; and

(ii) all property for sale in the auction is subject to a security agreement;

(7) a sale conducted by sealed bid without the option of increasing or decreasing the amount of a bid;

(8) an auction conducted only for student training purposes as part of a course of study approved by the department;

(9) an auction conducted by a posted stockyard or market agency as defined by the federal Packers and Stockyards Act (7 U.S.C. Section 181 et seq.), as amended;

(10) an auction of livestock conducted by a nonprofit livestock trade association chartered in this state, if the auction involves only the sale of livestock owned by members of the trade association;

(11) an auction conducted by a charitable or nonprofit organization chartered in this state, if the auction:

(A) is part of a fair that is organized under state, county, or municipal authority; and

(B) involves only the sale of property owned by the organization's members; or

(12) a sale or auction conducted outside of this state.

(b) This chapter applies to a sealed bid auction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.044, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.352, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 201 (H.B. 365), Sec. 1, eff. May 24, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 2, eff. June 14, 2013.

Sec. 1802.003. PREEMPTION. A political subdivision of this state may not levy on or collect from an auctioneer a license tax or fee as a regulatory or revenue measure or require the licensing of an auctioneer, if the auctioneer holds a license under this chapter and

is in compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 2, eff. June 14, 2013.

#### **SUBCHAPTER B. LICENSE REQUIREMENTS**

Sec. 1802.051. LICENSE REQUIRED. (a) A person may not act as an auctioneer of real or personal property in this state unless the person holds a license issued by the executive director under this chapter.

(b) An auctioneer who advertises to conduct an auction in this state shall provide the auctioneer's name and license number in the advertisement.

(c) An individual who is licensed under this chapter may not act as an auctioneer for an entity unless the entity:

(1) is an auction company owned or operated by an individual who is licensed under this chapter;

(2) holds a dealer general distinguishing number issued under Subchapter B, Chapter 503, Transportation Code, and the auction is for the purpose of auctioning vehicles as defined by Section 503.001, Transportation Code; or

(3) is a real estate brokerage firm that is operated by a broker licensed by the Texas Real Estate Commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.045, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.353, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 325 (H.B. 2519), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 3, eff. June 14, 2013.

Sec. 1802.052. ELIGIBILITY FOR AUCTIONEER'S LICENSE. (a) An individual is eligible for an auctioneer's license if the individual:

(1) is at least 18 years of age;

(2) is a citizen of the United States or a legal alien;

(3) passes a written or oral examination demonstrating knowledge of the auction business and of the laws of this state relating to the auction business;

(4) holds a high school diploma or a high school equivalency certificate;

(5) has not been convicted of a felony during the five years preceding the date of application; and

(6) has completed at least 80 hours of classroom instruction at an auction school with a curriculum approved by the department in accordance with the standards and procedures established by rule adopted under this chapter.

(b) The department, as provided by rule, may charge an auction school a reasonable fee for approving the curriculum as required under Subsection (a)(6).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 395, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 4, eff. June 14, 2013.

Sec. 1802.054. APPLICATION FOR LICENSE. An applicant for a license must apply to the executive director on a form provided by the executive director that establishes the applicant's eligibility for the license. The application must be accompanied by:

(1) any fee required for the auctioneer education and recovery fund authorized under Section 1802.153;

(2) the required license fee; and

(3) either:

(A) the permit number of a sales tax permit issued to the applicant by the comptroller under Subchapter F, Chapter 151, Tax Code; or

(B) proof of exemption from the tax permit requirement under Chapter 151, Tax Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.046, eff. Sept. 1, 2003;

Acts 2003, 78th Leg., ch. 1276, Sec. 14A.354, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 5, eff.

June 14, 2013.

Sec. 1802.055. APPLICATION FOR EXAMINATION. (a) An individual who establishes that the individual is eligible for an auctioneer's license may apply to the executive director to take the license examination. The application must be accompanied by the examination fee.

(b) On receipt of an examination application and fee, the executive director shall furnish the applicant with:

(1) study materials and references on which the examination will be based; and

(2) a schedule specifying the dates and places the examination will be offered.

(c) The applicant may take the examination at any scheduled offering not later than the 90th day after the date the applicant receives the study materials.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.047, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.355, eff. Sept. 1, 2003.

Sec. 1802.056. LICENSE EXAMINATION. (a) The license examination must be designed to establish:

(1) an applicant's general knowledge of the auction business;

(2) the principles of conducting an auction; and

(3) the laws of this state relating to auctioneers.

(b) The license examination shall be offered at least four times each year at locations designated by the executive director.

(c) The executive director shall prepare:

(1) examinations for an auctioneer's license; and

(2) study and reference materials on which the examinations are based.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.048, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.356, eff. Sept. 1, 2003.

Sec. 1802.058. REEXAMINATION. An applicant who fails the license examination may reapply to take the examination. If the applicant fails the examination twice during a one-year period, the applicant may not reapply for one year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1802.059. LICENSING BY RECIPROCITY. (a) An applicant for an auctioneer's license who is not a resident of this state but is licensed as an auctioneer in another state must submit to the executive director:

- (1) a license application;
- (2) a certified copy of the auctioneer's license issued to the applicant by the state or political subdivision in which the applicant resides; and
- (3) proof that the state or political subdivision in which the applicant is licensed has competency standards equivalent to or stricter than those of this state.

(b) The executive director shall accept the applicant's auctioneer's license submitted under Subsection (a)(2) as proof of the applicant's professional competence and waive the examination and training requirements of Section 1802.052 if the state or political subdivision that issued the nonresident a license extends similar recognition and courtesies to this state.

(c) A nonresident applicant must comply with all other application requirements prescribed by this chapter.

(d) A nonresident applicant must submit with the application a written irrevocable consent to service of process. The consent must be in the form and supported by additional information that the commission by rule requires. The consent must:

- (1) provide that an action relating to any transaction subject to this chapter may be commenced against the license holder in the proper court of any county of this state in which the cause of action may arise or in which the plaintiff may reside by service of process on the executive director as the license holder's agent; and
- (2) include a statement stipulating and agreeing that service provided by this section is as valid and binding as if service had been made on the person according to the laws of this or any other state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.002, eff. Sept. 1, 2003.

Sec. 1802.060. TERM OF LICENSE. A license issued under this chapter shall be issued for the period prescribed by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. AUCTIONEER EDUCATION ADVISORY BOARD**

Sec. 1802.101. AUCTIONEER EDUCATION ADVISORY BOARD. The advisory board shall advise the commission on educational matters, operational matters, and common practices within the auction industry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.003, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.359, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 6, eff. June 14, 2013.

Sec. 1802.102. APPOINTMENT OF ADVISORY BOARD; MEMBERSHIP; ELIGIBILITY. (a) The advisory board consists of seven members appointed as follows:

(1) four members who are licensed auctioneers appointed by the presiding officer of the commission, with the commission's approval;

(2) the administrative head, or the administrative head's designee, of any state agency or office that is selected by the commission; and

(3) two public members.

(b) In appointing advisory board members under Subsection (a)(1), the presiding officer of the commission shall consider the geographical diversity of the members.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.004, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 457 (H.B. 2548), Sec. 5, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1176 (H.B. 3278), Sec. 10, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 7, eff. June 14, 2013.

Sec. 1802.103. TERMS; VACANCIES. (a) The members appointed under Section 1802.102(a)(1) serve two-year terms that expire on September 1 and may not serve more than two consecutive terms. If a vacancy occurs during the term of such a member, the presiding officer of the commission, with the commission's approval, shall appoint a replacement to serve for the remainder of the term.

(b) The remaining members are ex officio members. Each ex officio member shall continue to serve during the time the member holds office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.005, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 8, eff. June 14, 2013.

Sec. 1802.104. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, shall appoint a member of the advisory board to serve as presiding officer of the board. The presiding officer serves for two years and may not serve more than two consecutive terms.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.006, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 9, eff. June 14, 2013.



Sec. 1802.106. COMPENSATION. A member appointed under Section 1802.102(a)(1) may not receive:

- (1) compensation for serving on the advisory board; or
- (2) reimbursement for expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1802.107. MEETINGS. (a) The advisory board shall meet at least quarterly each calendar year.

(b) The advisory board may meet at other times at the call of the presiding officer of the commission or the executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 10, eff. June 14, 2013.

Sec. 1802.108. CIVIL LIABILITY. A member of the advisory board is not liable in a civil action for an act performed in good faith while performing duties as an advisory board member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1802.109. AUCTIONEER EDUCATION PROGRAMS. (a) The advisory board shall:

- (1) evaluate educational programs, seminars, and training projects; and
- (2) make recommendations to the commission on their usefulness and merit as continuing education tools.

(b) On the recommendation of the advisory board, the commission may fund or underwrite specific classes, seminars, or events for the education and advancement of the auctioneering profession in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.007, eff. Sept. 1, 2003.

**SUBCHAPTER D. AUCTIONEER EDUCATION AND RECOVERY FUND**

Sec. 1802.151. FUND. The auctioneer education and recovery fund is a trust fund with the comptroller for the payment of claims against auctioneers licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1802.152. MANAGEMENT OF FUND. (a) The department is the manager of the fund and shall:

- (1) administer the fund without appropriation;
- (2) maintain books and records as required by the executive director;
- (3) appear at hearings or judicial proceedings; and
- (4) invest and reinvest the fund's assets as instructed by the executive director.

(b) The department, as manager, is entitled to compensation for reasonable and necessary costs and expenses for the management of the fund. The department shall be compensated from the earnings from the fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.049, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.363, eff. Sept. 1, 2003.

Sec. 1802.153. ADDITIONAL FEES. (a) In addition to any other fees required by this chapter, an applicant entitled to receive a license under this chapter must pay a fee before the executive director issues the license.

(b) If the balance in the fund on December 31 of a year is less than \$350,000, each license holder at the next license renewal shall pay, in addition to the renewal fee, a fee that is equal to the greater of \$50 or a pro rata share of the amount necessary to obtain a balance in the fund of \$350,000.

(c) The fees paid under this section shall be deposited in the fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.008, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.364, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 11, eff. June 14, 2013.

Sec. 1802.154. INVESTMENT OF FUND. (a) Amounts deposited in the fund may be invested and reinvested in the same manner as funds of the Employees Retirement System of Texas, and income from the investments shall be deposited to the credit of the fund.

(b) The department may not make an investment that would impair the liquidity required to satisfy payments made from the fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1802.155. LIABILITY. (a) The fund or the department is not liable to a consumer for a recovery from the fund if the assets of the fund are insufficient to pay the amount awarded.

(b) If the fund contains insufficient assets to pay the consumer:

(1) the department shall record the time and date an order for payment to a consumer was received; and

(2) the executive director shall pay consumers for whom an order is recorded under Subdivision (1) as funds become available in the order of the recorded time and date of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.050, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.365, eff. Sept. 1, 2003.

Sec. 1802.156. EDUCATION EXPENDITURES PERMITTED. The executive director may use amounts in excess of \$300,000 in the fund to:

(1) advance education and research in the auctioneering profession for the benefit of license holders and to improve and increase the efficiency of the industry;

(2) underwrite educational seminars, training centers, and other educational projects for the use and benefit of license holders;

(3) sponsor, contract, and underwrite other educational and research projects that advance the auctioneering profession in this

state; and

(4) cooperate with associations of auctioneers and other groups for the education and advancement of the auctioneering profession in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.051, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.366, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 12, eff. June 14, 2013.

#### **SUBCHAPTER E. COMPLAINT PROCEDURES**

Sec. 1802.201. INVESTIGATION OF COMPLAINTS. The executive director may, on the executive director's motion, and shall, on the written complaint of a person aggrieved by the actions of an auctioneer in an auction, investigate an alleged violation of this chapter by a licensed or unlicensed auctioneer or an applicant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.009, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.366, eff. Sept. 1, 2003.

Sec. 1802.202. CONSUMER CLAIMS. (a) A person who deals with an auctioneer licensed under this chapter and who is aggrieved by an action of the auctioneer as a result of a violation of a contract made with the auctioneer may initiate a claim against the fund by filing with the department a complaint against the auctioneer.

(b) The executive director may not pay a claim against an auctioneer who was not licensed at the time of the transaction on which the claim is based.

(c) The department shall investigate a complaint filed under this section and determine the amount owed to the aggrieved party.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.010, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.367, eff. Sept. 1, 2003.

Text of section as amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.011.

Sec. 1802.203. HEARING. (a) If the amount determined by the department under Section 1802.202 is disputed by the auctioneer or the aggrieved party, the department's hearings examiner shall:

(1) conduct a hearing on the claim in accordance with department rules; and

(2) determine the amount owed to the aggrieved party.

(b) A hearing on a claim may be conducted at the department's Austin office or at another location as provided by department rule.

(c) After the hearing, the hearings examiner shall prepare a proposal for decision for the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.011, eff. Sept. 1, 2003.

Text of section as amended by Acts 2003, 78th Leg., ch. 1215, Sec. 13  
 Sec. 1802.203. HEARING. If the amount determined by the department under Section 1802.202 is disputed by the auctioneer or the aggrieved party, the department shall refer the matter to the State Office of Administrative Hearings for a hearing on the disputed claim.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1215, Sec. 13, eff. Sept. 1, 2003.

Sec. 1802.204. APPEAL. A party may appeal a decision of the commission in the manner provided for a contested case under Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.012, eff. Sept. 1, 2003.

Sec. 1802.205. PAYMENT OF CLAIM. (a) If the department's determination under Section 1802.202 is not disputed by the auctioneer or the aggrieved party, the executive director shall pay the claim from the fund, subject to Section 1802.206.

(b) If a hearing is held on the department's determination, the

executive director shall pay to the aggrieved party the amount of actual damages determined by the executive director.

(c) The amount of actual damages may not include attorney's fees, speculative damages, or lost profits.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.052, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.370, eff. Sept. 1, 2003.

Sec. 1802.206. PAYMENT LIMITS. (a) The executive director may not pay a single aggrieved party more than \$15,000.

(b) The total payment of all claims by more than one aggrieved party arising from one auction at one location, regardless of the length of the auction, may not exceed \$30,000.

(c) The total payment of claims against a single auctioneer may not exceed \$30,000.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.053, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.371, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 13, eff. June 14, 2013.

Sec. 1802.207. REIMBURSEMENT; INTEREST. (a) If the executive director pays a claim against an auctioneer, the auctioneer shall:

(1) reimburse the fund immediately or agree in writing to reimburse the fund on a schedule to be determined by rule of the commission; and

(2) immediately pay the aggrieved party any amount due to that party or agree in writing to pay the party on a schedule to be determined by rule of the commission.

(b) Payments made by an auctioneer to the fund or to an aggrieved party under this section include interest accruing at the rate of eight percent a year beginning on the date the executive director pays the claim.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.013, eff. Sept. 1, 2003.

Sec. 1802.208. SUBROGATION. If the executive director pays a claim against an auctioneer, the department is subrogated to all rights of the aggrieved party against the auctioneer to the extent of the amount paid to the aggrieved party.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.054, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.372, eff. Sept. 1, 2003.

Sec. 1802.209. EFFECT ON DISCIPLINARY PROCEEDINGS. (a) This subchapter and Section 1802.252 do not limit the commission's or executive director's authority to take disciplinary action against a license holder for a violation of this chapter or a rule adopted under this chapter.

(b) A license holder's repayment of all amounts owed to the fund does not nullify or modify the effect of another disciplinary proceeding brought under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.014, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 14, eff. June 14, 2013.

#### **SUBCHAPTER F. DENIAL OF LICENSE AND DISCIPLINARY PROCEDURES**

Sec. 1802.251. DENIAL OF APPLICATION; SUSPENSION OR REVOCATION OF LICENSE. The commission or executive director may deny an application for a license or suspend or revoke the license of any auctioneer for:

- (1) violating this chapter or a rule adopted under this chapter;
- (2) obtaining a license through false or fraudulent representation;
- (3) making a substantial misrepresentation in an application for an auctioneer's license;
- (4) engaging in a continued and flagrant course of misrepresentation or making false promises through an agent,

advertising, or otherwise;

(5) failing to account for or remit, within a reasonable time, money belonging to another that is in the auctioneer's possession and commingling funds of another with the auctioneer's funds or failing to keep the funds of another in an escrow or trust account; or

(6) violating a provision of the Business & Commerce Code in conducting an auction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.015, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 15, eff. June 14, 2013.

Sec. 1802.252. REVOCATION FOR CLAIM ON FUND. (a) The commission may revoke a license issued under this chapter if the executive director makes a payment from the fund as the result of an action of the license holder.

(b) The commission may probate an order revoking a license.

(c) An auctioneer is not eligible for a new license until the auctioneer has repaid in full the amount paid from the fund on the auctioneer's account, including interest, unless:

(1) a hearing is held; and

(2) the executive director issues a new probated license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.016, eff. Sept. 1, 2003.

Sec. 1802.253. HEARING BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) Before denying an application for a license, the commission or executive director shall:

(1) set the matter for a hearing to be conducted by the State Office of Administrative Hearings; and

(2) before the hearing date, notify the applicant in writing of:

(A) the charges alleged or the question to be determined at the hearing; and

(B) the date and location of the hearing.



(b) At a hearing under this section, the applicant may:

- (1) be present and be heard in person or by counsel; and
- (2) have an opportunity to offer evidence by oral

testimony, affidavit, or deposition.

(c) Written notice may be served by personal delivery to the applicant or by certified mail to the last known mailing address of the applicant.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1048, Sec. 17, eff. June 14, 2013.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.017, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1215, Secs. 14, 15, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 18.004, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 16, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 17, eff. June 14, 2013.

#### **SUBCHAPTER G. CRIMINAL PENALTIES**

Sec. 1802.301. PRACTICING WITHOUT LICENSE; OFFENSE. (a) A person commits an offense if the person acts as an auctioneer without a license.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1802.302. FRIVOLOUS CLAIM; OFFENSE. (a) A person commits an offense if the person intends to benefit personally or to harm another and the person:

(1) institutes under this chapter a claim in which the person knows the person has no interest; or

(2) institutes under this chapter a frivolous suit or a claim that the person knows is false.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1802.303. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person violates a provision of this chapter or a rule adopted by the commission under this chapter for which a penalty is not provided.

(b) An offense under this section is a Class C misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.018, eff. Sept. 1, 2003.

**CHAPTER 1803. SOLICITATION FOR PUBLIC SAFETY ORGANIZATIONS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1803.001. DEFINITIONS. In this chapter:

(1) "Law enforcement personnel" means commissioned peace officers who are employees of government law enforcement agencies.

(2) "Public safety entity" means a public safety promoter or public safety organization.

(3) "Public safety organization" means a nongovernmental organization that, in a manner that reasonably implies that the organization is composed of law enforcement or public safety personnel or that a contribution, purchase, or membership will benefit public safety personnel, uses the term "officer," "peace officer," "police officer," "police," "law enforcement," "reserve officer," "deputy," "deputy sheriff," "constable," "deputy constable," "fireman," "firefighter," "volunteer fireman," "emergency medical service provider," "civilian employee," or any other term:

(A) in its name;

(B) in a publication of the organization; or

(C) in a solicitation for:

(i) contributions to the organization;

(ii) membership in the organization;

(iii) the purchase of advertising in a publication of the organization; or

(iv) the purchase of products or tickets to an event sponsored by or for the benefit of the organization by a solicitor.

(4) "Public safety personnel" means employees or volunteers of a public safety organization, including:

- (A) firefighters;
- (B) emergency medical service providers; or
- (C) civilian employees of a public safety organization.

(5) "Public safety promoter" means a person who:

- (A) is not affiliated with a public safety organization; and
- (B) in the name of public safety or in a name associated with public safety makes a request for a donation or the sale of tickets or advertising.

(6) "Public safety publication" means a nongovernmental publication with a name that includes the term "officer," "peace officer," "police officer," "police," "law enforcement," "reserve officer," "deputy," "deputy sheriff," "constable," "deputy constable," "fireman," "firefighter," "volunteer fireman," "emergency medical service provider," "civilian employee," or any other term in a manner that reasonably implies that the publication is published by a public safety organization or benefits public safety.

(7) "Public safety solicitor" means a person who:

- (A) contracts for or receives money for providing solicitation services for a public safety entity or public safety publication; and
- (B) solicits:
  - (i) contributions in person, by telephone, by electronic media, or by mail;
  - (ii) membership in a public safety organization from an individual not employed by a public safety agency of the United States, this state, or a political subdivision of this state; or
  - (iii) the purchase of:
    - (a) advertising; or
    - (b) goods, services, or tickets to an event sponsored by or for the benefit of a public safety organization or for the cause of public safety.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.002. EFFECT ON MUNICIPAL ORDINANCE. This chapter preempts any municipal ordinance applicable to public safety entities, public safety publications, public safety solicitors, or

solicitations related to a person registered under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER B. REGISTRATION AND BOND REQUIREMENTS**

Sec. 1803.051. REGISTRATION. (a) A public safety entity or public safety publication may not solicit unless the entity or publication:

(1) files a registration statement under Section 1803.053; and

(2) pays a registration fee under Section 1803.054.

(b) A public safety entity or public safety publication may not use a public safety solicitor, and a person may not act as a public safety solicitor unless the solicitor:

(1) files a registration statement and pays the registration fee under Section 1803.055; and

(2) files and maintains a bond under Section 1803.056.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.052. ELIGIBILITY TO USE SOLICITOR. (a) A public safety organization may register under Section 1803.053 and use a public safety solicitor only if the organization is a bona fide membership organization consisting of individual members:

(1) of whom at least five percent or 500 members, whichever is less, are employed as law enforcement personnel or public safety personnel by a public safety agency of the United States, this state, or a political subdivision of this state; and

(2) who have signed membership agreements with the organization and paid an annual membership fee of at least \$10.

(b) A public safety promoter may register under Section 1803.053 and use a public safety solicitor if the disclosure required by Section 1803.101 is made.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.053. REGISTRATION STATEMENT BY PUBLIC SAFETY ENTITY OR PUBLICATION. (a) Before beginning solicitations, a public safety

entity or public safety publication shall file with the secretary of state:

(1) a registration statement signed by two of its officers or directors; and

(2) if the public safety entity or publisher of the publication, as applicable, is a nonresident, an irrevocable written consent appointing the secretary of state as agent for service of process on the entity or publisher for any action relating to a violation of this chapter.

(b) The registration statement must disclose:

(1) the name, street address, and telephone number of any public safety solicitor for the registering entity;

(2) the name, street address, and telephone number of each public safety organization, public safety publication, or fund for which any part of the contributions will be used, or if there is no organization, publication, or fund, a statement describing how the contributions will be used;

(3) whether the registering entity or fund that the contributions are being solicited for has a federal and state charitable tax exemption;

(4) the name and public safety agency or former agency of each active and retired public safety officer serving on the board of directors or governing body of the registering entity;

(5) the number of members and the percentage of members who are active and retired public safety officers of the United States, this state, or a political subdivision of this state, as determined on December 31 of the year preceding the year in which the registration is made and the contributions are solicited, if the registering entity is a public safety organization;

(6) the name of the local chapter, lodge, association, or group of licensed public safety officers of the public safety organization for which contributions are being solicited, if the registering entity is a public safety organization;

(7) a copy of the most recent tax or informational return filed with the Internal Revenue Service by the registering entity;

(8) the amount of money collected during the previous year by the registering entity by solicitations of nonmembers of the public safety organization for which the funds were collected and the amount of funds paid as expenses to maintain the solicitation operation;

(9) the amount of money, if known or projected, expected to be collected during the year of filing by the registering entity by nonmember solicitations described by Subdivision (8);

(10) a copy of any contract or agreement between the registering entity and a solicitor; and

(11) if the registering entity is a public safety publication, information on:

(A) the total number of copies of each issue of the publication printed during the previous year;

(B) the frequency of the publication; and

(C) the date and circulation of the most recent issue of the publication.

(c) A registration statement takes effect on the date the secretary of state issues a certificate and is valid for one year. The statement may be renewed annually by filing a renewal registration statement and paying the registration fee required by Section 1803.054.

(d) A public safety entity or public safety publication shall file an updated statement with the secretary of state not later than the 30th day after the date of a change of street address, phone number, or name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.054. PUBLIC SAFETY ENTITY REGISTRATION FEE. (a) Except as provided by Subsection (b), a public safety entity registering under Section 1803.053 shall pay to the secretary of state an annual registration fee of \$250.

(b) A public safety organization consisting of members who are volunteer firefighters for a local political subdivision and that solicits only in the area of the firefighters' jurisdiction is not required to pay a registration fee.

(c) Subsection (b) does not apply to a statewide association of volunteer firefighters.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.055. SOLICITOR REGISTRATION STATEMENT AND FEE. (a) Before beginning solicitations for a public safety entity or public

safety publication, a public safety solicitor shall file with the secretary of state a registration statement containing:

(1) the name, street and mailing address, and telephone number of the solicitor;

(2) the name, street and mailing address, and telephone number of each public safety entity or public safety publication for whom the solicitor solicits or will solicit in this state; and

(3) if the solicitor is a nonresident, an irrevocable written consent appointing the secretary of state as agent for service of process on the solicitor for any action pertaining to a violation of this chapter.

(b) The registration statement required by Subsection (a) must be accompanied by:

(1) a \$500 registration fee; and

(2) a bond as required by Section 1803.056.

(c) A registration statement takes effect on the date the secretary of state issues a certificate and is valid for one year. The statement may be renewed annually by filing a renewal registration statement and paying the registration fee required by Subsection (b).

(d) A solicitor shall file an updated statement with the secretary of state not later than the 30th day after the date of a change of street address, mailing address, phone number, or name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.056. SOLICITOR BOND. (a) A public safety solicitor shall post with the secretary of state a \$10,000 surety bond issued by a surety company authorized to do business in this state.

(b) The bond must be payable to the state and conditioned on compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. SOLICITATION RESTRICTIONS**

Sec. 1803.101. SOLICITATION DISCLOSURE. (a) An oral or a written disclosure shall be given to each person before the person delivers any consideration to a public safety entity, public safety publication, or public safety solicitor.

(b) A written disclosure must be in contrasting eight-point type or larger.

(c) A disclosure must include:

(1) the name of the public safety organization registered under Section 1803.053, if an organization is involved;

(2) a statement that the promotion is independent of affiliation with any public safety organization, if a public safety promoter is involved;

(3) the name of any public safety solicitor employed;

(4) a general statement of the use of net funds received;

and

(5) the name, street address, and statewide telephone number established under Section 1803.102 that a person may use to obtain from the secretary of state additional information on the public safety entity, public safety publication, or public safety solicitor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.102. SOLICITATION INFORMATION HOTLINE. The secretary of state shall establish and operate a toll-free telephone line known as the Solicitation Information Hotline that enables a person to call the hotline number to:

(1) obtain information concerning a public safety entity, public safety publication, or public safety solicitor that has filed a registration statement with the secretary of state under this chapter; or

(2) report an alleged violation of this chapter by a public safety entity, public safety publication, or public safety solicitor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.103. PROHIBITED PRACTICES. In soliciting for a public safety entity or public safety publication, a person may not:

(1) use, unless authorized in writing by a public safety agency or public safety organization:

(A) any representation that implies that the contribution is for or on behalf of the agency or organization; or

(B) any emblem, device, or printed matter belonging to



or associated with the agency or organization;

(2) use a name, symbol, or statement similar to a name, symbol, or statement used by a public safety agency or organization in a manner intended to confuse or mislead a person being solicited;

(3) knowingly represent or imply that the solicitation proceeds are being used for a purpose other than the purpose for which the funds are actually used;

(4) represent or imply that the solicitor is a peace officer or member of a public safety agency or public safety organization if the solicitor is not an officer or a member;

(5) use or exploit the fact of filing with the secretary of state in a manner leading a person to believe that filing, in any way, constitutes an endorsement by or approval of the state;

(6) knowingly file incomplete, false, or misleading information in a document required to be filed with the secretary of state under this chapter;

(7) solicit for a public safety entity or public safety publication, or represent that those responding affirmatively to the solicitation will receive favored treatment by public safety personnel;

(8) collect a contribution or membership fee solicited at a person's residence by an in-person or telephone solicitation by means other than payment through the United States mail or parcel post courier;

(9) solicit for a public safety organization in a county in which members of the organization do not have jurisdiction; or

(10) commit another unfair or deceptive act or practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.104. FAILURE TO FILE TIMELY REPORT. A public safety entity or public safety publication that fails to timely file the information required by this chapter or that files information required by this chapter that is found to contain material misrepresentation may not use a public safety solicitor until it provides or corrects the information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER D. ENFORCEMENT AND PENALTIES**

Sec. 1803.151. AUDIT BY ATTORNEY GENERAL. (a) The attorney general may make a written request for information from a public safety entity, public safety publication, or public safety solicitor to audit or verify a representation contained in a registration statement.

(b) A public safety entity, public safety publication, or public safety solicitor shall provide information requested by the attorney general under Subsection (a) not later than the 10th working day after the date of the attorney general's request.

(c) Wilful failure to provide timely information under this section is a ground for bond forfeiture or suspension of registration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.152. CRIMINAL PENALTIES. (a) A person commits an offense if the person knowingly violates this chapter.

(b) An offense under this chapter is a Class A misdemeanor.

(c) A corporation or association may be held criminally responsible for conduct by a person acting on its behalf if the person's conduct:

(1) constitutes an offense under this chapter; and

(2) is done with the knowledge and approval of the corporation or association.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.153. CIVIL PENALTY AND INJUNCTION. (a) The attorney general may bring an action in a Travis County district court:

(1) for a civil penalty for a violation of this chapter;  
and

(2) to enjoin a person from violating this chapter.

(b) The attorney general shall notify the defendant of the alleged prohibited conduct not later than the seventh day before the date the action is commenced.

(c) Notice is not required if the attorney general intends to request that the court issue a temporary restraining order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.154. CIVIL PENALTIES. (a) A person who violates this chapter or an injunction issued under Section 1803.153 is liable to the state for a civil penalty of not more than:

- (1) \$2,500 for a single violation; or
- (2) \$10,000 for all of the violations.

(b) If a person found to have violated this chapter or an injunction has filed a bond under this chapter, the suit may be brought against the bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.155. SERVICE ON SECRETARY OF STATE. (a) A service of process or pleading served on the secretary of state as the agent for a nonresident public safety solicitor, public safety entity, or public safety publication must be served in triplicate.

(b) The secretary of state shall file one copy in the secretary of state's office and immediately forward the other copies by certified mail, return receipt requested, to the address of the nonresident, as shown on the nonresident's registration statement.

(c) Service on the secretary of state shall be returned not later than the 30th day after the date of service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## **CHAPTER 1804. SOLICITATION FOR VETERANS ORGANIZATIONS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1804.001. DEFINITIONS. In this chapter:

(1) "Veteran" means a person who has served on active duty in the armed forces of the United States or in the state military forces as defined by Section 437.001, Government Code.

(2) "Veterans organization" means a formally or informally formed nongovernmental entity that:

- (A) purports to include or represent veterans; or
- (B) includes a term in its name leading a reasonable person to assume the organization is associated with veterans or concerned with veterans' issues.

(3) "Veterans organization solicitor" means a person who receives monetary compensation for solicitation services for a veterans organization and who solicits:

(A) a contribution of financial support or a purchase of goods or services for a veterans organization in person, by telephone, or by mail; or

(B) membership in a veterans organization from an individual who is not a veteran.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.17, eff. September 1, 2013.

Sec. 1804.002. EFFECT ON MUNICIPAL ORDINANCE. This chapter does not preempt a municipal ordinance applicable to a veterans organization or a veterans organization solicitor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. REGISTRATION REQUIREMENTS**

Sec. 1804.051. REQUIREMENTS FOR SOLICITATION. (a) A veterans organization may not use a veterans organization solicitor unless:

(1) the organization:

(A) files a registration statement under Section 1804.053; and

(B) files and maintains a bond under Section 1804.101; and

(2) the solicitor complies with the requirements of Subsection (b).

(b) A person may not act as a veterans organization solicitor unless the person:

(1) files a registration statement under Section 1804.054; and

(2) files and maintains a bond under Section 1804.102.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.052. ELIGIBILITY TO USE SOLICITOR. (a) A veterans organization may register under Section 1804.053 and use a veterans organization solicitor only if the organization consists of individual members:

(1) of whom at least 90 percent or 500, whichever is less, are veterans; and

(2) who have signed membership agreements with the organization.

(b) A veterans organization may not use a veterans organization solicitor and a veterans organization solicitor may not solicit for a veterans organization if the organization or the solicitor has on three or more occasions forfeited a bond filed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.053. REGISTRATION STATEMENT BY VETERANS ORGANIZATION.

(a) Before beginning solicitations, a veterans organization must file with the secretary of state a registration statement containing:

(1) the name, street address, and telephone number of each solicitor that solicits for the veterans organization;

(2) the name, street address, and telephone number of each veterans organization or fund for which any part of the contributions will be used, or, if there is no organization or fund, a statement describing how the contributions will be used;

(3) a statement of whether the veterans organization or fund for which the contributions are solicited has a federal and state charitable tax exemption;

(4) the name of each veteran serving on the board of directors or governing body of the veterans organization or fund for which the contributions are solicited;

(5) a statement of the number of members who are veterans and the percentage of members of the veterans organization that are veterans, as determined on December 31 preceding the year in which the statement is filed;

(6) the name of each local chapter, lodge, association, or group of veterans that is a member of the veterans organization for which contributions are solicited;

(7) a copy of the Internal Revenue Service Form 990, or its successor, the veterans organization most recently filed; and

(8) the name, address, and telephone number of the surety for the bond filed under Section 1804.101.

(b) The registration statement must be accompanied by a \$150 registration fee and the original copy of the bond required under Section 1804.101.

(c) A registration statement issued under this section takes effect on the date the secretary of state issues a certificate and is valid for one year. The statement may be renewed annually by filing a renewal registration statement and paying the registration fee required by Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.054. SOLICITOR REGISTRATION STATEMENT. Before beginning solicitations for a veterans organization, a veterans organization solicitor must file with the secretary of state a registration statement containing:

- (1) the name, address, and telephone number of the solicitor;
- (2) the name, address, and telephone number of each veterans organization on whose behalf the solicitor solicits or will solicit; and
- (3) the name of any other state in which the solicitor is registered as a veterans organization solicitor and the registration's status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.055. SOLICITOR REGISTRATION FEE. (a) A registration statement under Section 1804.054 must be accompanied by:

- (1) a \$500 registration fee; and
- (2) a bond required under Section 1804.102.

(b) A registration statement issued under this section takes effect on the date the secretary of state issues a certificate and is valid for one year. A registration statement may be renewed annually by filing a renewal registration statement and paying the registration fee required by Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER C. BONDING AND REPORTING REQUIREMENTS**

Sec. 1804.101. VETERANS ORGANIZATION BOND. (a) A veterans organization using a veterans organization solicitor shall post a surety bond with the secretary of state:

(1) in the amount of \$1,000 if the organization is a veterans organization chartered by the United States Congress; or

(2) if the organization is not chartered by the United States Congress, in the amount of:

(A) \$5,000 if the organization solicits in only one county;

(B) \$10,000 if the organization solicits in more than one county but fewer than six counties; or

(C) \$25,000 if the organization solicits in six or more counties.

(b) The bond must be payable to the state and conditioned on compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.102. SOLICITOR BOND. (a) A veterans organization solicitor shall post a surety bond with the secretary of state in the amount of:

(1) \$5,000 if the solicitor solicits in only one county;

(2) \$10,000 if the solicitor solicits in more than one county but fewer than six counties; or

(3) \$25,000 if the solicitor solicits in six or more counties.

(b) The bond must be payable to the state and conditioned on compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.103. VETERANS ORGANIZATION REPORTS. (a) Before January 15 of each year, each veterans organization that received more than \$500 in solicitations during the preceding calendar year shall file with the secretary of state a report that includes:

(1) the name and address of the veterans organization and

each officer authorized to spend the organization's funds; and

- (2) the total amounts from all sources spent by the organization for each of the following:
- (A) administrative expenses;
  - (B) travel expenses of officers of the organization;
  - (C) travel expenses of each member of the organization;
  - (D) gifts to veterans or other veterans organizations;
  - (E) gifts to nonveterans;
  - (F) payments for the purchase, rental, or lease of and repairs to facilities used by the organization; and
  - (G) any other expenditures.

(b) A \$50 filing fee must accompany each report filed under this section.

(c) A veterans organization that is chartered by the United States Congress and that has subsidiary organizations may:

- (1) collect the reports of the subsidiary organizations; and
- (2) file its report and the reports of its subsidiary organizations together and pay a single filing fee.

(d) A veterans organization shall require an individual to sign a receipt for the funds given to the individual for the individual's personal use before the funds are delivered. The organization shall keep a receipt for the expenditure for seven years after the date of the expenditure.

(e) The reports and receipts are public records and the veterans organization shall make them available to any person who requests them in writing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.104. SOLICITOR REPORTS. (a) At the end of each calendar quarter, a solicitor who raises more than \$5,000 for a veterans organization during that period shall file with the secretary of state a report that includes:

- (1) the name, address, and telephone number of the solicitor;
- (2) the gross amount raised by the solicitor for the veterans organization;
- (3) the amount paid to the veterans organization; and



(4) the name and address of the person representing the veterans organization to which the amount was paid.

(b) A \$50 filing fee must accompany each report.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. SOLICITATION RESTRICTIONS**

Sec. 1804.151. SOLICITATION DISCLOSURE. (a) A veterans organization solicitor shall disclose at the time each solicitation is made the following information: "The secretary of state has on file important information about persons that seek contributions in the name of veterans, and the number to call about that information is the Solicitation Information Hotline (the number maintained by the secretary of state)."

(b) The disclosure must be made:

(1) orally if the solicitation is in person or by telephone; and

(2) by printed notice in any printed matter distributed by the solicitor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.152. SOLICITATION INFORMATION HOTLINE. The secretary of state shall establish and operate a toll-free telephone line known as the Solicitation Information Hotline that enables a person to call the hotline number to:

(1) obtain information concerning a veterans organization or solicitor that has filed a statement with the secretary of state under this chapter; or

(2) report an alleged violation of this chapter by a solicitor or a veterans organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.153. PROHIBITED PRACTICES. (a) A veterans organization solicitor may not solicit on behalf of a veterans organization in a county other than a county that the veterans organization serves unless the solicitor discloses to the person

being solicited the county or counties actually served by the organization.

(b) A contribution or membership fee solicited at a person's residence in person or by telephone may not be collected except through the United States mail or parcel post courier.

(c) A veterans organization solicitor may not make a materially false or misleading statement of fact during a solicitation that would lead a responsible person to believe that proceeds of the solicitation are being used or will be used for a purpose other than the purpose for which the proceeds are actually used.

(d) A veterans organization solicitor or a veterans organization may not make a material misrepresentation in a registration statement.

(e) For purposes of Subsection (d), overstating the number of veterans who are members of the veterans organization by more than three percent of the organization's total membership is a material misrepresentation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER E. ENFORCEMENT AND PENALTIES**

Sec. 1804.201. AUDIT BY ATTORNEY GENERAL. (a) The attorney general may request reasonable and necessary information from a veterans organization or a veterans organization solicitor for the purpose of auditing or verifying the representations contained in a registration statement.

(b) The attorney general may audit representations made by a veterans organization solicitor during a solicitation to determine whether the solicitation complies with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.202. CRIMINAL PENALTIES. (a) A person commits an offense if the person knowingly violates this chapter.

(b) An offense under this section is a Class B misdemeanor, except that if it is shown on trial of the offense that the defendant has been convicted previously under this section, the offense is a Class A misdemeanor.

(c) A corporation or association may be held criminally

responsible for the conduct of a person acting on its behalf if the person's conduct constitutes an offense under this section.

(d) It is a defense to prosecution under this section that:

(1) the defendant is a veterans organization;

(2) the person whose conduct constitutes the offense was acting on behalf of a corporation or association with which the veterans organization had contracted for services; and

(3) the person committed the conduct without the knowledge of the veterans organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.203. ENFORCEMENT AND INJUNCTION. (a) The attorney general may bring an action in a Travis County district court to enjoin a person from violating this chapter.

(b) The attorney general shall notify the defendant of the alleged prohibited conduct not later than the seventh day before the date the action is commenced.

(c) Notice is not required if the attorney general intends to request that the court issue a temporary restraining order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.204. CIVIL PENALTIES. (a) A person who violates this chapter is liable to the state for a civil penalty of not more than \$10,000 for each violation.

(b) A person who violates an injunction issued under this chapter is liable to the state for a civil penalty of not less than \$100,000.

(c) The attorney general shall bring an action to recover a civil penalty.

(d) If the violator has filed a bond under this chapter, the suit may be brought against the bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.205. SUIT ON BOND. (a) A person injured by a violation of this chapter may bring an action or join an action

brought by the state to recover against a bond filed under this chapter.

(b) The court may assess costs of litigation and reasonable attorney's fees incurred by a plaintiff other than the state or by a defendant who substantially prevails.

(c) In an action brought by a private plaintiff and the state under this chapter, if the amount claimed exceeds the amount of the bond, money derived from a bond forfeiture first applies to pay the private plaintiff's damages and attorney's fees, and any remaining amount is forfeited to the state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.206. AVAILABILITY OF OTHER REMEDIES. This chapter does not:

- (1) prevent the state or an injured party from bringing an action to recover a contribution obtained by misrepresentation; or
- (2) limit other causes of action available to a plaintiff by statute or common law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## **CHAPTER 1805. SALE OF SECONDHAND BUSINESS MACHINES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1805.001. DEFINITIONS. In this chapter:

(1) "Business machine" includes an adding machine, addressing machine, calculator, cash register, check-writing device, computer or peripheral device to a computer, letter-sorting or folding device, item of recording, copying, or accounting equipment, or typewriter. The term does not include office furniture or fixtures.

(2) "Secondhand dealer" means a person who:

(A) engages in the business of buying, selling, trading, accepting for sale on consignment, accepting for auction, or auctioning business machines; or

(B) owns or operates an auction or another event at which:

(i) two or more persons offer business machines for sale or exchange; and

(ii) a fee is charged for:

(a) offering or displaying property for sale or exchange; or

(b) admission to the area in which the property is offered or displayed for sale or exchange.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.002. APPLICATION TO BUSINESS MACHINES. (a) This chapter applies only to a business machine that has previously been sold at retail.

(b) This chapter does not apply to a business machine:

(1) acquired in good faith in a transaction involving the stock in trade of another secondhand dealer who previously made the reports on the machine required by this chapter if:

(A) the selling dealer delivers to the acquiring dealer a written document stating that the reports have been made;

(B) the acquiring dealer submits a copy of the statement to the chief of police of the municipality or the sheriff of the county in which the selling dealer is located; and

(C) each secondhand dealer involved in the transaction retains a copy of the statement required by this subdivision for three years after the date of the transaction;

(2) acquired in a nonjudicial sale, transfer, assignment, assignment for the benefit of creditors, or consignment of the assets or stock in trade, in bulk, or a substantial part of those assets, of an industrial or commercial enterprise, other than a secondhand dealer, for the voluntary dissolution or liquidation of the seller's business, or for disposing of an excessive quantity of personal property, or property that has been acquired in a nonjudicial sale or transfer from an owner other than a secondhand dealer, the seller's entire household of personal property, or a substantial part of that property, if the secondhand dealer:

(A) gives written notice to the chief of police of the municipality or the sheriff of the county in which the dealer's business is located that a reporting exemption is being claimed under this subdivision;

(B) retains in the dealer's place of business, for three years after the date of the transaction, a copy of the bill of

sale, receipt, inventory list, or other transfer document; and

(C) makes the record retained available for inspection by any peace officer;

(3) acquired in a sale made:

(A) by any public officer in the officer's official capacity as a trustee in bankruptcy, executor, administrator, receiver, or public official acting under judicial process or authority; or

(B) on the execution of, or by virtue of, any process issued by a court;

(4) acquired as surplus property from the United States, a state, a subdivision of a state, or a municipal corporation;

(5) reported by a secondhand dealer as an acquisition or a purchase, or reported as destroyed or otherwise disposed of, to:

(A) a state agency under another law of this state; or

(B) a municipal or county officer or agency under another law of this state or a municipal ordinance; or

(6) acquired by a person licensed under Chapter 371, Finance Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.003. APPLICATION TO SECONDHAND DEALERS. This chapter does not apply to a person:

(1) acting as a dealer for the exclusive benefit of any community chest, fund, foundation, or nonprofit corporation organized and operated for religious, hospital, or charitable purposes if none of the gross receipts or net earnings of the sale or exchange of business machines benefits a private shareholder or a person participating in the organization or the conduct of the sale or exchange;

(2) who owns the land on which an auction or event involving the sale or exchange of business machines occurs if the person:

(A) does not have control over the auction or event; and

(B) does not have personal knowledge of any facts arising from the auction or event constituting a violation of this chapter; or

(3) whose primary business includes the manufacture, sale, or service of computers or devices peripheral to computers.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.004. EFFECT ON OTHER LAWS AND ORDINANCES. (a) This chapter does not excuse noncompliance with another state law or municipal ordinance relating to the reporting, holding, or releasing of business machines.

(b) This chapter does not prohibit the enactment, amendment, or enforcement by any municipality of any ordinance relating to a secondhand dealer.

(c) This chapter does not supersede any municipal ordinance except to the extent that the ordinance does not require any reporting for transactions involving business machines.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. REPORTING REQUIREMENTS**

Sec. 1805.051. REPORT OF PURCHASE. (a) A secondhand dealer shall report each business machine that the dealer purchases, takes in trade, accepts for sale on consignment, or accepts for auction.

(b) The report required by Subsection (a) must:

- (1) meet the requirements of Section 1805.052; and
- (2) be made not later than 48 hours after the time the business machine is received.

(c) Before a business machine is offered for sale or exchange, a secondhand dealer shall notify each person intending to sell or exchange a business machine that, before the dealer may accept any of the person's business machines, the person must file with the secondhand dealer a list describing each of the person's machines to be accepted by the dealer.

(d) The list required by Subsection (c) must contain:

(1) the proposed seller's driver's license number or Department of Public Safety identification card number, as recorded by the dealer on physical presentation of the license or identification card by the seller;

(2) a complete and accurate description of each business machine, including its serial number or other identifying marks or

symbols;

(3) the proposed seller's certification that the information is true and complete; and

(4) if the business machine is delivered to the secondhand dealer for sale or exchange at an auction, the make, year, model, color, and registration number of the vehicle in which the business machine is transported to the auction.

(e) The secondhand dealer shall:

(1) provide, on demand, the list required by Subsection (c) to any peace officer; and

(2) mail or deliver the list to the chief of police or the sheriff as provided by Section 1805.052 not later than 48 hours after the list is filed with the secondhand dealer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.052. FORM OF REPORT; FILING. (a) A report required by this chapter must comply with this section unless a similar report is required by another state law or a municipal ordinance, in which event the required report must comply with the applicable law or ordinance.

(b) Except as provided by Section 1805.053, a report required by this chapter must contain:

(1) the name and address of the seller of the business machine;

(2) a complete and accurate description of the business machine for which the report is made, including the serial number or other identifying marks or symbols;

(3) the seller's certification that the information is true and complete; and

(4) the seller's driver's license number or Department of Public Safety identification card number, as recorded by the dealer on physical presentation of the license or identification card by the seller.

(c) If a transaction regulated by this chapter occurs in a municipality, the original report required by this chapter and a copy must be submitted to the municipality's chief of police. If the transaction does not occur in a municipality or occurs in a municipality that does not maintain a police department, the original



report and a copy must be submitted to the sheriff of the county in which the transaction occurred.

(d) The person submitting the report shall:

(1) submit the report on a form prescribed by the district attorney or person performing the duties of district attorney of the county in which the transaction occurs if no other state law or municipal ordinance requires a report of property acquired by a secondhand dealer as provided by Section 1805.051(a);

(2) retain a copy of the report in the person's place of business for three years from the date the report is filed; and

(3) make the report available for inspection by any peace officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.053. SERIAL NUMBER. (a) A secondhand dealer may not knowingly purchase a business machine, and a person in the business of repairing or servicing business machines may not knowingly service or repair a business machine, if another person has tampered with a serial number on the machine.

(b) A secondhand dealer or person in the business of repairing or servicing business machines shall file a report not later than the second day after the date a business machine is brought to the secondhand dealer or person if a person has tampered with the serial number on the business machine that is sought to be sold, serviced, or repaired.

(c) The report must contain:

(1) a complete and accurate description of the business machine; and

(2) if available, the name and address of the person attempting to sell the machine or have it serviced or repaired.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.054. REQUIRED RETENTION OF PROPERTY. (a) If a report is required under this chapter, other than a report under Section 1805.053, a secondhand dealer may not dispose of the business machine that is the subject of the report before the 11th day after the date the report is filed unless:

(1) the peace officer to whom the report is submitted, for good cause, authorizes disposition of any property described in a specific report; or

(2) the secondhand dealer obtains the name, address, and description of the buyer of the property and retains this information.

(b) A secondhand dealer who retains certain information under Subsection (a)(2) shall make that information available for inspection by any peace officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER C. REQUIREMENTS FOR CERTAIN PURCHASES; PENALTY**

Sec. 1805.101. PURCHASE FROM MINOR. (a) A secondhand dealer may not purchase a business machine from a person younger than 18 years of age unless the seller delivers to the dealer before the purchase a written statement from the seller's parent or legal guardian consenting to the transaction.

(b) The dealer shall retain the statement with the records required to be kept under this chapter. The dealer may destroy the statement when the business machine is sold or one year from the date of purchase, whichever date is later.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.102. PURCHASE AT TEMPORARY LOCATION OF SECONDHAND DEALER. (a) A secondhand dealer conducting business from a temporary location may not engage in the business of buying business machines unless the person has filed within a 12-month period at least 30 days before the date on which each purchase is made:

(1) a registration statement with the Department of Public Safety; and

(2) a copy of the registration statement with the local law enforcement agency of:

(A) the municipality in which the temporary location is located; or

(B) the county in which the temporary location is located if the temporary location is not located in a municipality.

(b) The statement must contain:

- (1) the secondhand dealer's name and address;
- (2) the business's location; and
- (3) other relevant information required by the department.

(c) If the secondhand dealer is an association or corporation, the statement must set forth the name and address of:

- (1) each member of the association; or
- (2) each officer and director of the corporation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.103. CRIMINAL PENALTY. (a) A person commits an offense if the person:

- (1) disposes of property in violation of Section 1805.054;
  - (2) purchases, services, or repairs a business machine in violation of Section 1805.053 or fails to timely file a report required by that section;
  - (3) fails to obtain or retain a statement as required by Section 1805.101;
  - (4) fails to make a report or record available for inspection by a peace officer as required by this chapter; or
  - (5) is a secondhand dealer and:
    - (A) fails to make a report as required by Section 1805.051; or
    - (B) fails to file a registration statement as required by Section 1805.102.
- (b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**TITLE 12. PRACTICES AND TRADES RELATED TO WATER, HEALTH, AND SAFETY**  
**SUBTITLE A. OCCUPATIONS RELATED TO WATER**  
**CHAPTER 1901. WATER WELL DRILLERS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1901.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Commission of Licensing and Regulation.
- (2) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 19.017(1); Acts 2003, 78th Leg., ch. 1276, Sec. 14A.401(a).
- (3) "Council" means the Texas Water Well Drillers Advisory

Council.

(4) "Department" means the Texas Department of Licensing and Regulation.

(5) "Dewatering well" means an artificial excavation that is constructed to produce groundwater to lower the water table or potentiometric surface and that is not used to produce or to facilitate the production of minerals under a state regulatory program.

(6) "Dewatering well driller" means a person who drills, bores, cores, or constructs a dewatering well. The term includes the owner or operator of a well or the contractor or drilling supervisor. The term does not include a person who acts under the direct supervision of a dewatering well driller and is not primarily responsible for the drilling operation.

(7) "Driller" means a water well driller, injection well driller, dewatering well driller, or monitoring well driller.

(7-a) "Executive director" means the executive director of the department.

(7-b) "Groundwater conservation district" means a district to which Chapter 36, Water Code, applies.

(8) "Injection well" includes:

(A) an air-conditioning return flow well used to return water that has been used for heating or cooling in a heat pump to the aquifer that supplied the water;

(B) a cooling water return flow well used to inject water that has been used for cooling;

(C) a drainage well used to drain surface fluid into a subsurface formation;

(D) a recharge well used to replenish water in an aquifer;

(E) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into fresh water;

(F) a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;

(G) a subsidence control well used to inject fluids into a non-oil-producing or non-gas-producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; and

(H) a closed system geothermal well used to circulate

water, other fluids, or gases through the earth as a heat source or heat sink.

(9) "Injection well driller" means a person who drills, bores, cores, or constructs an injection well. The term includes the owner or operator of a well or the contractor or drilling supervisor. The term does not include a person who acts under the direct supervision of an injection well driller and is not primarily responsible for the drilling operation.

(10) "Monitoring well" means an artificial excavation that is constructed to measure or monitor the quantity or movement of substances below the surface of the ground and that is not used in conjunction with the production of oil, gas, or other minerals.

(11) "Monitoring well driller" means a person who drills, bores, cores, or constructs a monitoring well. The term includes the owner or operator of a well or the contractor or drilling supervisor.

(12) "Person" means an individual, firm, partnership, association, corporation, or other private legal entity.

(13) "Pollution" means a change to the physical, thermal, chemical, or biological quality of water in a way that:

(A) makes the water harmful to humans, animals, vegetation, or property; or

(B) impairs the public enjoyment of the water for a reasonable purpose.

(14) "Water well" means an artificial excavation constructed to explore for or produce groundwater. The term does not include:

(A) a test or blast hole in a quarry or mine or a well or excavation constructed to explore for or produce oil, gas, or other minerals unless the hole is also used to produce groundwater; or

(B) an injection water source well regulated under Section 91.101, Natural Resources Code.

(15) "Water well driller" means a person who drills, bores, cores, or constructs a water well in this state. The term includes the owner or operator of a well or the contractor or drilling supervisor. The term does not include a person who:

(A) drills, bores, cores, or constructs a water well on the person's own property for the person's own use; or

(B) assists in constructing a water well under the direct supervision of a driller and is not primarily responsible for

the drilling operation.

(16) "Well" means a water well, injection well, dewatering well, or monitoring well.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.001, 19.017(1),  
eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.401,  
eff. Sept. 1, 2003.

Sec. 1901.002. EFFECT ON GROUNDWATER RIGHTS. This chapter does not affect the ownership of or the rights of landowners in groundwater.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.003. LIABILITY UNDER LAW. A person is not relieved from liability under law by obtaining a license under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER B. ADMINISTRATION AND LICENSING PROGRAMS**

Sec. 1901.051. LICENSING. (a) The department, with the advice of the council, shall prepare licensing examinations.

(b) The department shall evaluate the qualifications of license applicants.

(c) The executive director shall issue licenses to applicants who qualify.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.002, 26.055, eff.  
Sept. 1, 2003.

Sec. 1901.052. RULES. (a) The commission shall adopt rules as necessary to enforce this chapter, including rules governing:

- (1) license applications;
- (2) qualifications of applicants;
- (3) standards of conduct for drillers, including standards

for marking well drilling rigs and equipment; and

(4) procedures and practices before the department.

(b) The commission may not adopt a rule under this chapter that:

(1) regulates the installation or repair of well pumps and equipment by:

(A) a person on property the person owns or controls for the person's own use;

(B) an employee of a person described by Paragraph (A);  
or

(C) a person who is not hired or compensated and who acts on behalf of a person described by Paragraph (A); or

(2) requires a person who owns or controls property or possesses a well to complete, repair, or retrofit the well to any standard other than a standard in effect at the time the well was originally completed unless the well is found to be a threat to public health and safety or to water quality.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.003, eff. Sept. 1, 2003.

Sec. 1901.053. WATER WELL DRILLERS ACCOUNT. (a) The department shall deposit money collected under this chapter to the credit of the water well drillers account in the general revenue fund. Money deposited in that account under this section may be used only to administer this chapter.

(b) The department shall allocate not more than 20 percent of the money in the account to cover the department's administrative costs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.054. REGISTER OF LICENSE HOLDERS. The department shall maintain a current register of license holders.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.055. TRANSFER OF FUNCTIONS. If the functions necessary to the proper implementation of duties under this chapter are transferred to another entity, the powers and duties under this chapter are transferred to that entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER C. TEXAS WATER WELL DRILLERS ADVISORY COUNCIL**

Sec. 1901.101. COUNCIL MEMBERSHIP. (a) The Texas Water Well Drillers Advisory Council consists of nine members appointed by the presiding officer of the commission, with the commission's approval, as follows:

(1) six members who are drillers experienced in the well drilling business and familiar with well drilling, completion, and plugging methods and techniques; and

(2) three public members.

(b) One member appointed under Subsection (a)(1) must be selected from the state at large and the remaining five driller members must be selected from each of the following geographic areas of the state:

(1) Gulf Coast area;

(2) Trans-Pecos area;

(3) Central Texas area;

(4) Northeast Texas area; and

(5) Panhandle-South Plains area.

(c) Appointments to the council shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.004, eff. Sept. 1, 2003.

Sec. 1901.102. ELIGIBILITY OF MEMBERS. (a) A person is not eligible to serve as a member under Section 1901.101(a)(1) if:

(1) the person is employed by or owns an interest in a company, firm, or business association engaged in any phase of the well drilling business; and

(2) a member serving under Section 1901.101(a)(1) is employed by or owns an interest in the same company, firm, or



business association.

(b) A person is not eligible for appointment as a public member of the council if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of well drilling; or

(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization related to the field of well drilling.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.103. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) An officer, employee, or paid consultant of a trade association in the well drilling industry may not be a council member or an employee of the department connected with the administration of this chapter.

(b) A council member or an employee of the department connected with the administration of this chapter may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the well drilling industry.

(c) A person may not serve as a member of the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities on behalf of a trade or professional association in the well drilling industry.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.104. TERMS. Council members serve six-year terms expiring September 15.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.105. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, shall appoint a member of the council to serve as presiding officer of the council for two years.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.005, eff. Sept. 1, 2003.

Sec. 1901.106. GROUND FOR REMOVAL. It is a ground for removal from the council that a member:

(1) does not have at the time of appointment the qualifications required by Section 1901.101 or 1901.102;

(2) does not maintain during service on the council the qualifications required by Section 1901.101 or 1901.102;

(3) violates a prohibition established by Section 1901.103;  
or

(4) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend each year.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.107. MEETINGS; QUORUM. (a) The council shall hold meetings at the call of the presiding officer.

(b) The council shall conduct meetings in compliance with Chapter 551, Government Code.

(c) A majority of the council constitutes a quorum.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.108. REIMBURSEMENT. A council member may be reimbursed for travel expenses, including expenses for meals and lodging. A member is entitled to reimbursement for transportation expenses as prescribed by the General Appropriations Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.404(a), eff. Sept. 1, 2003.

Sec. 1901.109. COUNCIL POWERS AND DUTIES. (a) The council may propose rules for adoption by the commission relating to the regulation of drillers registered under this chapter.

(b) The council shall advise the department on the contents of licensing examinations.

(c) The council may:

(1) recommend standards for continuing education programs, including standards relating to:

(A) the qualifications of program providers and instructors; and

(B) the amount of program fees; and

(2) recommend topics to be covered in a continuing education course.

(d) The council shall assist the commission in evaluating continuing education programs.

(e) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 19.017(2).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.006, 19.017(2), eff. Sept. 1, 2003.

#### **SUBCHAPTER D. LICENSE REQUIREMENTS**

Sec. 1901.151. LICENSE REQUIRED. A person may not act or offer to act as a driller unless the person holds a license issued by the executive director under this chapter and rules adopted under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.056, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.406, eff. Sept. 1, 2003.

Sec. 1901.152. LICENSE APPLICATION; EXAMINATION FEE. (a) An application for a license must contain:

(1) the applicant's name;

(2) the applicant's business address;

(3) the applicant's permanent mailing address; and

(4) any other relevant information required by the department.

(b) An applicant must pay to the department an examination fee at the time the application is submitted.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.007, eff. Sept. 1, 2003.

Sec. 1901.154. LICENSE FEE. A person who qualifies for a license must pay to the department the license fee set by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.155. LICENSE EXPIRATION; RENEWAL. (a) A license issued under this chapter expires annually. On or before the license expiration date, a license holder must pay an annual renewal fee to the department.

(b) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 19.017(3).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.017(3), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.407(a), eff. Sept. 1, 2003.

Sec. 1901.158. LICENSE NOT TRANSFERABLE. A license is not transferable or assignable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.159. REPLACEMENT OF LOST OR DESTROYED LICENSE. On application and payment of a fee, the department shall issue a duplicate license to replace a lost or destroyed license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.161. EXEMPTION: DEWATERING WELL. The licensing requirements of this subchapter do not apply to a person who drills, bores, cores, or constructs a dewatering well or system to remove water for the purpose of constructing a highway, road, bridge,

drainage, or underground utility project.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.162. WAIVER FOR APPLICANT LICENSED IN ANOTHER STATE. The commission may adopt rules allowing waiver of a license requirement for an applicant who is licensed in another state that has license requirements substantially equivalent to those of this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.008, eff. Sept. 1, 2003.

#### **SUBCHAPTER E. EXAMINATION**

Sec. 1901.201. FREQUENCY OF EXAMINATION. (a) The department shall offer examinations at least once each year.

(b) The department shall offer examinations more frequently if more than 10 persons petition for an additional examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.202. CONTENTS OF EXAMINATION. (a) The department shall design written examinations to disqualify a person who lacks the necessary knowledge of drilling, of completion and plugging methods and techniques, and of groundwater formations to the extent that drilling by the person would create a serious risk of polluting fresh water.

(b) The department may prescribe additional requirements:

(1) for the examination of monitoring well drillers; and

(2) that relate to water conservation for the examination of dewatering well drillers.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.203. ORAL EXAMINATION. An applicant may take an oral examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.204. GRADING OF EXAMINATION. The department shall administer examinations so that a person grading an examination does not know the identity of the person taking the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.206. REEXAMINATION. A person who fails an examination may apply to take a subsequent examination on payment of the examination fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER F. PRACTICE BY LICENSE HOLDER**

Sec. 1901.251. WELL LOG. (a) Each driller who drills, deepens, or otherwise alters a water well in this state shall make and keep a legible and accurate well log in accordance with rules adopted by the commission and on forms prescribed by the executive director. The well log shall be recorded at the time of drilling, deepening, or otherwise altering the well and must contain:

- (1) the depth, thickness, and character of the strata penetrated;
- (2) the location of water-bearing strata;
- (3) the depth, size, and character of casing installed;

and

(4) any other information required by rules adopted by the commission.

(b) Not later than the 60th day after the date of the completion or cessation of drilling, deepening, or otherwise altering the well, the driller shall deliver or send by certified mail a copy of the well log to:

- (1) the department;
- (2) the Texas Natural Resource Conservation Commission;

and

(3) the owner of the well or the person for whom the well was drilled.

(c) If the department receives, by certified mail, a written

request from the owner of the well or from the person for whom the well was drilled that the well log be made confidential, the department shall protect the contents of the well log as confidential and not a matter of public record.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.009, eff. Sept. 1, 2003.

Sec. 1901.252. MARKING RIG. (a) A driller shall legibly mark the license number that appears on the driller's license on each rig used by the driller or the driller's employees in the well drilling business.

(b) The commission shall adopt rules specifying the manner for marking a rig.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.010, eff. Sept. 1, 2003.

Sec. 1901.253. COMPLETING WATER WELL. A driller shall complete a well under standards and procedures adopted by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.011, eff. Sept. 1, 2003.

Sec. 1901.254. NOTICE REGARDING INJURIOUS WATER; PLUGGING, REPAIR, OR COMPLETION OF WELL. (a) A driller shall notify the department and the landowner or person having a well drilled on encountering water injurious to vegetation, land, or other water and determining that the well must be plugged, repaired, or properly completed in order to avoid injury or pollution.

(b) The driller shall ensure that the well is plugged, repaired, or properly completed under standards and procedures adopted by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.012, eff. Sept. 1, 2003.

Sec. 1901.255. PLUGGING WATER WELL. (a) In this section:

(1) "Abandoned well" means a well that is not in use. A well is considered to be in use if:

(A) the well is not a deteriorated well and contains the casing, pump, and pump column in good condition;

(B) the well is not a deteriorated well and has been capped;

(C) the water from the well has been put to an authorized beneficial use, as defined by the Water Code;

(D) the well is used in the normal course and scope and with the intensity and frequency of other similar users in the general community; or

(E) the owner is participating in the Conservation Reserve Program authorized by Sections 1231-1236, Food Security Act of 1985 (16 U.S.C. Sections 3831-3836), or a similar governmental program.

(2) "Deteriorated well" means a well that, because of its condition, will cause or is likely to cause pollution of any water in this state, including groundwater.

(b) A driller who knows of an abandoned or deteriorated well shall notify the landowner or person who possesses the well that the well must be plugged or capped to avoid injury or pollution.

(c) Not later than the 180th day after the date a landowner or other person who possesses an abandoned or deteriorated well learns of its condition, the landowner or other person shall have the well plugged or capped under standards and procedures adopted by the commission.

(d) Not later than the 30th day after the date the well is plugged, a driller, licensed pump installer, or well owner who plugs an abandoned or deteriorated well shall submit a plugging report to:

(1) the board of directors of the groundwater conservation district in which the well is located, if the well is located in the boundaries of a groundwater conservation district; and

(2) the executive director.

(e) The department or the groundwater conservation district in which the well is located shall furnish plugging report forms on



request. The executive director shall prescribe the content of the forms.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.013, eff. Sept. 1, 2003.

Sec. 1901.256. ENFORCEMENT BY GROUNDWATER CONSERVATION DISTRICT. (a) This section applies only to a violation related to a well located in the boundaries of the groundwater conservation district seeking to bring an action under this section.

(b) A groundwater conservation district shall enforce compliance with Section 1901.255 related to wells located in the boundaries of the district.

(c) A groundwater conservation district may bring an action to enjoin a person from violating Section 1901.255.

(d) A groundwater conservation district may enforce by injunction or other appropriate remedy in a court any rule, decision, determination, or order adopted or entered under this chapter that is related to Section 1901.255.

(e) A groundwater conservation district may bring an action to recover a civil penalty under Section 1901.401 for a violation of this chapter or a rule adopted under this chapter related to Section 1901.255.

(f) The groundwater conservation district may bring the action in the county in which:

- (1) the offending activity occurred; or
- (2) the person engaging in the activity resides.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 19.014, eff. Sept. 1, 2003.

Sec. 1901.257. MEMORANDUM OF UNDERSTANDING REGARDING ABANDONED WELLS. (a) In this section, "abandoned well" and "deteriorated well" have the meanings assigned by Section 1901.255.

(b) The Texas Commission on Environmental Quality and the department shall by rule adopt or revise a joint memorandum of understanding to coordinate the efforts of the department, groundwater conservation districts, and the field offices of the

Texas Commission on Environmental Quality relating to investigative procedures for referrals of complaints regarding abandoned and deteriorated wells.

(c) Each groundwater conservation district in which an abandoned or deteriorated well is located shall join the memorandum of understanding adopted under Subsection (b).

Added by Acts 2003, 78th Leg., ch. 816, Sec. 19.015, eff. Sept. 1, 2003.

#### **SUBCHAPTER G. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES**

Sec. 1901.301. GROUND FOR DISCIPLINARY ACTION. The commission may discipline a person under Section 51.353 for a violation of this chapter or a rule adopted under this chapter, including:

(1) an intentional misstatement or misrepresentation of a fact on an application or well log or to a person for whom a well is being drilled, deepened, or otherwise altered;

(2) the failure to keep, deliver, or send a well log as required by Section 1901.251;

(3) the failure to advise a person for whom a well is being drilled that:

(A) injurious water has been encountered;

(B) the water is a pollution hazard; and

(C) the well must be immediately plugged in an acceptable manner; or

(4) the failure to complete a well in accordance with standards and procedures adopted by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.016, eff. Sept. 1, 2003.

#### **SUBCHAPTER I. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 1901.401. CIVIL PENALTY. A person who violates this chapter or a rule adopted under this chapter is subject to a civil penalty of not less than \$200 or more than \$1,000 for each day of noncompliance or each act of noncompliance as determined by the court.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.402. INJUNCTION AND OTHER ENFORCEMENT PROVISIONS.

(a) The executive director may bring an action to enjoin a person from violating this chapter.

(b) The executive director may enforce by injunction or other appropriate remedy in a court any rule, decision, determination, or order adopted or entered under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.057, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.418, eff. Sept. 1, 2003.

Sec. 1901.403. VENUE. The executive director may bring an action in:

- (1) Travis County; or
- (2) the county in which:
  - (A) the offending activity occurred; or
  - (B) the person engaging in the activity resides.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.058, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.418, eff. Sept. 1, 2003.

Sec. 1901.404. ACTION BY ATTORNEY GENERAL. (a) On request, the attorney general shall represent the department in an action under Section 1901.402.

(b) At the request of the executive director, the attorney general shall bring an action in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, as authorized by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.059, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.419, eff. Sept. 1, 2003.

**CHAPTER 1902. WATER WELL PUMP INSTALLERS****SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1902.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 20.008(1); Acts 2003, 78th Leg., ch. 1276, Sec. 14A.421.

(3) "Council" means the Texas Water Well Drillers Advisory Council.

(4) "Department" means the Texas Department of Licensing and Regulation.

(4-a) "Executive director" means the executive director of the department.

(5) "Installer" means a person who installs or repairs well pumps and equipment. The term does not include a person who:

(A) installs or repairs well pumps and equipment on the person's own property for the person's own use; or

(B) assists in pump installation under the direct supervision of an installer and is not primarily responsible for the installation.

(6) "Person" means an individual, firm, partnership, association, corporation, or other private legal entity.

(7) "Pollution" means a change to the physical, thermal, chemical, or biological quality of water in a way that:

(A) makes the water harmful to humans, animals, vegetation, or property; or

(B) impairs the public enjoyment of water for a reasonable purpose.

(8) "Pump installation" means the procedures employed in the placement and preparation for operation of equipment and materials used to obtain water from a well, including:

(A) construction involved in making the well and establishing seals and safeguards as necessary to protect the water from contamination; and

(B) repairs to an existing pump.

(9) "Well" means a water well, injection well, dewatering well, or monitoring well, as those terms are defined by Section 1901.001. The term does not include an injection water source well

regulated under Section 91.101, Natural Resources Code.

(10) "Well pumps and equipment" means equipment and materials used to obtain water from a well, including the seals and safeguards necessary to protect the water from contamination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 20.001, 20.008(1),  
eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.421(a),  
(b), eff. Sept. 1, 2003.

Sec. 1902.002. LIABILITY UNDER LAW. A person is not relieved from liability under law by obtaining a license under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER B. ADMINISTRATION AND LICENSING PROGRAMS**

Sec. 1902.051. LICENSING. (a) The department, with the advice of the council, shall prepare licensing examinations.

(b) The department shall evaluate the qualifications of license applicants.

(c) The executive director shall issue licenses to applicants who qualify.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 20.002, eff. Sept. 1,  
2003.

Sec. 1902.052. RULES. (a) The commission shall adopt rules as necessary to enforce this chapter.

(b) The commission may not adopt a rule under this chapter that:

(1) regulates the installation or repair of well pumps and equipment by:

(A) a person on property the person owns or controls for the person's own use;

(B) an employee of a person described by Paragraph (A);  
or

(C) a person who is not hired or compensated and who

acts on behalf of a person described by Paragraph (A); or

(2) requires a person who owns or controls property or possesses a well to complete, repair, or retrofit the well to any standard other than a standard in effect at the time the well was originally completed unless the well is found to be a threat to public health and safety or to water quality.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 20.003, eff. Sept. 1, 2003.

Sec. 1902.053. WATER WELL DRILLERS ACCOUNT. (a) The department shall deposit money collected under this chapter to the credit of the water well drillers account in the general revenue fund. Money deposited in that account under this section may be used only to administer this chapter.

(b) The department shall allocate not more than 20 percent of the money in the account to cover the department's administrative costs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1902.054. REGISTER OF LICENSE HOLDERS. The department shall maintain a current register of license holders.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1902.055. TRANSFER OF FUNCTIONS. If the functions necessary to the proper implementation of duties under this chapter are transferred to another entity, the powers and duties under this chapter are transferred to that entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER D. LICENSE REQUIREMENTS**

Sec. 1902.151. LICENSE REQUIRED. A person may not act or offer to act as an installer unless the person holds a license issued by

the executive director under rules adopted under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.060, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.423, eff. Sept. 1, 2003.

Sec. 1902.152. LICENSE APPLICATION; EXAMINATION FEE. (a) An application for a license must contain:

- (1) the applicant's name;
- (2) the applicant's business address;
- (3) the applicant's permanent mailing address; and
- (4) any other information required by the department.

(b) An applicant must pay to the department an examination fee at the time the application is submitted.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 20.004, eff. Sept. 1, 2003.

Sec. 1902.154. LICENSE FEE. A person who qualifies for a license must pay to the department the license fee set by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1902.155. LICENSE EXPIRATION; RENEWAL. (a) A license issued under this chapter expires annually. On or before the license expiration date, a license holder must pay an annual renewal fee to the department.

(b) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 20.008(3).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 20.008(3), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.424(a), eff. Sept. 1, 2003.

Sec. 1902.158. LICENSE NOT TRANSFERABLE. A license is not transferable or assignable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1902.159. REPLACEMENT OF LOST OR DESTROYED LICENSE. On application and payment of a fee, the department shall issue a duplicate license to replace a lost or destroyed license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1902.161. EXEMPTION: DEWATERING WELL PUMPS AND EQUIPMENT. The licensing requirements of this subchapter do not apply to a person who installs or repairs well pumps and equipment to remove water for the purpose of constructing a highway, road, bridge, drainage, or underground utility project.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1902.162. WAIVER FOR APPLICANT LICENSED IN ANOTHER STATE. The commission may adopt rules allowing waiver of a license requirement for an applicant who is licensed in another state that has license requirements substantially equivalent to those of this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 20.005, eff. Sept. 1, 2003.

#### **SUBCHAPTER E. EXAMINATION**

Sec. 1902.201. FREQUENCY OF EXAMINATION. (a) The department shall offer examinations at least once each month.

(b) The department shall offer examinations more frequently if more than 10 persons petition for an additional examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.



Sec. 1902.202. CONTENTS OF EXAMINATION. The department shall design written examinations to disqualify a person who lacks the knowledge of pump installation to the extent that pump installation by the person would create a serious risk of polluting fresh water.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1902.203. GRADING OF EXAMINATION. The department shall administer examinations so that a person grading an examination does not know the identity of the person taking the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER F. PRACTICE BY LICENSE HOLDER**

Sec. 1902.251. INSTALLING AND REPAIRING PUMPS. An installer shall install or repair pumps under standards and procedures adopted by the commission with the advice of the council.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 20.006, eff. Sept. 1, 2003.

Sec. 1902.252. NOTICE REGARDING INJURIOUS WATER; REPAIR OR COMPLETION OF WELL. (a) An installer shall notify the department and the landowner or person having a pump installed or repaired on encountering water injurious to vegetation, land, or other water.

(b) To avoid injury or pollution, the installer shall repair or properly complete the well under standards and procedures adopted by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 20.007, eff. Sept. 1, 2003.

Sec. 1902.253. NOTICE REGARDING ABANDONED OR DETERIORATED WELL. An installer who knows of an abandoned or deteriorated well as defined by Section 1901.255 shall notify the landowner or person who

possesses the well that the well must be plugged or capped to avoid injury or pollution.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

**SUBCHAPTER I. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 1902.401. CIVIL PENALTY. A person who violates this chapter or a rule adopted under this chapter is subject to a civil penalty of not less than \$200 or more than \$1,000 for each day of noncompliance or each act of noncompliance as determined by the court.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1902.402. INJUNCTION AND OTHER ENFORCEMENT PROVISIONS.

(a) The executive director may bring an action to enjoin a person from violating this chapter.

(b) The executive director may enforce by injunction or other appropriate remedy in a court any rule, decision, determination, or order adopted or entered under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.061, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.431, eff. Sept. 1, 2003.

Sec. 1902.403. VENUE. The executive director may bring an action in:

- (1) Travis County; or
- (2) the county in which:
  - (A) the offending activity occurred; or
  - (B) the person engaging in the activity resides.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.062, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.431, eff. Sept. 1, 2003.

Sec. 1902.404. ACTION BY ATTORNEY GENERAL. (a) On request, the attorney general shall represent the department in an action under Section 1902.402.

(b) At the request of the executive director, the attorney general shall bring an action in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, as authorized by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.063, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.432, eff. Sept. 1, 2003.

## CHAPTER 1903. IRRIGATORS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1903.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Council" means the Irrigator Advisory Council.

(3) "Executive director" means the executive director of the commission.

(4) "Irrigation system" means an assembly of component parts permanently installed for the controlled distribution and conservation of water to irrigate landscape vegetation, reduce dust, or control erosion. The term does not include a system used on or by an agricultural operation as defined by Section 251.002, Agriculture Code.

(5) "Person" means an individual.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.434(a), eff. Sept. 1, 2003.

Sec. 1903.002. EXEMPTIONS. (a) In this section, "property owners' association" has the meaning assigned by Section 202.001, Property Code.

(b) The licensing requirements of this chapter do not apply to a person who is:

(1) licensed by the Texas State Board of Plumbing

Examiners; or

(2) a licensed engineer, registered architect, or registered landscape architect to the extent the person's acts are incidental to the pursuit of the person's profession.

(c) The licensing requirements of this chapter do not apply to:

(1) irrigation or yard sprinkler work performed by a property owner in a building or on premises owned or occupied by the person as the person's home;

(2) irrigation or yard sprinkler repair work, other than extension of an existing irrigation or yard sprinkler system or installation of a replacement system, that is:

(A) performed by a maintenance person who does not act as an irrigator or engage in yard sprinkler construction or maintenance for the public; and

(B) incidental to and on premises owned by the business in which the person is regularly employed or engaged;

(3) irrigation or yard sprinkler work performed:

(A) by a regular employee of a railroad who does not act as an irrigator or engage in yard sprinkler construction or maintenance for the public; and

(B) on the premises or equipment of the railroad;

(4) irrigation or yard sprinkler work performed on public property by a person who is regularly employed by a political subdivision of this state;

(5) irrigation or yard sprinkler work performed by an agriculturist, agronomist, horticulturist, forester, gardener, contract gardener, garden or lawn caretaker, nurseryman, or grader or cultivator of land on land owned by the person;

(6) irrigation or yard sprinkler work performed by a member of a property owners' association on real property owned by the association or in common by the association's members if the irrigation or yard sprinkler system waters real property that:

(A) is less than one-half acre in size; and

(B) is used for aesthetic or recreational purposes;

(7) irrigation or yard sprinkler work performed by a person using a garden hose, hose sprinkler, hose-end product, or agricultural irrigation system;

(8) activities involving a commercial agricultural irrigation system;

(9) a person who assists in the installation, maintenance,

alteration, repair, or service of an irrigation system under the direct supervision of an individual described by Subchapter F of this chapter who is licensed under Chapter 37, Water Code; or

(10) an owner of a business that employs an individual described by Subchapter F of this chapter who is licensed under Chapter 37, Water Code, to supervise the business's sale, design, consultation, installation, maintenance, alteration, repair, and service of irrigation systems.

(d) A person who is exempt from the licensing requirements of this chapter shall comply with the standards established by this chapter and the rules adopted under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.435(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER B. COMMISSION POWERS AND DUTIES**

Sec. 1903.053. STANDARDS. (a) The commission shall adopt by rule and enforce standards governing:

- (1) the connection of irrigation systems to any water supply;
- (2) the design, installation, and operation of irrigation systems;
- (3) water conservation; and
- (4) the duties and responsibilities of licensed irrigators.

(b) The commission may not require or prohibit the use of any irrigation system, component part, or equipment of any particular brand or manufacturer.

(c) In adopting standards under this section, the commission shall consult the council.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.436(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 13, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.34, eff. September 1, 2007.

**SUBCHAPTER D. IRRIGATOR ADVISORY COUNCIL**

Sec. 1903.151. COUNCIL MEMBERSHIP. (a) The Irrigator Advisory Council consists of nine members appointed by the commission as follows:

(1) six members who are irrigators, residents of this state, experienced in the irrigation business, and familiar with irrigation methods and techniques; and

(2) three public members.

(b) Appointments to the council shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.438(a), eff. Sept. 1, 2003.

Sec. 1903.152. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the council if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of irrigation; or

(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization related to the field of irrigation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1903.155. PRESIDING OFFICER. The council shall elect a presiding officer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.438(b), eff. Sept. 1, 2003.

Sec. 1903.157. MEETINGS. The council shall hold meetings at the call of the commission or presiding officer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.438(c), eff.

Sept. 1, 2003.

Sec. 1903.158. PER DIEM; REIMBURSEMENT. A council member is entitled to a per diem as set by legislative appropriation for each day the member engages in the business of the council. A council member is entitled to reimbursement for travel expenses, including expenses for meals and lodging, as prescribed by the General Appropriations Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1903.159. COUNCIL DUTIES. The council shall provide advice to the commission and the commission's staff concerning matters relating to irrigation.

Acts 2003, 78th Leg., ch. 1276, Sec. 14A.438(d), eff. Sept. 1, 2003.

#### **SUBCHAPTER F. LICENSING REQUIREMENTS**

Sec. 1903.251. LICENSE REQUIRED. (a) A person must hold a license issued by the commission under Chapter 37, Water Code, if the person:

- (1) sells, designs, installs, maintains, alters, repairs, or services an irrigation system;
- (2) provides consulting services relating to an irrigation system;
- (3) connects an irrigation system to a private or public, raw or potable water supply system or any water supply; or
- (4) inspects an irrigation system for a municipality or water district.

(b) A person is ineligible for a license under Subsection (a)(4) if the person engages in or has a financial or advisory interest in an entity that engages in an activity under Subsection (a)(1), (2), or (3).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.435(c), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 874 (H.B. 1656), Sec. 1, eff. June 15, 2007.

Sec. 1903.252. LICENSING OF LANDSCAPE ARCHITECT. The commission may not require a person who on August 27, 1979, held a license as a landscape architect under Chapter 457, Acts of the 61st Legislature, Regular Session, 1969 (Article 249c, Vernon's Texas Civil Statutes), to pass an examination in order to be licensed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.435(c), eff. Sept. 1, 2003.

Sec. 1903.255. RECIPROCAL LICENSING. The commission may waive any prerequisite for obtaining a license for an applicant who is registered or licensed as an irrigator or installer by another jurisdiction with which this state has a reciprocity agreement. The commission may make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.439(a), eff. Sept. 1, 2003.

Sec. 1903.256. INSTALLATION OF IRRIGATION SYSTEM WITHOUT LICENSE; OFFENSE. (a) Unless exempt under Section 1903.002, a person commits an offense if the person installs an irrigation system without holding a license issued by the commission under Chapter 37, Water Code.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 324 (H.B. 2507), Sec. 1, eff. September 1, 2011.

## **CHAPTER 1904. WATER TREATMENT SPECIALISTS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1904.001. DEFINITIONS. In this chapter:



(1) "Commission" means the Texas Natural Resource Conservation Commission.

(2) "Installation of water treatment appliances" includes connecting the appliances to all necessary utility connections in residential, commercial, or industrial facilities.

(3) "Water treatment" means a business conducted under contract that requires experience in the analysis of water, including the ability to determine how to treat influent and effluent water, to alter or purify water, and to add or remove a mineral, chemical, or bacterial content or substance. The term also includes the installation and service of potable water treatment equipment in public or private water systems and making connections necessary to complete installation of a water treatment system.

(4) "Water treatment equipment" includes appliances used to alter or purify water or to alter a mineral, chemical, or bacterial content or substance.

Redesignated from Health and Safety Code, Subchapter G, Chapter 341 and amended by Acts 2007, 80th Leg., R.S., Ch. 1084 (H.B. 3017), Sec. 1, eff. June 15, 2007.

#### **SUBCHAPTER B. CERTIFICATION REQUIREMENTS**

Sec. 1904.051. WATER TREATMENT SPECIALIST CERTIFICATION PROGRAM. (a) The commission by rule shall establish a program to certify persons qualified to install, exchange, service, and repair residential, commercial, or industrial water treatment equipment and appliances.

(b) The rules must establish:

(1) standards for certification to ensure the public health and to protect the public from unqualified persons engaging in activities relating to water treatment;

(2) classes of certification;

(3) duration of certification; and

(4) reasonable annual certification fees in an amount sufficient to pay the administrative costs of the certification program, but not to exceed \$150 a year for any class of certification.

Redesignated from Health and Safety Code, Subchapter G, Chapter 341 and amended by Acts 2007, 80th Leg., R.S., Ch. 1084 (H.B. 3017), Sec.

1, eff. June 15, 2007.

Sec. 1904.052. CERTIFICATION REQUIRED. A person may not engage in water treatment unless the person first obtains a certificate from the commission under the program established under this chapter.

Redesignated from Health and Safety Code, Subchapter G, Chapter 341 and amended by Acts 2007, 80th Leg., R.S., Ch. 1084 (H.B. 3017), Sec. 1, eff. June 15, 2007.

Sec. 1904.053. APPLICATION FOR CERTIFICATION. A person desiring to obtain certification under the program established under this chapter shall file with the commission:

- (1) an application in the form prescribed by the commission and containing the information required by the commission; and
- (2) the appropriate certification fee.

Redesignated from Health and Safety Code, Subchapter G, Chapter 341 and amended by Acts 2007, 80th Leg., R.S., Ch. 1084 (H.B. 3017), Sec. 1, eff. June 15, 2007.

Sec. 1904.054. ISSUANCE OF CERTIFICATE. (a) On receipt of an application that meets commission requirements and the required fee, the commission shall issue to a person who meets commission standards for certification a certificate stating that the person is qualified to install, exchange, service, and repair residential, commercial, or industrial water treatment facilities.

(b) All fees received by the commission under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

Redesignated from Health and Safety Code, Subchapter G, Chapter 341 and amended by Acts 2007, 80th Leg., R.S., Ch. 1084 (H.B. 3017), Sec. 1, eff. June 15, 2007.

Sec. 1904.055. EXEMPTIONS. (a) A person who holds a license under Chapter 1301 is exempt from the requirements of this chapter.

(b) This chapter does not apply to an employee of an industrial facility installing or servicing water treatment equipment.

Redesignated from Health and Safety Code, Subchapter G, Chapter 341 and amended by Acts 2007, 80th Leg., R.S., Ch. 1084 (H.B. 3017), Sec. 1, eff. June 15, 2007.

**SUBTITLE B. PRACTICES RELATED TO HEALTH AND SAFETY**

**CHAPTER 1951. STRUCTURAL PEST CONTROL**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1951.001. SHORT TITLE. This chapter may be cited as the Texas Structural Pest Control Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1951.002. DEFINITIONS. In this chapter:

(1) "Apartment building" means a building that contains at least two dwelling units that are rented primarily for nontransient permanent dwelling purposes, with rental paid by intervals of one week or longer.

(2) Repealed by Acts 2007, 80th Leg., R.S., Ch. 890, Sec. 1.79(1), eff. September 1, 2007.

(3) "Certified applicator" means a certified commercial applicator or a certified noncommercial applicator.

(4) "Certified commercial applicator" means a person who holds a certified commercial applicator's license.

(5) "Certified noncommercial applicator" means a person who holds a certified noncommercial applicator's license.

(5-a) "Commissioner" means the commissioner of agriculture.

(5-b) "Committee" means the structural pest control advisory committee.

(6) "Day-care center" has the meaning assigned by Section 42.002, Human Resources Code.

(6-a) "Department" means the Department of Agriculture.

(7) "Device" means an instrument or contrivance that is designed for trapping, destroying, repelling, or mitigating the effects of a pest or another form of plant or animal life, other than human beings or bacteria, viruses, or other microorganisms that live on or in human beings or animals. The term does not include:

(A) a firearm; or

(B) equipment used for the application of pesticides that is sold separately from a device.

(8) "Hospital" has the meaning assigned by Section 241.003, Health and Safety Code.

(9) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(10) "Nursing home" means an institution as that term is defined by Section 242.002, Health and Safety Code.

(11) "Person" means an individual, firm, partnership, corporation, association, or other organization, any combination of those persons, or any type of business entity.

(12) "Restricted-use pesticide" means a pesticide classified for restricted or limited use by the administrator of the United States Environmental Protection Agency.

(13) "School" means a:

(A) public primary or secondary school; or

(B) private or parochial primary or secondary school that is accredited by an accreditation body that is a member of the Texas Private School Accreditation Commission.

(14) "State-limited-use pesticide" means a pesticide classified for restricted or limited use by the commissioner.

(15) "Structural pest control business license" means a license issued under Section 1951.301.

(16) "Technician" means a person who holds a license under this chapter and who, under direct supervision of a certified noncommercial applicator or, as an employee of a holder of a structural pest control business license, performs supervised pesticide applications, maintains or uses structural pest control devices, makes sales presentations, or identifies pest infestation or damage. The term does not include a person whose duties are solely clerical or are otherwise completely disassociated with pest control.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.01, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.79(1), eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.02, eff.

September 1, 2009.

Sec. 1951.0021. STRUCTURAL PEST CONTROL SERVICE. The Structural Pest Control Service is a service of the department responsible for the regulation and licensing of persons engaged in the business of structural pest control. The service is established to provide exceptional customer service to the public and the industry, enhance the educational and professional standards of license holders, and ensure the health, safety, and welfare of the public.

Added by Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.02, eff. September 1, 2007.

Sec. 1951.003. BUSINESS OF STRUCTURAL PEST CONTROL. (a) In this chapter, a person is engaged in the "business of structural pest control" if the person performs, offers to perform, or advertises for or solicits the person's performance of any of the following services for compensation, including services performed as a part of the person's employment:

(1) identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations of:

(A) arthropods, including insects, spiders, mites, ticks, and related pests, wood-infesting organisms, rodents, weeds, nuisance birds, and any other obnoxious or undesirable animals that may infest households, railroad cars, ships, docks, trucks, airplanes, or other structures or their contents; or

(B) pests or diseases of trees, shrubs, or other plantings in a park or adjacent to a residence, business establishment, industrial plant, institutional building, or street;

(2) making oral or written inspection reports, recommendations, estimates, or bids with respect to an infestation described by Subdivision (1); or

(3) making contracts, or submitting bids based on an inspection for services or performing services designed to prevent, control, or eliminate an infestation described by Subdivision (1) by the use of insecticides, pesticides, rodenticides, fumigants, allied chemicals or substances, or mechanical devices.

(b) A person is not engaged in the business of structural pest control if the person is a clerical employee or a manual laborer and the person does not:

- (1) identify pests;
- (2) make inspections, recommendations, estimates, bids, or contracts;
- (3) provide estimates, bids, or contracts based on an inspection; or
- (4) apply insecticides, pesticides, rodenticides, fumigants, allied chemicals, or other related substances regulated by the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.03, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 332 (H.B. 2742), Sec. 1, eff. June 17, 2011.

Sec. 1951.004. DIRECT SUPERVISION. In this chapter, a pesticide is applied under direct supervision if the application is made by a person acting under the instructions and control of a certified commercial applicator responsible for the actions of the person and available if needed for consultation or assistance. The certified commercial applicator is not required to be physically present at the time and place of the pesticide application.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1951.005. LOCAL REGULATION OF PESTICIDE SALE OR USE. (a) Except as provided by this section, a municipality or other political subdivision of this state may not adopt an ordinance or rule regarding pesticide sale or use.

(b) This section does not limit the authority of a municipality or county to:

- (1) encourage locally approved and provided educational material concerning a pesticide;
- (2) zone for the sale or storage of pesticide products;
- (3) adopt fire or building regulations, including

regulations governing the storage of pesticide products or governing fumigation and thermal insecticidal fogging operations, as preventative measures to protect the public and emergency services personnel from an accident or emergency involving pesticide products;

(4) provide or designate sites for the disposal of pesticide products;

(5) route hazardous materials; or

(6) regulate discharge to sanitary sewer systems.

(c) A municipality or other political subdivision may take any action otherwise prohibited by this section to:

(1) comply with any federal or state requirements;

(2) avoid a federal or state penalty or fine; or

(3) attain or maintain compliance with federal or state environmental standards, including state water quality standards.

(d) This section does not affect Subchapter G, Chapter 76, Agriculture Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1951.006. APPLICABILITY OF FEES TO GOVERNMENT EMPLOYEES. A person employed by a governmental entity is not exempt from a fee imposed under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1951.007. APPLICABILITY OF AGRICULTURE CODE LICENSING PROVISIONS. A provision of the Agriculture Code that applies generally to licensing or regulatory programs administered by the department, including a provision that refers generally to licensing or regulatory programs under the Agriculture Code, applies to this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 7.04, eff. September 1, 2009.

#### **SUBCHAPTER B. EXEMPTIONS**

Sec. 1951.051. INDIVIDUAL PERFORMING PEST CONTROL WORK ON OWN OR EMPLOYER'S PREMISES. (a) An individual who does not hold a

license under this chapter may use insecticides, pesticides, rodenticides, fumigants, or allied chemicals or substances or mechanical devices designed to prevent, control, or eliminate pest infestations unless:

- (1) that use is prohibited by state law or rule;
- (2) that use is prohibited by rule of the United States Environmental Protection Agency; or
- (3) the substance used is labeled as a restricted-use pesticide or a state-limited-use pesticide.

(b) An individual may act under Subsection (a) only on premises:

- (1) owned by the individual;
- (2) in which the individual owns a partnership or joint venture interest; or
- (3) of a person who employs the individual primarily to perform services other than pest control.

(c) Subsection (b)(3) does not apply to:

- (1) an apartment building;
- (2) a day-care center;
- (3) a hospital;
- (4) a nursing home;
- (5) a hotel, motel, or lodge;
- (6) a warehouse;
- (7) a food-processing establishment;
- (8) a facility owned by the state or a political subdivision of the state, except as provided by Section 1951.303(b)(1); or
- (9) a school.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1951.052. PERSON PERFORMING PEST CONTROL WORK ON PERSON'S DWELLING. (a) Except as provided by Sections 1951.212 and 1951.457(c), this chapter does not apply to a person who performs pest control work on property that the person owns or leases as the person's dwelling.

(b) A person described by Subsection (a) is not considered to be engaged in the business of structural pest control.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.



Sec. 1951.053. PERSON PERFORMING PEST CONTROL WORK OTHERWISE REGULATED BY DEPARTMENT. (a) Except as provided by Sections 1951.212 and 1951.457(c), this chapter does not apply to:

(1) a person who performs pest control work on growing plants, trees, shrubs, grass, or other horticultural plants if the person holds a commercial or noncommercial applicator license from the department and issued under Chapter 76, Agriculture Code, that covers the pest control work; or

(2) a person who performs pest control work on growing plants, trees, shrubs, grass, or other horticultural plants or rights-of-way if the person:

(A) is employed by a political subdivision or a cemetery;

(B) is engaged in pest control work or vegetation management for the political subdivision or cemetery;

(C) holds a commercial or noncommercial applicator license from the department and issued under Chapter 76, Agriculture Code, that covers pest control work or is under the direct supervision of a person who holds a commercial or noncommercial applicator license from the department and issued under Chapter 76, Agriculture Code, that covers pest control work; and

(D) complies with annual continuing education required by the department.

(b) A person described by Subsection (a) is not considered to be engaged in the business of structural pest control.

(c) Neither this section nor any other law shall prohibit a political subdivision from reducing the number of hours of training or other requirements for an employee conducting larval mosquito control on property owned or controlled by the political subdivision using biological pesticides approved for general use by the Department of State Health Services, provided the employee is given instructions adequate to ensure the safe and effective use of such pesticides.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 884, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. [2458](#)), Sec. 1.03, eff.

September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 7.05, eff. September 1, 2009.

Sec. 1951.054. PERSON PERFORMING PEST CONTROL WORK ON AGRICULTURAL LAND. (a) Except as provided by Sections 1951.212 and 1951.457(c), this chapter does not apply to a person or the person's employee who is engaged in the business of agriculture or aerial application or custom application of pesticides to agricultural lands.

(b) A person described by Subsection (a) is not considered to be engaged in the business of structural pest control.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1951.055. PERSON USING PEST CONTROL CHEMICALS FOR HOUSEHOLD USE. (a) Except as provided by Sections 1951.212 and 1951.457(c), this chapter does not apply to a person who uses pest control chemicals that are for household use and are available for purchase in retail food stores, such as aerosol bombs and spray cans, if the insecticide is used in accordance with the label directions on the insecticide or with department rules or guidelines or as provided by Section 1951.303 and is:

(1) used by the owner of a building or the owner's employee or agent in an area occupied by the owner in a residential building; or

(2) used in a place that is vacant, unused, and unoccupied.

(b) A person described by Subsection (a) is not considered to be engaged in the business of structural pest control.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. [2458](#)), Sec. 1.04, eff. September 1, 2007.

Sec. 1951.056. BEEKEEPERS. (a) Except as provided by Sections 1951.212 and 1951.457(c), this chapter does not apply to a person acting as a beekeeper, as defined by Section 131.001, Agriculture

Code, who:

(1) is registered with the chief apiary inspector as provided by Subchapter C, Chapter 131, Agriculture Code;

(2) does not use pesticides or electrical devices other than conventional bee smokers or equipment as defined by Section 131.001, Agriculture Code; and

(3) collects, removes, or destroys honey bees.

(b) A person described by Subsection (a) is not considered to be engaged in the business of structural pest control.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.05, eff. September 1, 2007.

Sec. 1951.057. FALCONERS. (a) This chapter does not apply to a person engaged in falconry, as defined by Section 49.001, Parks and Wildlife Code, who:

(1) is the holder of a falconer's permit as provided by Chapter 49, Parks and Wildlife Code; and

(2) uses a raptor to control or relocate other birds.

(b) A person described by Subsection (a) is not considered to be engaged in the business of structural pest control.

Added by Acts 2009, 81st Leg., R.S., Ch. 325 (H.B. 693), Sec. 1, eff. June 19, 2009.

Sec. 1951.058. ACTIVITIES NOT INVOLVING PESTICIDES. When performed without the use of a pesticide, this chapter does not apply to the:

(1) use of a raptor to control or relocate other birds;

(2) physical removal of pests or the habitat of pests while cleaning a chimney;

(3) use of a live trap to remove an animal from the premises of a residence, agricultural operation, or business structure;

(4) removal by mechanical means of weeds or other obstructing vegetation from a sewer, drainage system, body of water, or similar area; or

(5) installation, maintenance, or use of a nonpesticidal barrier to remove or prevent infestation by nuisance animals.

Added by Acts 2009, 81st Leg., R.S., Ch. 762 (S.B. 768), Sec. 1, eff. June 19, 2009.

Sec. 1951.059. ACTIVITIES INVOLVING MINIMAL RISK OF HARM. (a) The department by rule may exempt an activity from all or part of the requirements of this chapter, other than a requirement under Section 1951.212, if the department determines that the activity presents only a minimal risk of harm to the health, safety, and welfare of the public, the person performing the activity, pets and other domesticated animals, and the environment.

(b) A business that performs an activity exempted from regulation under this section and that is not otherwise required to hold a license issued under this chapter shall provide to each customer a written notice, as prescribed by department rule, that:

(1) informs the customer of the customer's rights under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code);

(2) provides contact information for the consumer protection division of the office of the attorney general; and

(3) contains other information required by the department.

(c) Failure to provide the notice required by Subsection (b) is a violation of this chapter. The department may impose an administrative penalty or take any other enforcement action provided by this chapter or the Agriculture Code to deter, restrain, or punish a person who violates this section. An enforcement action by the department under this section is in addition to remedies and penalties provided by the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

Added by Acts 2009, 81st Leg., R.S., Ch. 762 (S.B. 768), Sec. 1, eff. June 19, 2009.

#### **SUBCHAPTER C. STRUCTURAL PEST CONTROL ADVISORY COMMITTEE**

Sec. 1951.101. COMMITTEE MEMBERSHIP. (a) The committee consists of 11 members appointed by the commissioner as follows:

(1) one member who is an employee of a school district and

associated with a school integrated pest management program;

(2) three members who represent the public;

(3) one member from an institution of higher education who is knowledgeable in the science of pests and pest control;

(4) three members who represent the interests of structural pest control operators and who are appointed based on recommendations provided by a trade association of operators;

(5) one member who represents the interests of consumers;

(6) the commissioner of state health services or the commissioner's designee; and

(7) one member who is a structural pest control operator with experience in natural, organic, or holistic pest control.

(b) Members of the committee serve staggered four-year terms. The terms of five or six members, as appropriate, expire on February 1 of each odd-numbered year.

(c) Service on the committee by a state officer or employee is an additional duty of the member's office or employment.

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.07, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.06, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 718 (H.B. 3567), Sec. 1, eff. September 1, 2013.

Sec. 1951.102. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the committee if:

(1) the person is licensed under this chapter; or

(2) the person or the person's spouse:

(A) is registered, certified, or licensed by an occupational regulatory agency in the field of pest control;

(B) is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department;

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

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.08, eff. September 1, 2007.

Sec. 1951.103. MEMBERSHIP RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the committee if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of pest control except as provided by Section 1951.101(a)(4); or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of pest control.

(c) A person may not be a member of the committee if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.09, eff. September 1, 2007.

Sec. 1951.104. DUTIES OF COMMITTEE. The committee shall:

(1) gather and provide information relating to the practice of structural pest control at the request of the department or the

commissioner; and

(2) advise the department and the commissioner on:

- (A) the education and curricula requirements for applicants;
- (B) the content of examinations under this chapter;
- (C) proposed rules and standards on technical issues related to structural pest control and rules related to enforcement;
- (D) standards and criteria for the issuance of licenses under this chapter;
- (E) fees for license applications and examinations under this chapter; and
- (F) other issues affecting the practice of structural pest control.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.10, eff. September 1, 2007.

Sec. 1951.105. RULES GOVERNING COMMITTEE; COMMITTEE MEETINGS.

(a) The department shall adopt rules for the operation of the committee, including rules governing:

- (1) the purpose, role, responsibility, and goals of the committee;
- (2) the quorum requirements for the committee;
- (3) the qualifications required for members of the committee, which may include experience and geographic representation requirements;
- (4) the appointment process for the committee;
- (5) the members' terms;
- (6) the training requirements;
- (7) a process to regularly evaluate the effectiveness of the committee; and
- (8) a requirement that the committee comply with Chapter 551, Government Code.

(b) The committee shall:

- (1) meet quarterly;
- (2) operate under Robert's Rules of Order; and
- (3) record the minutes of each meeting.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.11, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.07, eff. September 1, 2009.

Sec. 1951.106. APPLICABILITY OF OTHER LAW TO COMMITTEE. (a) Section 2110.008, Government Code, does not apply to the committee.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 890, Sec. 1.79(3), eff. September 1, 2007.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 890, Sec. 1.79(3), eff. September 1, 2007.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.12, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.13, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.79(3), eff. September 1, 2007.

#### **SUBCHAPTER E. POWERS AND DUTIES OF DEPARTMENT RELATING TO STRUCTURAL PEST CONTROL**

Sec. 1951.201. SOLE LICENSING AUTHORITY; FEES. (a) The department is the sole authority in this state for licensing persons engaged in the business of structural pest control.

(b) The department, with the advice of the committee, shall establish fees under this chapter in amounts reasonable and necessary to cover the costs of administering the department's programs and activities under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.15, eff. September 1, 2007.



Sec. 1951.203. STANDARDS AND CRITERIA FOR LICENSES. The department, with the advice of the committee, shall develop standards and criteria for issuing:

- (1) a structural pest control business license to a person engaged in the business of structural pest control;
- (2) a certified commercial applicator's license to an individual engaged in the business of structural pest control;
- (3) a certified noncommercial applicator's license to an individual; and
- (4) a technician license to an individual.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.17, eff. September 1, 2007.

Sec. 1951.204. SUBPOENA AUTHORITY. (a) As part of an investigation under this chapter, the commissioner may request and, if necessary, compel by subpoena:

- (1) the attendance of witnesses for examination under oath; and
- (2) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) The commissioner, acting through the attorney general, may bring an action to enforce a subpoena issued under Subsection (a) against a person who fails to comply with the subpoena.

(c) Venue for an action brought under Subsection (b) is in a district court in:

- (1) Travis County; or
- (2) the county in which the alleged violation occurred.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.18, eff. September 1, 2007.

Sec. 1951.205. ENVIRONMENTAL RULES. (a) The department, with the advice of the committee, shall adopt rules as authorized under this chapter governing the methods and practices of structural pest control that the department determines are necessary to protect the public's health and welfare and prevent adverse effects on human life and the environment. Each rule adopted must cite the section of this chapter that authorizes the rule.

(b) A rule relating to the use of economic poisons must comply with applicable standards of the federal government and the commissioner governing the use of such substances.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.19, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.08, eff. September 1, 2009.

Sec. 1951.206. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) Except as provided by Subsection (b), the department may not adopt a rule restricting advertising or competitive bidding by a person subject to regulation by the department under this chapter.

(b) The department may adopt rules restricting advertising or competitive bidding to prohibit false, misleading, or deceptive practices by a person subject to regulation by the department under this chapter. A rule adopted under this subsection may not:

- (1) restrict the use of any medium for advertising;
- (2) restrict a person's personal appearance or use of a person's voice in an advertisement;
- (3) relate to the size or duration of an advertisement by a person; or
- (4) restrict a person's advertisement under a trade name.

(c) Subsection (b)(4) does not prohibit the department from adopting a rule regulating the use of the name of a business or license holder in an advertisement for a structural pest control business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.20, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 717 (H.B. 3566), Sec. 1, eff. June 14, 2013.

Sec. 1951.207. INSPECTION OF LICENSE HOLDERS. (a) The department by rule shall adopt a policy that requires a business holding a structural pest control business license to be inspected by a field inspector at least once:

- (1) in the business's first year of operation; and
- (2) every four years after the first year of operation.

(b) The department by rule shall adopt a policy and guidelines for conducting an investigation under this chapter, including:

(1) procedures for investigating a complaint concerning misuse of pesticides, including contamination by pesticides and human exposure to pesticides;

(2) the circumstances in which a case should be referred to the:

- (A) Department of State Health Services;
- (B) Texas Commission on Environmental Quality; or
- (C) United States Environmental Protection Agency;

(3) recommendations to consumers and applicators regarding cleanup after a spill or misapplication; and

(4) procedures for residue sampling, including the circumstances in which to take a residue sample and the time in which the sample should be taken.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.21, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.09, eff. September 1, 2009.

Sec. 1951.208. MISAPPLICATION OF PESTICIDES. (a) If an investigation shows that a misapplication of pesticides has occurred on the premises of a consumer, the department shall immediately notify the consumer and the applicator of the misapplication.

(b) On a finding of misapplication, the department shall keep records of health injuries and property damages resulting from the misapplication reported to the department by a:

- (1) certified applicator;
- (2) physician;
- (3) person holding a structural pest control business license;
- (4) technician;
- (5) consumer; or
- (6) state agency.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.22, eff. September 1, 2007.

Sec. 1951.209. AVAILABILITY OF CERTAIN INFORMATION. The department may make available to the Department of State Health Services under the occupational condition reporting program established under Chapter 84, Health and Safety Code, any information the department receives concerning an exposure to a pesticide caused by a person licensed under this chapter that results in a medically verifiable illness. The department and the executive commissioner of the Health and Human Services Commission shall adopt joint rules for making that information available to the Department of State Health Services. The rules must require the department to make that information available to an institution of higher education that conducts research in urban entomology, epidemiology, or other areas related to structural pest control.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.23, eff. September 1, 2007.

Sec. 1951.210. PRETREATMENT INSPECTION SERVICE; FEES; LIABILITY. (a) The department may provide a pretreatment inspection service to consumers. A pretreatment inspection is limited to a determination of whether there is an infestation of pests on the

premises inspected.

(b) On the request of a consumer, the department may make available an inspector employed by the department to inspect the premises of the consumer if the consumer has obtained, from at least two pest control companies:

(1) a determination that there is an infestation of pests on the premises; and

(2) an estimate of the cost of the treatment.

(c) The department shall charge a fee for a pretreatment inspection in an amount sufficient to pay the cost of providing the service.

(d) The department is not liable for any damages that may arise as a result of an inspection made under this section that is subsequently found to be incorrect.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.24, eff. September 1, 2007.

Sec. 1951.211. CONSULTATION WITH INTEGRATED PEST MANAGEMENT TECHNIQUES EXPERT. The department may contract with an institution of higher education for the services of an expert in integrated pest management to consult with the department, department staff, license holders, and the public regarding integrated pest management techniques.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.25, eff. September 1, 2007.

Sec. 1951.212. INTEGRATED PEST MANAGEMENT PROGRAMS FOR SCHOOL DISTRICTS. (a) The department shall establish standards for an integrated pest management program for the use of pesticides, herbicides, and other chemical agents to control pests, rodents, insects, and weeds at the school buildings and other facilities of school districts.

(b) The department shall use the structural pest control

advisory committee to assist the department in developing the standards for the integrated pest management program. In developing the standards, the advisory committee shall consult with a person knowledgeable in the area of integrated pest management in schools.

(c) The department shall include in standards adopted under this section a requirement to use the least toxic methods available to control pests, rodents, insects, and weeds.

(d) The department by rule shall establish categories of pesticides that a school district is allowed to apply. For each category, the department shall specify:

(1) the minimum distance a school district must maintain between an area where pesticides are being applied and an area where students are present at the time of application;

(2) the minimum amount of time a school district is required to wait before allowing students to enter an indoor or outdoor area in a school building or on school grounds for normal academic instruction or organized extracurricular activities after pesticides have been applied;

(3) the requirements for posting notice of the indoor and outdoor use of pesticides;

(4) the requirements for obtaining approval before applying the pesticide; and

(5) the requirements for maintaining records of the application of pesticides.

(e) Each school district shall:

(1) adopt an integrated pest management program that incorporates the standards established by the department under this section;

(2) designate an integrated pest management coordinator for the district; and

(3) report to the department not later than the 90th day after the date the district designates or replaces an integrated pest management coordinator the name, address, telephone number, and e-mail address of the district's current coordinator.

(f) Each person who is designated as the integrated pest management coordinator for a school district shall successfully complete six hours of continuing education in integrated pest management every three years.

(g) The department shall inspect each school district at least once every five years for compliance with this section and may

conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

- (1) whether there has been a prior violation by the school district;
- (2) the inspection history of the school district;
- (3) any history of complaints involving the school district; and
- (4) any other factor determined by the department by rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.26, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.10, eff. September 1, 2009.

#### **SUBCHAPTER F. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 1951.251. PUBLIC INTEREST INFORMATION. (a) The department, with the advice of the committee, shall prepare information of public interest describing the functions of the department under this chapter and the procedures by which complaints are filed with and resolved by the department under this chapter.

(b) The department shall make the information available to the public and appropriate state agencies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.27, eff. September 1, 2007.

Sec. 1951.252. COMPLAINTS. (a) The department by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department under this chapter. The department may provide for that notice:

- (1) on each license form, application, or written contract for services of a person regulated under this chapter;
- (2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or

(3) in a bill for services provided by a person regulated under this chapter.

(b) The department shall keep an information file about each complaint filed with the department under this chapter that the department has authority to resolve.

(c) If a written complaint is filed with the department under this chapter that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(d) The department shall provide to a license holder against whom a complaint has been filed under this chapter:

(1) the allegations made against the license holder in the complaint; and

(2) on the license holder's request, any information obtained by the department in its investigation of the complaint.

(e) The department shall provide the information required under Subsection (d) in a timely manner to allow the license holder time to respond to the complaint.

(f) The commissioner may allow an authorized employee of the department to dismiss a complaint if an investigation demonstrates that:

(1) a violation did not occur; or

(2) the subject of the complaint is outside the department's jurisdiction under this chapter.

(g) An employee who dismisses a complaint under Subsection (f) shall report the dismissal to the commissioner. The report must include a sufficient explanation of the reason the complaint was dismissed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.28, eff. September 1, 2007.

Sec. 1951.253. PUBLIC PARTICIPATION. (a) The department shall develop and implement policies that provide the public with a reasonable opportunity to appear before the committee and to speak on



any issue for which the committee has a duty under this chapter to advise the department.

(b) The department shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability can be provided reasonable access to the department's programs under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.29, eff. September 1, 2007.

Sec. 1951.254. PUBLIC INFORMATION PROGRAM. (a) The department shall establish a public information program as provided by this section and Sections 1951.453-1951.456 to inform the public about the practice and regulation of structural pest control.

(b) The department may create a public information program advisory committee to assist in the development of a public information program.

(c) The department shall make available to the public and other appropriate state agencies the information compiled as part of the program.

(d) The public information program must:

(1) include the adoption and distribution, in a manner that the department considers appropriate, of a standard form for complaints under this chapter;

(2) inform prospective applicants for licensing under this chapter about the qualifications and requirements for licensing;

(3) inform applicants, license holders, and the public on the department's Internet website, in department brochures, and on any other available information resource about the department's enforcement process under this chapter, including each step in the complaint investigation and resolution process, from initial filing thorough final appeal; and

(4) inform license holders that a license holder may obtain information about a complaint made against the license holder and may obtain on request a copy of the complaint file.

(e) The department shall develop a clear, factual, and balanced information sheet of one or more pages containing information on:

- (1) the pest control industry;
  - (2) chemicals used in structural pest control;
  - (3) general health and safety issues relating to structural pest control;
  - (4) precautions to take before, during, and after application;
  - (5) steps to take if a misapplication, including an underapplication or an overapplication, is suspected; and
  - (6) any other matters determined by the department.
- (f) The information sheet must include:
- (1) the names and telephone numbers of the department and the Department of State Health Services;
  - (2) the telephone number of any pesticide hotline established by a state or federal agency or by a state university;
  - (3) a statement of a consumer's rights under Chapter 601, Business & Commerce Code, to cancel a home solicitation transaction; and
  - (4) information concerning the availability of any pretreatment inspection service that may be provided by the department under Section 1951.210.
- (g) The department shall develop a sign to be posted in the area of an indoor treatment that contains:
- (1) the date of the planned treatment; and
  - (2) any other information required by the department.
- (h) The department shall make available a consumer and industry telephone hotline to provide direct access to the Structural Pest Control Service to ensure timely and efficient assistance with industry and consumer needs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.29, eff. April 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. [2458](#)), Sec. 1.30, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 7.11, eff. September 1, 2009.

Sec. 1951.255. ENFORCEMENT INFORMATION. (a) The department

shall make available to the public information about each final enforcement action taken by the department against a person under this chapter. The department shall provide this information on its Internet website and in other appropriate publications.

(b) The department may determine the format in which it will provide the information required under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.31, eff. September 1, 2007.

#### **SUBCHAPTER G. LICENSE REQUIREMENTS, ISSUANCE, AND RENEWAL**

Sec. 1951.301. STRUCTURAL PEST CONTROL BUSINESS LICENSE REQUIRED. (a) In this section, "branch office" means any place of business, other than the primary office or a facility serving solely as a telephone answering service, that has at least one employee during normal business hours who is capable of:

- (1) answering customers' normal questions;
- (2) scheduling normal inspections or work; or
- (3) performing structural pest control functions.

(b) A person may not engage in the business of structural pest control unless the person:

- (1) meets the standards set by the department under this chapter; and
- (2) holds a structural pest control business license issued under this chapter.

(c) A structural pest control business license entitles a person and the person's employees to engage in the business of structural pest control under the direct supervision of a certified commercial applicator.

(d) A person engaged in the business of structural pest control must hold a structural pest control business license for each place of business, including each branch office. A certified commercial applicator, certified noncommercial applicator, or licensed technician is not required to obtain a separate license for each branch office of an employer.

(e) Each structural pest control business license holder shall employ a certified commercial applicator at all times.

(f) A certified commercial applicator or technician license must be associated with a business license holder. The name of the

employer of a licensed commercial applicator or technician must be printed on the face of the license issued to a commercial applicator or technician.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.32, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.12, eff. September 1, 2009.

Sec. 1951.302. CERTIFIED COMMERCIAL APPLICATOR'S LICENSE. The department must determine that an individual is competent to use or supervise the use of a restricted-use pesticide or state-limited-use pesticide covered by the individual's certified commercial applicator's license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.33, eff. September 1, 2007.

Sec. 1951.303. CERTIFIED NONCOMMERCIAL APPLICATOR'S LICENSE.

(a) In this section, "incidental use situation" means a pesticide application, including treating wasps in an area adjacent to a utility meter, treating fire ants in a transformer box, or the treating of ants by a janitor or clerical employee in a break area, that:

- (1) is on an occasional, isolated, site-specific basis;
- (2) is incidental to the performance of a primary duty that is not pest control by an employee; and
- (3) involves the use of general use pesticides after instruction, as provided by rules adopted by the department.

(b) An individual who does not hold a certified commercial applicator's license may not engage in the business of structural pest control unless the individual holds a certified noncommercial applicator's or technician license and:

- (1) is employed by the state or a political subdivision of the state and engages in the business of structural pest control

other than by applying a general use pesticide in an incidental use situation; or

(2) engages in the business of structural pest control as an employee of a person who owns, operates, or maintains a building that is:

- (A) an apartment building;
- (B) a day-care center;
- (C) a hospital;
- (D) a nursing home;
- (E) a hotel, motel, or lodge;
- (F) a warehouse;
- (G) a food-processing establishment, other than a restaurant, retail food, or food service establishment; or
- (H) a school.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.34, eff. September 1, 2007.

Sec. 1951.304. TECHNICIAN LICENSE. The department may designate different classes or categories for technicians.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.35, eff. September 1, 2007.

Sec. 1951.305. APPLICATION. (a) A person must apply for a license under this chapter on a form prescribed and provided by the department.

(b) Each applicant must provide the information the department requires to determine the applicant's qualifications.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.36, eff. September 1, 2007.

Sec. 1951.306. WAIVER FOR APPLICANT LICENSED IN ANOTHER STATE.

(a) The department may waive any license requirement under this chapter for an applicant who holds a license issued by another state that has license requirements substantially equivalent to those of this state. The department may enter into reciprocal licensing agreements with other states that have license requirements substantially equivalent to those of this state.

(b) The department may issue an endorsement of license to a person who:

(1) establishes residence in this state; and

(2) has been determined by the department to meet the qualifications of a certified applicator by taking the appropriate examination in another state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.37, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.13, eff. September 1, 2009.

Sec. 1951.307. LICENSE RENEWAL. A person may renew a license by submitting an application to the department and paying the required renewal fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.38, eff. September 1, 2007.

Sec. 1951.308. LICENSE EXPIRATION. A license issued under this chapter expires at the end of the license period as determined by department rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.39, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.14, eff.

September 1, 2009.

Sec. 1951.309. FEE FOR INITIAL OR RENEWAL LICENSE. (a) An applicant for an initial or renewal structural pest control business license or for an initial or renewal endorsement of license under Section 1951.306 must submit with the person's application a fee in an amount established by department rule for:

- (1) a license or endorsement; and
- (2) a license for each technician the applicant employs.

(b) An applicant for an initial or renewal certified applicator's license must deliver with the person's application a fee in an amount established by department rule for:

- (1) a license; and
- (2) a license for each technician the applicant employs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. [2458](#)), Sec. 1.40, eff. September 1, 2007.

Sec. 1951.312. LIABILITY INSURANCE; EXCEPTIONS. (a) The department may not issue or renew a structural pest control business license until the license applicant:

(1) files with the department a policy or contract of insurance, approved as sufficient by the department, in an amount not less than \$200,000 for bodily injury and property damage coverage, with a minimum total aggregate of \$300,000 for all occurrences, insuring the applicant against liability for damage to persons or property occurring as a result of operations performed in the course of the business of structural pest control on premises or any other property under the applicant's care, custody, or control;

(2) in the case of an applicant who has an unexpired and uncanceled insurance policy or contract on file with the department, files with the department a certificate or other evidence from an insurance company stating that:

(A) the policy or contract insures the applicant against liability for acts and damage as described in Subdivision (1); and

(B) the amount of insurance coverage is in the amount approved by the department;

(3) files with the department a bond, certificate of deposit, or other proof acceptable to the department of sufficient funds in an amount not less than \$300,000 for payment of claims of damage to persons or property occurring as a result of operations performed negligently in the course of the business of structural pest control on premises or any other property under the applicant's care, custody, or control; or

(4) files with the department evidence satisfactory to the department of coverage under a general liability insurance policy, in an amount not less than \$200,000 for bodily injury and property damage coverage, with a minimum total aggregate of \$300,000 for all occurrences, if the applicant operates solely as a wood treater who treats wood on commercial property owned by the applicant.

(b) A structural pest control business license holder shall at all times maintain the insurance policy or contract or the security described by Subsection (a)(3) in the amount approved by the department. Failure to renew the policy or contract or maintain it or the security in the required amount is a ground for suspension or revocation of the license and a violation of this section.

(c) The department by rule may require different amounts of insurance coverage for different classifications of operations under this chapter.

(d) The department may adopt insurance requirements for certified noncommercial applicators or technicians.

(e) An applicant who files proof under Subsection (a)(3) must designate a third party not affiliated with the applicant to handle the processing of damage claims regarding that security.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 537, Sec. 1, 2, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. [2458](#)), Sec. 1.43, eff. September 1, 2007.

Sec. 1951.313. MEMORANDUM OF AGREEMENT. The department may enter into a memorandum of agreement with a political subdivision



other than an institution of public or private education concerning licensing requirements.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.44, eff. September 1, 2007.

Sec. 1951.314. LICENSE NOT TRANSFERABLE. A license issued by the department under this chapter is not transferable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.45, eff. September 1, 2007.

Sec. 1951.315. CONTINUING EDUCATION REQUIREMENTS. The department shall administer a mandatory continuing education program for all license holders. Each license holder must comply with the continuing education requirements established by department rule in order to retain or renew a license.

Added by Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.46, eff. September 1, 2007.

#### **SUBCHAPTER H. TRAINING**

Sec. 1951.351. TECHNICIAN TRAINING PROGRAM. (a) The department shall:

(1) develop or approve a training program for licensed technicians and for applicants to become licensed technicians; and

(2) require that an applicant for a technician license complete the training program.

(b) The department shall develop the educational and training materials for the training program with the Texas Agricultural Extension Service or any other institution of higher education. The department shall publish and distribute, in conjunction with the Texas Agricultural Extension Service, the materials developed as a part of the training program.

- (c) The training program must include instruction in:
- (1) recognition of pests and pest damage;
  - (2) pesticide labels and label comprehension;
  - (3) pesticide safety;
  - (4) environmental protection;
  - (5) procedures for the immediate reporting of spills and misapplications;
  - (6) application equipment and techniques;
  - (7) pesticide formulations and actions;
  - (8) emergency procedures and pesticide cleanup;
  - (9) state and federal law relating to structural pest control;
  - (10) basic principles of mathematics, chemistry, toxicology, and entomology;
  - (11) nonchemical pest control techniques, including biological, mechanical, and prevention techniques; and
  - (12) any other topic the department considers necessary.

(d) The department may create a technician training program advisory committee to assist the department in developing the training program required by this section.

(e) The department may approve a training program that has not been developed by the department if the program meets the standards adopted by the department for the program. Completion of a training program approved by the department under this subsection satisfies Subsection (a)(2).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.47, eff. September 1, 2007.

Sec. 1951.352. NEW DEVELOPMENTS; PROOF OF STUDY. If the department determines that new developments in pest control have occurred that are so significant that proper knowledge of the developments is necessary to protect the public, the department may require of each applicant proof of study by:

- (1) attending approved training courses; or
- (2) taking additional examinations on the new developments only.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.48, eff. September 1, 2007.

Sec. 1951.353. FEES RELATED TO TRAINING PROGRAMS. (a) The department may charge a fee to a person to purchase or borrow materials developed for the technician training program under Section 1951.351. The department shall set the fee in an amount that will recover the costs of the program.

(b) The department may charge a fee in an amount established by rule for each course considered for approval under Section 1951.352.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.49, eff. September 1, 2007.

#### **SUBCHAPTER I. EXAMINATIONS**

Sec. 1951.401. EXAMINATION FOR CERTIFIED APPLICATOR'S LICENSE. The department may require a person to qualify for a certified applicator's license by passing an examination demonstrating the person's competence in the field of structural pest control.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.50, eff. September 1, 2007.

Sec. 1951.402. EXAMINATION FOR TECHNICIAN LICENSE. The department shall require an applicant for a technician license to pass an examination developed and administered by the department or a person designated by the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.51, eff. September 1, 2007.

Sec. 1951.403. EXAMINATION FEE. Each time a person applies to take an examination for a license, the person shall pay the department an examination fee, in an amount established by department rule, for each category of examination to be taken. Except as provided by department rule, an examination fee is not refundable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.52, eff. September 1, 2007.

Sec. 1951.404. LIST OF STUDY MATERIALS AND SEMINARS. The department shall make public a list of study materials and educational seminars that are available to help applicants successfully complete any examination administered under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.53, eff. September 1, 2007.

Sec. 1951.405. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a licensing examination is administered under this chapter, the department shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the department shall notify each examinee of the results of the examination not later than the 14th day after the date the department receives the results from the testing service.

(b) If notice of the results of an examination graded or reviewed by a national testing service will be delayed for more than 90 days after the examination date, the department shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails a licensing examination administered under this chapter, the department shall provide to the person an analysis of the person's performance on the

examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.54, eff. September 1, 2007.

Sec. 1951.406. EXAMINATION POLICY. (a) The department shall develop a written policy governing licensing examinations under this subchapter that prescribes:

(1) procedures to improve the design and construction of examinations;

(2) procedures for administering the examinations; and

(3) the process for evaluating examinations in use.

(b) The policy must include:

(1) a procedure for seeking assistance in the development of examinations from experts in:

(A) structural pest control;

(B) structural pest control education; and

(C) examination creation and validation;

(2) a schedule that provides for examination revision and maintenance, including the regular update of examinations;

(3) a procedure to routinely analyze and validate examinations;

(4) a procedure for the development of a bank of questions for each examination;

(5) guidelines for developing examinations from the bank of questions;

(6) the number and type of questions for each examination; and

(7) a requirement that the person responsible for examination development make periodic reports on examination issues to the commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.55, eff. September 1, 2007.

#### **SUBCHAPTER J. PRACTICE BY LICENSE HOLDER**

Sec. 1951.451. CONTRACT FOR PEST CONTROL SERVICES. A written

contract under which a license holder under this chapter agrees to perform structural pest control services in this state must include:

- (1) the department's mailing address and telephone number; and
- (2) a statement that the department has jurisdiction over individuals licensed under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.56, eff. September 1, 2007.

Sec. 1951.452. RECORDS OF LICENSE HOLDER. (a) The department may require each license holder to make records, as prescribed by the department, of the license holder's use of pesticides.

(b) Subject to Subsection (c), a record required under Subsection (a) shall be:

- (1) maintained for at least two years on the license holder's business premises; and
- (2) made available for inspection by the department and its authorized agents during normal business hours.

(c) A certified noncommercial applicator shall maintain required records on the premises of the person's employer for at least two years. The records shall be made available for inspection by the department and its authorized agents during the employer's normal operating hours.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.57, eff. September 1, 2007.

Sec. 1951.453. PEST CONTROL INFORMATION FOR INDOOR TREATMENTS: RESIDENTIAL PROPERTY. (a) For an indoor treatment at a private residence that is not rental property, a certified applicator or technician shall make available a pest control information sheet developed under Section 1951.254 to the owner of the residence before each treatment begins.

(b) For an indoor treatment at a residential rental property

with fewer than five rental units, a certified applicator or technician shall make available a pest control information sheet developed under Section 1951.254 to the tenant of each unit.

(c) For an indoor treatment at a residential rental property with five or more rental units, a certified applicator or technician shall make available a pest control information sheet developed under Section 1951.254 and a pest control sign developed under that section to the owner or manager of the property. The owner or manager or an employee or agent of the owner or manager, other than the certified applicator or technician, shall notify residents who live in the direct area of the treatment or in an adjacent area by:

- (1) posting the sign in an area of common access at least 48 hours before each planned treatment; or
- (2) leaving the information sheet on the front door of each unit or in a conspicuous place inside each unit at least 48 hours before each planned treatment.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.15, eff. September 1, 2009.

Sec. 1951.454. PEST CONTROL INFORMATION FOR INDOOR TREATMENTS: WORKPLACE. For an indoor treatment at a workplace, a certified applicator or technician shall make available a pest control information sheet developed under Section 1951.254 and a pest control sign developed under that section to the employer or the building manager. The employer or building manager or an employee or agent of the owner or manager, other than the certified applicator or technician, shall notify the persons who work at the workplace of the date of the planned treatment by:

- (1) posting the sign in an area of common access that the persons are likely to check on a regular basis at least 48 hours before each planned treatment; and
- (2) providing the information sheet to any person working in the building on a request made by the person during normal business hours.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.16, eff. September 1, 2009.

Sec. 1951.455. PEST CONTROL INFORMATION FOR INDOOR TREATMENTS: CERTAIN OTHER BUILDINGS. (a) For an indoor treatment at a building that is a hospital, nursing home, hotel, motel, lodge, warehouse, food-processing establishment, school, or day-care center, a certified applicator or technician shall make available a pest control information sheet developed under Section 1951.254 and a pest control sign developed under that section to the chief administrator or building manager. The chief administrator or building manager shall notify the persons who work in the building of the treatment by:

(1) posting the sign in an area of common access that the persons are likely to check on a regular basis at least 48 hours before each planned treatment; and

(2) providing the information sheet to a person working in the building on request of the person.

(b) Personnel at a school or day-care center shall inform the parent, guardian, or managing conservator of each child attending the school or center, at the time the child is registered, that:

(1) the school or center periodically applies pesticides indoors; and

(2) information on the application of the pesticides is available at the request of the parent, guardian, or managing conservator.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.17, eff. September 1, 2009.

Sec. 1951.456. PEST CONTROL INFORMATION FOR INDOOR TREATMENTS; RULES; EXCEPTION. (a) The department shall develop a policy to implement and enforce Sections 1951.453-1951.455.

(b) Under rules adopted by the department, a requirement under Sections 1951.453-1951.455 that notice of a treatment be given at least 48 hours before the treatment may be waived for emergency



treatments.

(c) A person is not considered in violation of Section 1951.453, 1951.454, or 1951.455 or a rule adopted under this section for not posting a pest control sign developed under Section 1951.254 if the sign is posted as required by Section 1951.453, 1951.454, or 1951.455 or a rule adopted under this section but is removed by an unauthorized person.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 7.19(4), eff. September 1, 2009.

(e) The signage, advance notice, and information sheet requirements of Sections 1951.453-1951.455 do not apply to space that is vacant, unused, and unoccupied as a residence, workplace, or other use covered by Sections 1951.453-1951.455.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. [2458](#)), Sec. 1.58, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 7.19(4), eff. September 1, 2009.

Sec. 1951.457. PEST CONTROL INFORMATION FOR OUTDOOR TREATMENTS.

(a) For an outdoor treatment at a private residence that is not rental property, a certified applicator or technician shall make available a pest control information sheet developed under Section 1951.254 at the residence before the treatment begins.

(b) For an outdoor treatment at a residential rental property with fewer than five rental units, a certified applicator or technician shall make available a pest control information sheet at each unit at the time of treatment.

(c) The department may adopt rules to require the distribution of a pest control information sheet for an outdoor treatment other than an outdoor treatment described by this section if the department determines that the distribution or posting, or both, would protect the public's health, safety, and welfare.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. [2458](#)), Sec. 1.59, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.18, eff. September 1, 2009.

Sec. 1951.458. PRACTICE BY NONCOMMERCIAL APPLICATOR OR TECHNICIAN. (a) A person who holds a certified noncommercial applicator's or technician license may not engage in the business of structural pest control outside the scope of the employment for which the person is licensed as a certified noncommercial applicator or technician unless the person becomes licensed as otherwise provided by this chapter.

(b) A person who holds a certified noncommercial applicator's or technician license may engage in the business of structural pest control without association with a business that holds a structural pest control business license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1951.459. PEST CONTROL SERVICES FOR CERTAIN BUILDINGS. The owner of a building that is an apartment building, day-care center, hospital, nursing home, hotel, motel, lodge, warehouse, school, or food-processing establishment, other than a restaurant, retail food, or food service establishment, may obtain pest control services for that building from a person only by:

(1) contracting with a person who holds a license to perform the services; or

(2) requiring a person employed by the owner who is licensed as a certified noncommercial applicator or technician to perform the services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER K. DISCIPLINARY PROCEDURES**

Sec. 1951.501. DISCIPLINARY POWERS OF COMMISSIONER RELATING TO STRUCTURAL PEST CONTROL. (a) In this section, "parent company" means an individual or a partnership, corporation, or other business entity holding one or more structural pest control business licenses.

(b) On a determination that an applicant or structural pest control business license holder under a parent company has

substantially failed to comply with the standards and rules established by the department under this chapter, after notice and a hearing, the commissioner may refuse to:

- (1) examine the applicant;
- (2) issue a license to the applicant; or
- (3) issue a business license to the parent company.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 7.19(5), eff. September 1, 2009.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 7.19(5), eff. September 1, 2009.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.60, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.19(5), eff. September 1, 2009.

Sec. 1951.502. RIGHT TO HEARING. (a) If the commissioner proposes to suspend or revoke a person's license, the person is entitled to a hearing before the commissioner or a hearings officer appointed by the commissioner.

(b) The commissioner shall establish procedures by which a decision to suspend or revoke a license is made by or is appealable to the commissioner.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.61, eff. September 1, 2007.

Sec. 1951.503. JUDICIAL REVIEW. (a) An applicant or license holder may appeal from an order or other action of the commissioner under this chapter by bringing an action in a district court of Travis County.

(b) Notice of appeal must be filed not later than the 30th day after the date the commissioner issues the order.

(c) The hearing in district court is under the substantial evidence rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.62, eff. September 1, 2007.

Sec. 1951.504. SETTLEMENT OF CONTESTED CASES. (a) A settlement of a contested case under Chapter 2001, Government Code, must be approved by the commissioner.

(b) The department by rule shall establish guidelines for the settlement of a contested case under Chapter 2001, Government Code.

(c) The commissioner may authorize the department to conduct informal settlement negotiations between the department and a license holder to resolve a complaint, other than a complaint involving a misapplication, by a consumer against the license holder.

(d) An informal settlement reached under Subsection (c):

(1) may not require the license holder to:

(A) refund money to the consumer in an amount greater than the amount provided under the original contract for services by the license holder; or

(B) perform any services that the license holder did not agree to perform in the original contract; and

(2) does not release the license holder from any liability for a misapplication.

(e) The department by rule shall establish guidelines for the informal settlement of consumer complaints as provided by Subsections (c) and (d).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.63, eff. September 1, 2007.

Sec. 1951.505. EFFECT OF REVOCATION. (a) A license revoked under Section 1951.501 may not be renewed.

(b) A person whose license is revoked may not apply for a new license until the first anniversary of the effective date of the revocation. A new license may not be issued without the approval of the department.

(c) If the commissioner revokes the license of a certified applicator in one category, the commissioner may place the applicator on probation for any other category in which the applicator is licensed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.64, eff. September 1, 2007.

Sec. 1951.506. EMERGENCY SUSPENSION. (a) The commissioner shall temporarily suspend the license of a person licensed under this chapter if the commissioner determines from the evidence or information presented to the commissioner that continued practice by the person would constitute a continuing and imminent threat to the public welfare or environment.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare or environment still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.65, eff. September 1, 2007.

#### **SUBCHAPTER M. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 1951.601. ENFORCEMENT ACTION FOR MISAPPLICATION OF PESTICIDES. If the commissioner finds that an applicator has misapplied pesticides, the commissioner shall institute an enforcement action against the applicator. The department by rule

shall adopt a policy to implement this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.75, eff. September 1, 2007.

Sec. 1951.602. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule, license, or order of the commissioner is subject to a civil penalty of not less than \$50 or more than \$2,000 for each act of violation and for each day of violation.

(b) If it appears that a person has violated or is threatening to violate this chapter or a rule, license, or order of the commissioner, the commissioner may have a civil action instituted in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment and recovery of a civil penalty under Subsection (a); or

(3) both injunctive relief and the civil penalty.

(c) On application for injunctive relief and a finding that a person is violating or threatening to violate this chapter or a rule, license, or order of the commissioner, the district court shall grant injunctive relief as the facts warrant.

(d) At the request of the commissioner, the attorney general shall institute and conduct an action in the name of the state for the injunctive relief, to recover the civil penalty, or both.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.76, eff. September 1, 2007.

Sec. 1951.603. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) violates this chapter;

(2) violates a rule adopted under Section 1951.205 or 1951.206; or

(3) intentionally makes a false statement in an application for a license or otherwise fraudulently obtains or attempts to obtain a license.

(b) Each day a violation occurs is a separate offense.

(c) Except as otherwise provided by this subsection, an offense under this section is a Class C misdemeanor. An offense under this section is a Class B misdemeanor if the person has been convicted previously of an offense under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

## **CHAPTER 1952. CODE ENFORCEMENT OFFICERS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1952.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Health.

(2) "Code enforcement" means the inspection of public or private premises for the purpose of:

(A) identifying environmental hazards, including:

(i) fire or health hazards;

(ii) nuisance violations;

(iii) unsafe building conditions; and

(iv) violations of any fire, health, or building regulation, statute, or ordinance; and

(B) improving and rehabilitating those premises with regard to those hazards.

(3) "Code enforcement officer" means an agent of this state or a political subdivision of this state who engages in code enforcement.

(4) "Department" means the Texas Department of Health.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1952.002. EXEMPTION FROM REGISTRATION. A person is not required to be registered under this chapter if the person:

(1) is required to be licensed or registered under another law of this state; and

(2) engages in code enforcement under that license or registration.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1952.003. EMPLOYMENT OF REGISTERED PERSON NOT REQUIRED. This state or a political subdivision of this state may engage in code enforcement without employing a person registered under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER B. BOARD POWERS AND DUTIES**

Sec. 1952.051. RULES. The board by rule shall:

(1) adopt standards and education requirements consistent with those established under Chapter 654, Government Code, for the registration of:

(A) code enforcement officers; and

(B) code enforcement officers in training; and

(2) prescribe application forms for original and renewal certificates of registration.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1952.052. FEES. The board shall set fees in amounts that are reasonable and necessary to cover the cost of administering this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1079, Sec. 1, eff. Sept. 1, 2003.

Sec. 1952.053. REGISTER OF APPLICATIONS. (a) The department shall maintain a register of each application for a certificate of registration under this chapter.

(b) The register must include:

(1) the name, residence, date of birth, and social security number of the applicant;

(2) the name and address of the employer or business of the applicant;



- (3) the date of the application;
- (4) the education and experience qualifications of the applicant;
- (5) the action taken by the department regarding the application and the date of the action;
- (6) the serial number of any certificate of registration issued to the applicant; and
- (7) any other information required by board rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1952.054. RECORD OF PROCEEDINGS. The department shall keep a record of proceedings under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER C. REGISTRATION REQUIREMENTS**

Sec. 1952.101. REGISTRATION REQUIRED. Except as permitted by Section 1952.002, a person may not claim to be a code enforcement officer or use the title "code enforcement officer" unless the person holds a certificate of registration under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1952.102. ELIGIBILITY TO REGISTER AS CODE ENFORCEMENT OFFICER. To be eligible to receive a certificate of registration as a code enforcement officer, a person must:

- (1) have at least one year of full-time experience in the field of code enforcement;
- (2) pass the examination conducted by the department or the department's designee;
- (3) pay the application, examination, and registration fees; and
- (4) meet any other requirements prescribed by this chapter or by board rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1952.103. ELIGIBILITY TO REGISTER AS CODE ENFORCEMENT OFFICER IN TRAINING. (a) An applicant for a certificate of registration under this chapter who has less than one year of full-time experience in code enforcement is entitled to receive a certificate of registration as a code enforcement officer in training on:

(1) passing the examination described by Section 1952.102(2); and

(2) paying the required fees.

(b) A certificate issued under this section expires on the first anniversary of the date of issuance.

(c) A code enforcement officer in training may engage in code enforcement under the supervision of a registered code enforcement officer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1952.104. RECIPROCAL REGISTRATION. On proper application, the department shall issue a certificate of registration to a license holder or registrant of another state that has requirements for the licensing or registration of a code enforcement officer that are at least equivalent to those of this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1952.105. RENEWAL OR REINSTATEMENT OF CERTIFICATE. (a) A certificate of registration issued under this chapter expires on the first anniversary of the date of issuance and may be renewed annually on payment of the required renewal fee and on completion of the annual continuing education requirements prescribed by the board.

(b) The department may reinstate as provided by board rule a certificate of registration that was revoked for failure to pay the renewal fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.452(a), eff. Sept. 1, 2003.

Sec. 1952.1051. CONTINUING EDUCATION. The board by rule shall prescribe annual continuing education requirements for code enforcement officers and code enforcement officers in training that:

- (1) establish the number of hours of continuing education required for renewal of a certificate of registration;
- (2) establish an approved curriculum that includes material regarding changes in applicable law; and
- (3) provide that the approved curriculum may be taught by suitable public agencies and by private entities approved by the department.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.453(a), eff. Sept. 1, 2003.

Sec. 1952.106. STATEWIDE VALIDITY OF CERTIFICATE; NONTRANSFERABILITY. (a) A certificate of registration issued under this chapter is valid throughout this state.

(b) A certificate of registration issued under this chapter is not assignable or transferable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER D. CERTIFICATE DENIAL AND DISCIPLINARY ACTION**

Sec. 1952.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION.

(a) The department may deny a person's application for a certificate of registration if the person's certificate or license to engage in code enforcement or a related profession has been revoked by another licensing entity in this state or another state for:

- (1) unprofessional conduct;
- (2) fraud, deceit, or negligence; or
- (3) misconduct in the practice of code enforcement or a related profession.

(b) The department shall suspend or revoke a certificate of registration issued under this chapter if the department determines that the certificate holder:

- (1) engaged in fraud or deceit in obtaining a certificate; or
- (2) is grossly negligent, incompetent, or guilty of misconduct in the practice of code enforcement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1952.152. PROCEDURE. The denial, suspension, or revocation of a certificate of registration under this chapter is governed by:

- (1) the board's rules for a contested case hearing; and
- (2) Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER E. PENALTIES**

Sec. 1952.201. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 1952.101.

- (b) An offense under this section is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER F. ADMINISTRATIVE PENALTY**

Sec. 1952.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The department may impose an administrative penalty on a person registered under this chapter who violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 25, eff. Sept. 1, 2003.

Sec. 1952.252. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the administrative penalty may not be less than \$50 or more than \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

- (b) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 25, eff. Sept. 1, 2003.

Sec. 1952.253. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the commissioner of public health or the commissioner's designee determines that a violation occurred, the commissioner or the designee may issue to the department a report stating:

- (1) the facts on which the determination is based; and
- (2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the commissioner of public health or the commissioner's designee shall give written notice of the report to the person. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended administrative penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 25, eff. Sept. 1, 2003.

Sec. 1952.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

- (1) accept the determination and recommended administrative penalty of the commissioner of public health or the commissioner's designee; or
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the commissioner of public health or the commissioner's designee, the department by order shall approve the determination and impose the recommended penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 25, eff. Sept. 1, 2003.

Sec. 1952.255. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the

commissioner of public health or the commissioner's designee shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 25, eff. Sept. 1, 2003.

Sec. 1952.256. DECISION BY DEPARTMENT. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the department by order may determine that:

- (1) a violation occurred and impose an administrative penalty; or
- (2) a violation did not occur.

(b) The notice of the department's order given to the person must include a statement of the right of the person to judicial review of the order.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 25, eff. Sept. 1, 2003.

Sec. 1952.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Within 30 days after the date the department's order becomes final, the person shall:

- (1) pay the administrative penalty; or
- (2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account; or
  - (B) giving the court a supersedeas bond approved by the court that:
    - (i) is for the amount of the penalty; and
    - (ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner of public health or the commissioner's designee by certified mail.

(c) If the commissioner of public health or the commissioner's designee receives a copy of an affidavit under Subsection (b)(2), the commissioner or the designee may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 25, eff. Sept. 1, 2003.

Sec. 1952.258. COLLECTION OF PENALTY. (a) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 25, eff. Sept. 1, 2003.

Sec. 1952.259. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 25, eff. Sept. 1, 2003.

Sec. 1952.260. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the

court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 25, eff. Sept. 1, 2003.

Sec. 1952.261. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is a contested case under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 25, eff. Sept. 1, 2003.

## **CHAPTER 1953. SANITARIANS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1953.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Health.

(2) "Sanitarian" means a person trained in sanitary science to perform duties relating to education and inspections in environmental sanitation.

(3) "Sanitation" means the study, art, and technique of applying scientific knowledge to improve the human environment for the purpose of promoting public health and welfare.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1953.002. EMPLOYMENT OF SANITARIAN. This chapter does not require a person, including a municipality or governmental agency, to employ a sanitarian.



Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1953.003. EXEMPTIONS. This chapter does not apply to a person, including a physician, dentist, engineer, or veterinarian, who is licensed by an agency of this state other than the board and who, by nature of the person's employment or duties, might be construed as being subject to this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER B. BOARD POWERS AND DUTIES**

Sec. 1953.051. GENERAL DUTIES OF BOARD. The board shall:

- (1) adopt rules to administer and enforce this chapter;
- (2) administer continuing education requirements; and
- (3) prescribe necessary forms.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1953.052. FEES; PAYMENT OF ADMINISTRATIVE COSTS. (a) The board shall prescribe fees under this chapter.

(b) General revenue of the state may not be used to pay the costs of administering this chapter in an amount that exceeds the amount of fees received under this chapter.

(c) If the fees are inadequate to pay the costs of administering this chapter, the board may increase the fees to an amount sufficient to pay those costs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1953.053. REGISTER OF APPLICATIONS. (a) The board shall keep a register of each application for a certificate of registration under this chapter.

(b) The register must include:

- (1) the name, age, and place of residence of the applicant;
- (2) the name and address of the employer or business connection of the applicant;
- (3) the date of the application;

- (4) complete information regarding the applicant's education and experience qualifications;
- (5) the date the board reviewed and acted on the application;
- (6) a description of the board's action on the application;
- (7) the serial number of any certificate of registration issued to the applicant; and
- (8) any other information the board determines necessary.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1953.054. RECORD OF PROCEEDINGS. The board shall keep a record of proceedings under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1953.055. REPORTS. The board shall maintain a copy of each annual report and each report prepared by the state auditor issued in connection with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER C. CERTIFICATE OF REGISTRATION**

Sec. 1953.101. REGISTRATION REQUIRED. A person who engages or offers to engage in work in sanitation may not represent that the person is a sanitarian or use a title containing the word "sanitarian" unless the person holds a certificate of registration under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1953.102. ELIGIBILITY REQUIREMENTS. (a) To be eligible to receive a certificate of registration as a professional sanitarian, a person must:

- (1) hold at least a bachelor's degree from an accredited college or university that includes at least 30 semester hours in basic or applied science;

(2) complete any additional training in the basic sciences or public health the board determines necessary to effectively serve as a professional sanitarian; and

(3) have at least two years of full-time experience in sanitation.

(b) The board by rule may establish other qualifications for registration.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1953.103. RECIPROCAL REGISTRATION. The board under rules adopted by the board may enter into an agreement with another state to provide for reciprocal registration if the other state provides by statute for the registration of sanitarians.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1953.104. ISSUANCE OF CERTIFICATE: PROFESSIONAL SANITARIAN. The board shall issue a certificate of registration as a professional sanitarian to a person who:

- (1) applies on the form prescribed by the board;
- (2) pays the registration fee set by the board;
- (3) meets the eligibility requirements prescribed by

Section 1953.102; and

- (4) passes an examination under Subchapter D.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1953.105. ISSUANCE OF CERTIFICATE: SANITARIAN IN TRAINING. (a) On approval by the board, the board shall issue a certificate of registration as a sanitarian in training to a person who:

- (1) is employed in sanitation;
- (2) meets the eligibility requirements prescribed by

Section 1953.102, other than the requirements relating to experience;

(3) pays a registration fee prescribed by the board for a sanitarian in training; and

- (4) passes an examination under Subchapter D.

(b) A certificate issued under this section is valid for a period not to exceed two years after the date of issuance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1953.106. RENEWAL OR REINSTATEMENT OF CERTIFICATE. (a) To renew a certificate of registration under this chapter, a professional sanitarian must:

(1) pay to the board a renewal fee prescribed by the board; and

(2) provide proof of completion of continuing education contact hours as prescribed by the board.

(b) The board may reinstate a certificate of registration as provided by board rules that was revoked for failure to pay the renewal fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER D. EXAMINATION**

Sec. 1953.151. EXAMINATION. (a) To obtain a certificate of registration under this chapter, an applicant must pass a written examination prescribed by the board that provides evidence satisfactory to the board that the applicant is qualified for registration under this chapter.

(b) An applicant for a certificate of registration may not take the examination unless the applicant pays the examination fee prescribed by the board.

(c) In evaluating an applicant's performance on the examination, the board shall carefully consider the applicant's knowledge and understanding of the principles of sanitation and the physical, biological, and social sciences.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1953.152. EXAMINATION RESULTS. (a) Not later than the 30th day after the examination date, the board shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the board shall

notify each examinee of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of the results of an examination graded or reviewed by a national testing service will not be given before the 91st day after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the examination, the board shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER E. CERTIFICATE DENIAL AND DISCIPLINARY PROCEDURES**

##### **Sec. 1953.201. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION.**

(a) The board may deny a person's application for a certificate of registration if:

(1) the person's certificate or license to engage in a profession in this state or elsewhere has been revoked for unprofessional conduct, fraud, deceit, negligence, or misconduct in the practice of the profession; or

(2) satisfactory proof is presented to the board establishing that the person has been found guilty of unprofessional conduct, fraud, deceit, negligence, or misconduct in the practice of a profession.

(b) The board may suspend or revoke a certificate of registration if the certificate holder:

(1) practiced fraud or deceit in obtaining the certificate;  
or

(2) acted in a manner constituting gross negligence, incompetency, or misconduct in the practice of sanitation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

**Sec. 1953.202. HEARING.** The board may not deny an application for a certificate of registration or suspend or revoke a person's certificate until a hearing is held and the person is given the opportunity to answer any charges filed with the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER F. PENALTIES**

Sec. 1953.251. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 1953.101.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER G. ADMINISTRATIVE PENALTY**

Sec. 1953.301. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on a person registered under this chapter who violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 26, eff. Sept. 1, 2003.

Sec. 1953.302. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the administrative penalty may not be less than \$50 or more than \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 26, eff. Sept. 1, 2003.

Sec. 1953.303. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the commissioner of public health or the commissioner's designee determines that a violation occurred, the commissioner or the designee may issue to the board a report stating:

- (1) the facts on which the determination is based; and

(2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the commissioner of public health or the commissioner's designee shall give written notice of the report to the person. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended administrative penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 26, eff. Sept. 1, 2003.

Sec. 1953.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

- (1) accept the determination and recommended administrative penalty of the commissioner of public health or the commissioner's designee; or
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the commissioner of public health or the commissioner's designee, the board by order shall approve the determination and impose the recommended penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 26, eff. Sept. 1, 2003.

Sec. 1953.305. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the commissioner of public health or the commissioner's designee shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 26, eff. Sept. 1, 2003.

Sec. 1953.306. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the board by order may determine that:

- (1) a violation occurred and impose an administrative penalty; or
- (2) a violation did not occur.

(b) The notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 26, eff. Sept. 1, 2003.

Sec. 1953.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Within 30 days after the date the board's order becomes final, the person shall:

- (1) pay the administrative penalty; or
- (2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account; or
  - (B) giving the court a supersedeas bond approved by the court that:
    - (i) is for the amount of the penalty; and
    - (ii) is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

- (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and
- (B) giving a copy of the affidavit to the commissioner of public health or the commissioner's designee by certified mail.

(c) If the commissioner of public health or the commissioner's



designee receives a copy of an affidavit under Subsection (b)(2), the commissioner or the designee may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 26, eff. Sept. 1, 2003.

Sec. 1953.308. COLLECTION OF PENALTY. (a) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 26, eff. Sept. 1, 2003.

Sec. 1953.309. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 26, eff. Sept. 1, 2003.

Sec. 1953.310. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is

not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 26, eff. Sept. 1, 2003.

Sec. 1953.311. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is a contested case under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 26, eff. Sept. 1, 2003.

## **CHAPTER 1954. ASBESTOS HEALTH PROTECTION**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1954.001. SHORT TITLE. This chapter may be cited as the Texas Asbestos Health Protection Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.002. DEFINITIONS. In this chapter:

(1) "Air monitoring" means the collection of airborne samples for analysis of asbestos fibers.

(2) "Asbestos" means:

(A) an asbestiform variety of chrysotile, amosite, crocidolite, tremolite, anthophyllite, or actinolite; or

(B) a material that contains one percent or more of a substance described by Paragraph A.

(3) "Asbestos abatement" means a removal, encapsulation, or enclosure of asbestos to reduce or eliminate or that has the effect of reducing or eliminating:

(A) a concentration of asbestos fibers; or

(B) an asbestos-containing material.

(4) "Asbestos-related activity" means:

(A) the removal, encapsulation, or enclosure of asbestos;

(B) the performance of an asbestos survey;

(C) the development of an asbestos management plan or response action;

(D) the collection or analysis of an asbestos sample;  
or

(E) the performance of another activity for which a license is required under this chapter.

(5) "Asbestos removal" means an action that disturbs, dislodges, strips, or otherwise takes away asbestos fibers.

(6) "Board" means the Texas Board of Health.

(7) "Commissioner" means the commissioner of public health.

(8) "Department" means the Texas Department of Health.

(9) "Encapsulation" means a method of control of asbestos fibers in which the surface of an asbestos-containing material is penetrated by or covered with a coating prepared for that purpose.

(10) "Enclosure" means the construction of an airtight wall and ceiling around an asbestos-containing material.

(11) "Public building" means a building used or to be used for a purpose that involves public access or occupancy and includes a building that is vacant at any time, including during preparation for actual demolition. The term does not include:

(A) an industrial facility to which access is limited principally to employees of the facility because of a process or function that is hazardous to human health or safety;

(B) a federal building or installation;

(C) a private residence;

(D) an apartment building that has not more than four dwelling units; or

(E) a manufacturing facility or building that is part of a facility to which access is limited to workers and invited guests under controlled conditions.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

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

Sec. 1954.051. GENERAL RULEMAKING AUTHORITY. The board shall adopt substantive and procedural rules as necessary or desirable for the board, the department, and the commissioner to discharge their powers and duties under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

## Sec. 1954.052. RULES REGARDING ASBESTOS CONCENTRATION LEVELS.

(a) The board may adopt rules defining the maximum airborne asbestos concentrations that are:

(1) permissible outside of a regulated containment area during an abatement activity; and

(2) acceptable for final clearance.

(b) The board may not identify any level of asbestos concentration as a safe exposure level because any exposure to airborne asbestos is considered to involve some risk.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.053. RULES REGARDING PERFORMANCE STANDARDS AND WORK PRACTICES. The board may adopt rules specifying:

(1) performance standards at least as stringent as applicable federal standards; and

(2) work practices that affect asbestos removal or encapsulation in a public building.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.054. RULES RESTRICTING ADVERTISING OR COMPETITIVE

BIDDING. (a) The board may not adopt a rule restricting advertising or competitive bidding by a person licensed or registered under this chapter except to prohibit a false, misleading, or deceptive practice.

(b) In its rules to prohibit a false, misleading, or deceptive practice, the board may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of the personal appearance or voice of the person in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.055. RECIPROCITY AGREEMENT. The department may adopt rules under this chapter to effect reciprocity agreements with other states.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.056. FEES. (a) The board shall adopt a schedule of the fees that are provided by this chapter and any other fee that is reasonable and necessary.

(b) A license fee may not exceed:

- (1) \$100 for a license as an air monitoring technician;
- (2) \$200 for a license as an inspector;
- (3) \$250 for a restricted license as an asbestos abatement supervisor;
- (4) \$300 for a license as an asbestos abatement supervisor;
- (5) \$300 for a license as an asbestos laboratory;
- (6) \$500 for a license as an asbestos abatement contractor;
- (7) \$500 for a license as a management planner;
- (8) \$500 for a license as a consultant;
- (9) \$500 for a license as a training sponsor; or
- (10) \$500 for a license as a transporter.

(c) A registration fee for an asbestos abatement worker may not exceed \$50.

(d) The department may set a fee for a provisional license or registration in an amount reasonable and necessary to cover the cost of issuing the license or registration.

(e) The fees collected by the department under this chapter shall be deposited to the credit of the asbestos removal licensure fund account in the general revenue fund. The fees may be used only by the department for the purposes of this chapter. Not more than 25 percent of the fees collected may be applied for administrative costs necessary to implement this chapter. The remainder shall be used for enforcement personnel necessary to investigate compliance with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.057. GENERAL INVESTIGATIVE AUTHORITY. (a) The department may conduct any inspection or cause the production of any documentary or other evidence that the department considers necessary to determine whether a license should be:

- (1) issued, delayed, or denied; or
- (2) modified, suspended, or revoked.

(b) The department may require additional written information and assurances from the applicant or license holder at any time after the filing of an application for a license and before the expiration of the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.058. AUTHORITY TO CONTRACT FOR INSPECTIONS. The department may contract with any person to perform inspections necessary to enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.059. ASBESTOS SITE INSPECTIONS. (a) The department shall inspect:

- (1) an asbestos abatement contractor during an abatement project at least annually; and
- (2) other licensed organizations in accordance with board rules.

(b) The department shall require a building or facility owner or the owner's authorized representative to complete an immediate inspection for asbestos if the department determines after an asbestos site inspection that there appears to be a danger or potential danger to:

- (1) the occupants of the building;
- (2) workers in the building or facility; or
- (3) the public.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.060. DEMOLITION AND RENOVATION ACTIVITIES; INSPECTIONS. (a) The board may adopt and the department may

enforce rules regarding demolition and renovation activities to protect the public from asbestos emissions. At a minimum, the rules must be sufficient to permit the department to obtain authority from the United States Environmental Protection Agency to implement and enforce in this state the provisions of 40 C.F.R. Part 61, Subpart M, that establish the requirements applicable to the demolition and renovation of a facility, including the disposal of asbestos-containing waste materials.

(b) An employee or agent of the department may enter a facility, as that term is defined by 40 C.F.R. Section 61.141, to inspect and investigate conditions to determine compliance with the rules adopted under Subsection (a).

(c) The board may exempt a demolition or renovation project from the rules relating to demolition and renovation activities adopted under Subsection (a) if:

(1) the project has received an exemption from the United States Environmental Protection Agency exempting the project from federal regulations; or

(2) the board determines that:

(A) the project will use methods for the abatement or removal of asbestos that provide protection for the public health and safety at least equivalent to the protection provided by the procedures required under board rule for the abatement or removal of asbestos; and

(B) the project does not violate federal law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.454(a), eff. Sept. 1, 2003.

Sec. 1954.061. MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN SOLID WASTE FACILITIES. The board and the Texas Natural Resource Conservation Commission by rule shall adopt a joint memorandum of understanding regarding the inspection of solid waste facilities that receive asbestos.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.062. DISSEMINATION OF INFORMATION; EDUCATIONAL

PROGRAMS OR EXHIBITS. (a) The department may:

- (1) develop and distribute to the public information regarding asbestos;
- (2) conduct educational programs regarding asbestos; and
- (3) assemble or sponsor informational or educational exhibits regarding asbestos.

(b) The department may respond to a request for information or assistance relating to asbestos control and abatement from a federal facility or another facility not included within the scope of this chapter. The department may collect fees for those services in the manner provided by Subchapter D, Chapter 12, Health and Safety Code, for public health services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.063. COMPLAINTS; RAPID RESPONSE TASK FORCE. (a) The department shall investigate any complaint involving the control and abatement of asbestos.

(b) The department shall maintain a rapid response task force to investigate each complaint received by the department regarding:

- (1) possible health hazards to workers or the public; or
- (2) contamination of the environment.

(c) The rapid response task force shall investigate a complaint not later than 48 hours after the time of the complaint to the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER C. LICENSE AND REGISTRATION REQUIREMENTS**

Sec. 1954.101. LICENSE REQUIRED FOR CERTAIN ACTIVITIES. (a) Unless a person is licensed under this chapter, the person may not:

- (1) remove asbestos from or encapsulate or enclose asbestos in a public building or supervise that removal, encapsulation, or enclosure;
- (2) perform or supervise maintenance, repair, installation, renovation, or cleaning that dislodges, breaks, cuts, abrades, or impinges on asbestos materials in a public building;
- (3) perform an asbestos survey or inspection of a public building, including the sampling and assessment of exposure;



(4) provide plans, instructions, or schedules for the management of asbestos in a public building;

(5) provide monitoring services for airborne asbestos dust using:

(A) transmission electron microscopy;

(B) phase contrast microscopy; or

(C) another analytical method approved by the department;

(6) provide an analysis of:

(A) a bulk material sample for asbestos content or asbestos concentration; or

(B) an airborne sample using:

(i) transmission electron microscopy;

(ii) phase contrast microscopy;

(iii) polarized light microscopy;

(iv) scanning electron microscopy; or

(v) another analytical method approved by the department;

(7) design and prepare abatement project plans and specifications for asbestos abatement in a public building;

(8) handle an asbestos abatement contract on behalf of another person;

(9) transport an asbestos-containing material from a facility for disposal; or

(10) sponsor or certify an initial or refresher training course required for licensing or registration under this chapter.

(b) In accordance with a schedule established by board rules, a person may not sponsor or certify an asbestos training course required for licensing or registration under this chapter unless the person is licensed as a training sponsor.

(c) The department may waive the requirement for a license on receipt of notice of an emergency that results from a sudden unexpected event that is not a planned renovation or demolition.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.102. LICENSE CLASSIFICATIONS. (a) The board shall determine and specify the scope, purpose, eligibility, qualifications, and compliance requirements for each class of license

and any other license necessary for the board to carry out its duties under this chapter.

(b) A person must be licensed as:

(1) an asbestos abatement supervisor, if the person is an individual who:

(A) supervises the removal, encapsulation, or enclosure of asbestos; and

(B) is designated as the competent person, as that term is defined by 29 C.F.R. Section 1926.1101;

(2) an asbestos abatement contractor, if the person is designated as the contractor for a project:

(A) in which asbestos abatement, encapsulation, or enclosure will be conducted; and

(B) that is not designated as a small-scale, short-duration activity;

(3) an inspector, if the person is an individual who performs an asbestos survey of a facility;

(4) a management planner, if the person develops a management plan or an inspection or survey report;

(5) an air-monitoring technician, if the person is a technician who performs air monitoring for an asbestos abatement project or related activity;

(6) a consultant, if the person designs specifications for an asbestos abatement project;

(7) a transporter, if the person engages in the transportation of asbestos-containing materials from a facility in this state; or

(8) a training sponsor, if the person sponsors or certifies an asbestos training or refresher course.

(c) A laboratory may be licensed as an asbestos laboratory only if the laboratory:

(1) is accredited by the National Voluntary Laboratory and Analytical Proficiency Accreditation or is enrolled in the EPA Proficiency Analytical Testing rounds, as appropriate; or

(2) has similar qualifications as required by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.103. REGISTRATION REQUIRED FOR CERTAIN ACTIVITIES.

An individual must be registered as an asbestos abatement worker if the individual:

- (1) removes, encapsulates, encloses, loads, or unloads asbestos in the scope of employment; or
- (2) performs maintenance, repair, installation, renovation, or cleaning activities that may dislodge, break, cut, abrade, or impinge on asbestos-containing materials.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.104. RESILIENT FLOOR-COVERING MATERIAL. (a) For purposes of this section, "resilient floor-covering material" includes sheet vinyl flooring, resilient tile such as vinyl composition tile, asphalt tile, rubber tile, and associated adhesives.

(b) The licensing and registration requirements of this chapter do not apply to an activity that involves resilient floor-covering material if the removal of the material is performed consistently with:

- (1) work practices published by the resilient floor-covering industry; or
- (2) other methods determined by the commissioner to provide public health protection from asbestos exposure.

(c) A person who removes resilient floor-covering material must have completed a training course on the work practices described by Subsection (b) for a minimum of eight hours.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.455(a), eff. Sept. 1, 2003.

Sec. 1954.105. APPLICATION FOR LICENSE. (a) An applicant for a license to engage in asbestos abatement or in another asbestos-related activity for which a license is required under this chapter must:

- (1) submit an application to the department on a form prescribed by the department; and
- (2) pay to the department a nonrefundable application fee in the amount set by the board.

(b) An application for a license must be signed by the applicant and must include, as applicable:

- (1) the applicant's business name and address;
- (2) a written respiratory protection plan;
- (3) a list of the asbestos-related activities that the applicant has performed during the preceding 12 months; and
- (4) additional information the department requires.

(c) To be issued a license, an applicant must also provide to the department, as applicable:

(1) a certificate of good standing issued by the secretary of state, if the applicant is a corporation or other business entity;

(2) a certificate from the secretary of state authorizing the applicant to conduct business in this state, if the applicant is a foreign corporation;

(3) a state sales tax number; and

(4) a certificate of insurance, issued for the purpose of licensing under this chapter, that demonstrates:

(A) asbestos abatement liability coverage for an asbestos abatement contractor performing work for hire;

(B) professional liability insurance coverage for errors and omissions for a consultant, inspector, or asbestos laboratory performing work for hire;

(C) liability insurance to transport for hire asbestos-containing materials for purposes of disposal; and

(D) if workers' compensation insurance is required by the owner of the public building or by the specifications for the asbestos-related activity, either:

(i) proof of workers' compensation insurance issued by a company licensed to issue workers' compensation insurance in this state and written in this state on the Texas form; or

(ii) evidence of self-insurance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.106. ELIGIBILITY FOR LICENSE. (a) To qualify for a license under this chapter, an applicant must meet the requirements of this section and any other requirements established by the board, including asbestos-related education or experience requirements.

(b) A person engaged in removing, encapsulating, or enclosing

asbestos must demonstrate to the department that the person:

(1) completed in the preceding 12 months:

(A) a thorough and detailed training course on asbestos removal, encapsulation, and enclosure approved by the United States Environmental Protection Agency or the department; and

(B) a physical examination that meets the requirements stated in the asbestos regulations of the United States Environmental Protection Agency or the United States Occupational Safety and Health Administration;

(2) is capable of complying with all applicable standards of the department, the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other state or federal agency authorized to regulate activities affecting the control and abatement of asbestos; and

(3) has access to at least one appropriate disposal site for deposit of any asbestos waste the person generates during the term of the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.107. RESTRICTED LICENSE FOR CERTAIN APPLICANTS. (a) An individual may apply for a restricted license as an asbestos abatement supervisor without the experience the board by rule may require to be licensed as an asbestos abatement supervisor if the individual:

(1) is an employee of a building owner or manager; and

(2) meets all other qualifications or requirements for a license.

(b) The authority granted by a license issued under this section is restricted to supervising those practices and procedures described by 40 C.F. R. Part 763, Subpart E, Appendix B, relating to small-scale, short-duration operations, maintenance, and repair activities involving asbestos-containing materials, for buildings under the control of the license holder's employer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.108. APPLICATION FOR REGISTRATION OR RENEWAL; ELIGIBILITY. (a) An application for registration or the renewal of

registration as an asbestos abatement worker must be made on a form provided by the department. An application for registration must be accompanied by a nonrefundable fee set by the board in an amount not to exceed \$50.

(b) The board shall determine the criteria for registration or the renewal of registration as an asbestos abatement worker.

(c) A physical examination for an asbestos abatement worker must be conducted in accordance with the physical examination requirements described by Section 1954.106(b)(1)(B).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.109. EXAMINATIONS. The board may:

(1) require or authorize the use of standardized examinations for licensing or registration under this chapter; and

(2) set fees in amounts not to exceed \$200 for the administration of the examinations.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.110. EXAMINATION RESULTS. (a) The department shall notify each person who takes a licensing or registration examination under this chapter of the results of the examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a testing service, the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service.

(b) If the notice of the results of an examination graded or reviewed by a testing service will be delayed for more than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails a licensing or registration examination, the department shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.111. TERMS OF LICENSE OR REGISTRATION; NONASSIGNABILITY. (a) The terms of a license or registration are subject to amendment or modification by a rule adopted or order issued under this chapter.

(b) A license or registration may not be assigned to another person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.112. REPLACEMENT LICENSE. A license holder may request a replacement license certificate by completing an appropriate application.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER D. PROVISIONAL LICENSE OR REGISTRATION**

Sec. 1954.151. PROVISIONAL LICENSE OR REGISTRATION. (a) The department may grant a provisional license or registration to an applicant for a license or registration in this state who:

(1) has been licensed or registered in good standing to perform the relevant asbestos-related activity for at least two years in another jurisdiction, including a foreign country, that has licensing or registration requirements substantially equivalent to the requirements of this chapter;

(2) is currently licensed or registered in that jurisdiction;

(3) has passed a national or other examination recognized by the board relating to the relevant asbestos-related activity, if the board requires an examination under Section 1954.109 to obtain the license or registration required to perform that activity; and

(4) is sponsored by a person licensed under this chapter with whom the provisional license or registration holder will practice during the time the person holds the provisional license or registration.

(b) The department may waive the requirement of Subsection (a)(4) if the department determines that compliance with the requirement would be a hardship to the applicant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.152. TERM OF LICENSE OR REGISTRATION. A provisional license or registration is valid until the date the department approves or denies the provisional license or registration holder's application for a license or registration under Subchapter C.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.153. ELIGIBILITY FOR LICENSE OR REGISTRATION. The department shall issue a license or registration under Subchapter C to a provisional license or registration holder who is eligible to be licensed or registered under rules adopted under Section 1954.055 or who:

(1) passes the part of the examination under Section 1954.109 that relates to the applicant's knowledge and understanding of the laws and rules relating to the performance of the relevant asbestos-related activity in this state, if the board requires an examination under Section 1954.109 to obtain the license or registration required to perform that activity;

(2) meets the relevant academic and experience requirements for the license or registration, as verified by the department; and

(3) satisfies any other applicable license or registration requirement under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.154. DECISION ON APPLICATION. (a) The department shall approve or deny a provisional license or registration holder's application for a license or registration not later than the 180th day after the date the provisional license or registration is issued.

(b) The department may extend the 180-day period if the department has not received the results of an examination before the end of that period.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.



**SUBCHAPTER E. LICENSE OR REGISTRATION EXPIRATION AND RENEWAL**

Sec. 1954.201. ANNUAL LICENSE RENEWAL REQUIRED. (a) A license issued under this chapter expires on the first anniversary of its effective date, unless the license is renewed for a one-year term as provided by this subchapter. A person whose license has expired may not engage in an activity for which a license is required until the license is renewed.

(b) The board by rule may adopt a system under which licenses expire on various dates during the year. For a year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total renewal fee is payable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.202. NOTICE OF LICENSE EXPIRATION. At least one month before a license issued under this chapter expires, the department shall send by first-class mail to the license holder at the license holder's last known address a notice that states:

- (1) the date on which the license expires;
- (2) the date by which the renewal application must be received by the department for the renewal to be issued and mailed before the license expires; and
- (3) the amount of the renewal fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.203. PROCEDURE FOR LICENSE RENEWAL. (a) A person may renew an unexpired license for an additional one-year term if the person:

- (1) is otherwise entitled to be licensed;
- (2) submits to the department a renewal application on the form required by the department;
- (3) pays to the department a nonrefundable renewal fee in an amount not to exceed the amount of the application fee required under Section 1954.105(a);
- (4) has successfully completed:

- (A) the requirements for renewal; and
- (B) a current physical examination; and

(5) has complied with any final order resulting from a violation of this chapter.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including any examination requirements, for obtaining an original license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.204. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The department may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application.

(b) The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.205. TERM OF REGISTRATION; PROCEDURE FOR REGISTRATION RENEWAL. (a) The board shall set the term of registration of an asbestos abatement worker.

(b) The procedures provided by this subchapter for the renewal of a license apply to the renewal of an asbestos abatement worker registration.

(c) An asbestos abatement worker who is required to complete periodic retraining must submit evidence of that retraining with the worker's application for renewal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

**SUBCHAPTER F. PRACTICE BY HOLDER OF LICENSE OR REGISTRATION**

Sec. 1954.251. RECORDS. (a) A license holder shall keep an appropriate record of each asbestos-related activity the license holder performs in a public building. The record must include, as applicable:

(1) the name and address of each individual who supervised the asbestos-related activity;

(2) the location and a description of the project and the approximate amount of asbestos material that was removed or encapsulated;

(3) the date on which the asbestos-related activity began and the date on which it was completed;

(4) a summary of the procedures used to comply with all applicable standards;

(5) the name and address of each disposal site where the asbestos-containing waste was deposited; and

(6) any other information the department requires.

(b) The license holder shall keep the records required by this section for at least 30 years, or as long as required by federal law or regulation.

(c) The license holder shall make the records available to the department at any reasonable time.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.252. NOTICE OF ASBESTOS REMOVAL, ENCAPSULATION, OR ENCLOSURE. (a) A person engaged in removing asbestos from or encapsulating or enclosing asbestos in a public building shall notify the department in writing at least 10 days before the date the person begins the removal, encapsulation, or enclosure project according to applicable laws.

(b) Notwithstanding Subsection (a), a person may give the required notice orally if the removal, encapsulation, or enclosure project is of an emergency nature.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.253. SUPERVISION BY ASBESTOS ABATEMENT SUPERVISOR. The removal of asbestos from or the encapsulation or enclosure of asbestos in a public building must be supervised by an individual licensed as an asbestos abatement supervisor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.254. CONFLICT OF INTEREST FOR CERTAIN LICENSE HOLDERS. A person licensed under this chapter to perform asbestos inspections or surveys, write management plans, or design abatement specifications for an asbestos abatement project may also engage in the removal of asbestos from the building or facility at which an asbestos abatement project takes place only if the person is retained to remove the asbestos by a municipality.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.255. CONFLICT OF INTEREST FOR INDEPENDENT THIRD-PARTY MONITOR. (a) In this section, "independent third-party monitor" means a person retained to collect area air samples for analysis by and for the owner of the building or facility being abated.

(b) An independent third-party monitor may not be employed by the asbestos abatement contractor to analyze an area sample collected during the abatement project.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.256. APPROVAL OF ASBESTOS TRAINING; RECORD OF ATTENDEES. (a) The board shall adopt an asbestos training approval plan to approve the training required for a person to be licensed or registered under this chapter. In adopting the plan, the board shall adopt by reference the Model Accreditation Plan developed by the United States Environmental Protection Agency.

(b) The board may establish other requirements or change the number, design, or content of the plan adopted under Subsection (a) as the board determines desirable, provided that the plan is at least as comprehensive and stringent as the Model Accreditation Plan.

(c) A licensed training sponsor may sponsor an asbestos

training course only if the course is approved by the department for that purpose.

(d) A licensed training sponsor shall provide to the department in accordance with board rules a record of the persons who attend an asbestos training course for licensing or registration under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.257. DUTIES REGARDING EMPLOYEE OR AGENT. A person engaged in an asbestos-related activity shall ensure that each employee or agent who will come in contact with asbestos or who will be responsible for the activity:

(1) is familiar with federal, state, and local standards for asbestos removal, encapsulation, and enclosure;

(2) has completed the applicable training course relating to asbestos control and abatement developed and approved by the United States Environmental Protection Agency or the department under Section 1954.256; and

(3) is supplied with approved equipment in good working order for the protection of the person, the public, and the environment.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.258. COMPLIANCE WITH BOARD STANDARDS NOT A DEFENSE TO CIVIL LIABILITY. Compliance with any minimum standards adopted by the board under this chapter does not constitute a defense to a civil action for damages arising from a work activity affecting asbestos.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.259. SURVEY REQUIRED. (a) In this section, "permit" means a license, certificate, approval, registration, consent, permit, or other form of authorization that a person is required by law, rule, regulation, order, or ordinance to obtain to perform an action, or to initiate, continue, or complete a project, for which the authorization is sought.

(b) A municipality that requires a person to obtain a permit before renovating or demolishing a public or commercial building may not issue the permit unless the applicant provides:

(1) evidence acceptable to the municipality that an asbestos survey, as required by this chapter, of all parts of the building affected by the planned renovation or demolition has been completed by a person licensed under this chapter to perform a survey; or

(2) a certification from a licensed engineer or registered architect, stating that:

(A) the engineer or architect has reviewed the material safety data sheets for the materials used in the original construction, the subsequent renovations or alterations of all parts of the building affected by the planned renovation or demolition, and any asbestos surveys of the building previously conducted in accordance with this chapter; and

(B) in the engineer's or architect's professional opinion, all parts of the building affected by the planned renovation or demolition do not contain asbestos.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.456(a), eff. Sept. 1, 2003.

Sec. 1954.260. DURATION OF ASBESTOS SURVEY. An asbestos survey performed for a public building as required by this chapter and any other law is valid if the survey was performed in compliance with the laws in effect at the time the survey was completed and the survey identifies any asbestos-containing building material, the location of that material, and any other asbestos condition in the building. Any renovation, construction, or other activity for which an asbestos survey is required shall be conducted without the requirement of obtaining a new asbestos survey if a valid asbestos survey exists.

Acts 2003, 78th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 2003.

#### **SUBCHAPTER G. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES**

Sec. 1954.301. DISCIPLINARY POWERS OF DEPARTMENT. (a) If an act or omission of a person licensed under this chapter constitutes grounds prescribed for disciplinary action under Section 1954.302,

the department, after providing the person with notice and an opportunity for a hearing, shall:

- (1) revoke or suspend the person's license;
- (2) suspend the license on an emergency basis;
- (3) modify the license; or
- (4) reprimand the person.

(b) If an act or omission of a person registered under this chapter constitutes grounds for disciplinary action under Section 1954.303, the department, after providing the person with notice and an opportunity for a hearing, shall:

- (1) refuse to renew the person's registration;
- (2) revoke or suspend the registration;
- (3) suspend the registration on an emergency basis; or
- (4) reprimand the person.

(c) After providing the sponsor of an asbestos training course with notice and an opportunity for a hearing, the department may:

- (1) revoke or suspend the approval of the course; or
- (2) suspend the approval of the course on an emergency

basis.

(d) The department may place on probation a person whose license or registration is suspended. If a suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

- (2) limit practice to the areas prescribed by the board;

or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.302. GROUNDS FOR DISCIPLINE OF LICENSE HOLDER. The board by rule shall adopt the criteria for the department to take disciplinary action against a license holder under Section 1954.301. At a minimum, the criteria must require disciplinary action against a license holder who:

(1) commits fraud or deception in obtaining or attempting to obtain a license or a contract to perform an asbestos-related

activity;

- (2) fails at any time to meet the qualifications for a license;
- (3) violates a rule adopted under this chapter;
- (4) violates an applicable federal or state standard for asbestos-related activities; or
- (5) falsifies or fails to maintain a record of an asbestos-related activity required by a federal agency or by the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.303. GROUNDS FOR DISCIPLINE OF REGISTERED PERSON.

The department shall take disciplinary action under Section 1954.301 against a person registered under this chapter who:

- (1) fraudulently or deceptively assigns, obtains, or attempts to assign or obtain a registration or the renewal of a registration; or

- (2) violates:

- (A) a federal, state, or local asbestos law or rule;

or

- (B) an order issued by the board or department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.304. ACTION BASED ON COMPLAINTS AGAINST ASBESTOS ABATEMENT SUPERVISOR. (a) If the department receives three validated complaints against an asbestos abatement supervisor regarding noncompliance with this chapter, the department shall:

- (1) revoke the supervisor's license; and

- (2) issue to the supervisor a registration.

(b) A registration issued under this section expires six months from the date of issuance. The asbestos abatement supervisor may reapply for a license after the registration expires.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.305. PROCEDURE FOR EMERGENCY SUSPENSION. (a) The suspension on an emergency basis of a license or registration or of



the approval of an asbestos training course is effective immediately.

(b) The department shall provide to the person whose license, registration, or asbestos training course approval is suspended on an emergency basis an opportunity for a hearing not later than the 20th day after the date of the suspension.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.306. ADMINISTRATIVE PROCEDURE. A notice and hearing required under this subchapter and judicial review of a final administrative decision issued under this subchapter are governed by Chapter 2001, Government Code, and the board rules for contested case hearings.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.307. REAPPLICATION FOLLOWING LICENSE REVOCATION OR SUSPENSION. A person whose license is revoked or suspended may not reapply for a license until after the period stated in a schedule established by board rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER H. ADMINISTRATIVE PENALTY**

Sec. 1954.351. IMPOSITION OF ADMINISTRATIVE PENALTY. The commissioner may impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.352. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of imposing a penalty.

(b) In determining the amount of the penalty, the commissioner shall consider:

- (1) the seriousness of the violation;
- (2) any hazard created to the health and safety of the public;
- (3) the person's history of previous violations; and
- (4) any other matter that justice may require.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.353. OPPORTUNITY FOR HEARING; ORDER. (a) The commissioner may impose an administrative penalty under this subchapter only after the person charged with a violation is given the opportunity for a hearing.

(b) If a hearing is held, the commissioner shall make findings of fact and issue a written decision as to:

- (1) the occurrence of the violation; and
- (2) the amount of any penalty that is warranted.

(c) If the person charged with a violation fails to exercise the opportunity for a hearing, the commissioner, after determining that a violation occurred and the amount of the penalty that is warranted, may impose a penalty and shall issue an order requiring the person to pay any penalty imposed.

(d) Not later than the 30th day after the date an order is issued after determining that a violation occurred, the commissioner shall inform the person charged with the violation of the amount of any penalty imposed.

(e) The commissioner may consolidate a hearing under this section with another proceeding.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.354. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the commissioner's decision or order becomes final as provided by Section 2001.144, Government Code, the person shall:

- (1) pay the administrative penalty; or
- (2) file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(2) may stay enforcement of the penalty by:

(1) paying the penalty to the commissioner for placement in an escrow account; or

(2) giving the commissioner a bond in a form approved by the commissioner that:

(A) is for the amount of the penalty; and

(B) is effective until judicial review of the commissioner's decision or order is final.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.355. COLLECTION OF PENALTY. At the request of the commissioner, the attorney general may bring a civil action to recover an administrative penalty imposed under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.356. JUDICIAL REVIEW. Judicial review of a decision or order of the commissioner imposing a penalty under this subchapter is instituted by filing a petition with a district court in Travis County and is under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.357. REMITTANCE OF PENALTY AND INTEREST OR RELEASE OF BOND. If after judicial review the administrative penalty is reduced or is not upheld by the court, the commissioner shall:

(1) remit the appropriate amount, plus accrued interest, to the person not later than the 30th day after the date of the determination, if the person paid the penalty; or

(2) execute a release of the bond, if the person gave a bond.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER I. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 1954.401. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The

commissioner may request the attorney general or the district, county, or city attorney having jurisdiction to bring a civil suit for injunctive relief, the assessment and recovery of a civil penalty, or both, against a person who:

(1) appears to have violated, is violating, or is threatening to violate this chapter or a rule adopted or order issued under this chapter; or

(2) owns a public building or is the owner's agent and has contracted with or otherwise permitted a person who is not licensed or registered under this chapter to perform in the building an activity for which a license or registration is required.

(b) A civil penalty may not exceed \$10,000 a day for each violation. Each day a violation occurs or continues to occur is a separate violation for purposes of imposing a penalty.

(c) In determining the amount of a civil penalty, the court shall consider:

(1) the seriousness of the violation;

(2) any hazard created to the health and safety of the public;

(3) the person's history of previous violations; and

(4) the demonstrated good faith of the person charged with the violation.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the state treasury. A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.402. CRIMINAL PENALTY. (a) A person required to be licensed under this chapter commits an offense if the person:

(1) removes asbestos from a public building or encapsulates the asbestos without a license after having been previously assessed a civil or administrative penalty for removing or encapsulating asbestos without a license; or

(2) fails to keep records as required by Section 1954.251 after having been previously assessed a civil or administrative penalty for failing to keep records.

(b) An offense under this section is a misdemeanor punishable

by a fine not to exceed \$20,000, unless the defendant has been previously convicted under this section, in which event the offense is punishable by:

- (1) a fine not to exceed \$25,000;
- (2) confinement in jail for not more than two years; or
- (3) both the fine and confinement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

## **CHAPTER 1955. LEAD-BASED PAINT ABATEMENT**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1955.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Child-occupied facility" means a building or part of a building constructed before 1978, including a day-care center, preschool, or kindergarten classroom, that is visited regularly by the same child, six years of age or younger, at least two days in any calendar week if the visits are for at least:
  - (A) three hours each day; and
  - (B) 60 hours each year.
- (3) "Department" means the Texas Department of Health.
- (4) "Federal law and rules" means:
  - (A) Title IV, Toxic Substances Control Act (15 U.S.C. Section 2681 et seq.), and the rules adopted by the United States Environmental Protection Agency under that law for authorization of state programs;
  - (B) any regulations or requirements adopted by the United States Department of Housing and Urban Development regarding eligibility for grants to states and local governments; and
  - (C) any other requirements adopted by a federal agency with jurisdiction over lead hazards.
- (5) "Lead-based paint activity" means inspection, testing, risk assessment, risk reduction, lead abatement project design or planning, abatement or removal, or creation of lead-based paint hazards.
- (6) "Person" means an individual, corporation, company, contractor, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of individuals.

(7) "Target housing" means any housing constructed before 1978, other than:

(A) housing for the elderly or persons with disabilities, unless a child six years of age or younger resides or is expected to reside in the housing; or

(B) a dwelling without bedrooms.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.002. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a certified or accredited person except to prohibit false, misleading, or deceptive practices.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the use of a certified or accredited person's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the certified or accredited person; or

(4) restricts the certified or accredited person's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

#### **SUBCHAPTER B. CERTIFICATION AND ACCREDITATION**

Sec. 1955.051. CERTIFICATION AND ACCREDITATION PROGRAM. (a) The department shall establish a program in compliance with federal law and rules for:

(1) certification of a person involved in a lead-based paint activity in target housing or in a child-occupied facility; and

(2) accreditation of a training provider.

(b) The program may not exceed the minimum requirements of federal law and rules for authorization of a state program and receipt of federal funding by a state or local government.

(c) The department shall make any changes to the program that are:

(1) consistent with this chapter; and

(2) necessary to comply with federal law and rules.

(d) Rules adopted under this section must:

(1) set minimum training requirements for use by accredited training providers;

(2) set standards for the reliability, effectiveness, and safety of lead-based paint activities in target housing;

(3) set standards for accrediting training providers;

(4) require the use of certified and accredited personnel in a lead-based paint activity in target housing or in a child-occupied facility;

(5) be revised as necessary to:

(A) comply with federal law and rules; and

(B) maintain eligibility for federal funding;

(6) facilitate reciprocity and communication with other states having a certification and accreditation program;

(7) provide for the revocation of the certification or accreditation of a person certified or accredited by the department; and

(8) provide for financial assurance for a person certified or accredited by the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.052. CERTIFICATION REQUIREMENT. (a) The board by rule may require a person involved in a lead-based paint activity in target housing or a public area that the department determines creates a public health hazard to be certified. The department shall delay implementation of the certification requirement for six months after the date the rule is adopted.

(b) A rule adopted under this section must be consistent with federal law and rules.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.053. FEES. The department may impose a fee to cover the cost of administering the program.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.054. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes any certification or accreditation examination under this chapter, the department shall notify the person of the examination results. If an examination is graded or reviewed by a testing service, the department shall notify the person of the examination results not later than the 14th day after the date the department receives the results from the testing service.

(b) If notice of the results of an examination graded or reviewed by a testing service will be delayed for more than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the person's examination results.

(d) If requested in writing by a person who fails an examination, the department shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.055. CERTIFICATION OR ACCREDITATION EXPIRATION. (a) The board by rule may adopt a system under which certifications or accreditations expire on various dates during the year. For the year in which the expiration date is changed, the department shall prorate certification or accreditation fees on a monthly basis so that each certified or accredited person pays only that portion of the certification or accreditation fee that is allocable to the number of months during which the certification or accreditation is valid. On renewal of the certification or accreditation on the new expiration date, the total certification or accreditation renewal fee is payable.

(b) A person whose certification or accreditation has expired may not engage in activities that require certification or accreditation until the certification or accreditation has been renewed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.056. NOTICE OF EXPIRATION. Not later than the 30th



day before the expiration date of a person's certification or accreditation, the department shall send written notice of the impending expiration to the person at the person's last known address according to department records.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.057. CERTIFICATION OR ACCREDITATION RENEWAL. (a) A person who is otherwise eligible to renew a certification or accreditation may renew an unexpired certification or accreditation by paying the required renewal fee to the department before the expiration date of the certification or accreditation.

(b) A person whose certification or accreditation has been expired for 90 days or less may renew the certification or accreditation by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose certification or accreditation has been expired for more than 90 days but less than one year may renew the certification or accreditation by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose certification or accreditation has been expired for one year or more may not renew the certification or accreditation. The person may be recertified or reaccredited by complying with the requirements and procedures, including any examination requirements, for obtaining an original certification or accreditation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.058. RENEWAL BY OUT-OF-STATE PRACTITIONER. (a) The department may renew without reexamination an expired certification or accreditation of a person who was certified or accredited in this state, moved to another state, and is currently certified or accredited and has been in practice in the other state for the two years preceding the date the person applies for renewal.

(b) The person must pay to the department a fee that is equal to two times the normally required renewal fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

**SUBCHAPTER C. PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 1955.101. DISCIPLINARY ACTION BY DEPARTMENT. The department shall revoke, suspend, or refuse to renew a certification or accreditation or shall reprimand a certified or accredited person for a violation of this chapter or a board rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.102. PROBATION. (a) The board may place on probation a person whose certification or accreditation is suspended.

(b) The board may require a person whose certification or accreditation suspension is probated to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board;

or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.103. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a person who violates this chapter or a rule adopted under this chapter. The amount of the penalty may not exceed \$5,000 for each day of the violation.

(b) The board shall adopt rules relating to the imposition and collection of an administrative penalty.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.104. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted or certification issued under this chapter, the state may bring an action in the manner prescribed by Section 7.105(a), Water Code, for injunctive relief, to

recover a civil penalty, or for both injunctive relief and a civil penalty.

(b) Venue for an action brought under this section is in the county prescribed by Section 7.105(c), Water Code.

(c) The amount of a civil penalty imposed under this section may not exceed:

- (1) \$2,000 for the first violation; or
- (2) \$10,000 for a subsequent violation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.105. CRIMINAL PENALTY. (a) A person commits an offense if:

- (1) the person knowingly violates this chapter or a rule adopted or certification issued under this chapter; and
- (2) the violation endangers the public health and safety.

(b) An offense under this section is a misdemeanor punishable by:

- (1) a fine not to exceed \$10,000;
- (2) confinement for a term not to exceed six months; or
- (3) both the fine and the confinement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

## **CHAPTER 1956. METAL RECYCLING ENTITIES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1956.001. DEFINITIONS. In this chapter:

(1) "Aluminum material" means a product made from aluminum, an aluminum alloy, or an aluminum by-product. The term includes aluminum wiring and an aluminum beer keg but does not include another type of aluminum can used to contain a food or beverage.

(2) "Bronze material" means:

(A) a cemetery vase, receptacle, or memorial made from bronze;

(B) bronze statuary; or

(C) material readily identifiable as bronze, including bronze wiring.

(3) "Commission" means the Public Safety Commission.

(4) "Copper or brass material" means:

(A) insulated or noninsulated copper wire or cable of the type used by a public utility or common carrier that contains copper or an alloy of copper or zinc;

(B) a copper or brass item of a type commonly used in construction or by a public utility; or

(C) copper pipe or copper tubing.

(5) "Department" means the Texas Department of Public Safety.

(6) "Director" means the public safety director.

(7) "Metal recycling entity" means a business that is operated from a fixed location and is predominantly engaged in:

(A) performing the manufacturing process by which scrap, used, or obsolete ferrous or nonferrous metal is converted into raw material products consisting of prepared grades and having an existing or potential economic value, by a method that in part requires the use of powered tools and equipment, including processes that involve processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form of that metal;

(B) the use of raw material products described under Paragraph (A) in the manufacture of producer or consumer goods; or

(C) purchasing or otherwise acquiring scrap, used, or obsolete ferrous or nonferrous metals for the eventual use of the metal for the purposes described by Paragraph (A) or (B).

(8) "Personal identification document" means:

(A) a valid driver's license issued by a state in the United States;

(B) a United States military identification card; or

(C) a personal identification certificate issued by the department under Section 521.101, Transportation Code, or a corresponding card or certificate issued by another state.

(9) "Regulated material" means:

(A) aluminum material;

(B) bronze material;

(C) copper or brass material; or

(D) regulated metal.

(10) "Regulated metal" means:

(A) manhole covers;

(B) guardrails;

(C) metal cylinders designed to contain compressed air,

oxygen, gases, or liquids;

(D) beer kegs made from metal other than aluminum;

(E) historical markers or cemetery vases, receptacles, or memorials made from metal other than aluminum;

(F) unused rebar;

(G) street signs;

(H) drain gates;

(I) safes;

(J) communication, transmission, and service wire or cable;

(K) condensing or evaporator coils for central heating or air conditioning units;

(L) utility structures, including the fixtures and hardware;

(M) aluminum or stainless steel containers designed to hold propane for fueling forklifts;

(N) metal railroad equipment, including tie plates, signal houses, control boxes, signs, signals, traffic devices, traffic control devices, traffic control signals, switch plates, e-clips, and rail tie functions;

(O) catalytic converters not attached to a vehicle;

(P) fire hydrants;

(Q) metal bleachers or other seating facilities used in recreational areas or sporting arenas;

(R) any metal item clearly and conspicuously marked with any form of the name, initials, or logo of a governmental entity, utility, cemetery, or railroad;

(S) insulated utility, communications, or electrical wire that has been burned in whole or in part to remove the insulation;

(T) backflow valves; and

(U) metal in the form of commonly recognized products of the industrial metals recycling process, including bales, briquettes, billets, sows, ingots, pucks, and chopped or shredded metals.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. [1154](#)), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 1, eff. September 1, 2011.

Sec. 1956.002. EXCEPTION. This chapter does not apply to:

(1) a purchase of regulated material from a public utility or a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of the seller's business;

(2) a purchase of regulated material by a manufacturer whose primary business is the manufacture of iron and steel products made from melting scrap iron and scrap steel; or

(3) the transport or hauling of recyclable materials to or from the metal recycling entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Sec. 1956.003. LOCAL LAW; CRIMINAL PENALTY. (a) A county, municipality, or political subdivision of this state may adopt a rule, charter, or ordinance or issue an order or impose standards that are more stringent than but do not conflict with this chapter or rules adopted under this chapter.

(a-1) A county, municipality, or other political subdivision may require the record of purchase described under Section 1956.033 to contain a clear and legible thumbprint of a seller of regulated material.

(a-2) A county, municipality, or other political subdivision that, as authorized under Subsection (a), requires a metal recycling entity to report to the county, municipality, or political subdivision information relating to a sale of regulated material shall:

(1) include in any contract entered into by the county, municipality, or political subdivision relating to the reporting of the information a provision that:

(A) requires any contractor, subcontractor, or third party that has access to, comes into possession of, or otherwise

obtains information relating to a sale of regulated material to maintain the confidentiality of all information received, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased; and

(B) allows the county, municipality, or political subdivision to terminate the contract of any contractor, subcontractor, or third party that violates the confidentiality provision required by Paragraph (A); and

(2) investigate a complaint alleging that a contractor, subcontractor, or third party has failed to maintain the confidentiality of information relating to a sale of regulated material.

(b) A county, municipality, or political subdivision of this state may issue a license or permit to a business to allow the business to act as a metal recycling entity in that county or municipality and may impose a fee not to exceed \$250 for the issuance or renewal of the license or permit.

(c) A county, municipality, or political subdivision of this state that issues a license or permit to a business as authorized under Subsection (b) shall submit to the department in the manner required by the department information on each business that is issued a license or permit.

(d) A municipality or political subdivision of this state, other than a county, may not increase the local license or permit fee imposed on a metal recycling facility unless the increase is approved by the local governing body. A request for an increase in the local license or permit fee must be based on the costs associated with law enforcement and administration of the licensing or permitting program. The municipality or political subdivision must submit a report to the department on the law enforcement and administrative costs associated with the fee increase.

(e) A county may increase the local license or permit fee imposed on a metal recycling facility one additional time before the second anniversary of the date of the initial fee increase. The fee increase must be based on the average cost charged by municipalities statewide.

(f) A person commits an offense if the person owns or operates a metal recycling entity and does not hold a license or permit required by a county, municipality, or other political subdivision as authorized under Subsection (b). An offense under this subsection is

a Class B misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted under this subsection, in which event the offense is a Class A misdemeanor.

(g) Notwithstanding any other law, a county, municipality, or other political subdivision must provide a minimum 30-day notice followed by a public hearing prior to enacting a prohibition on the sale or use of a recyclable product.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 3, eff. March 1, 2012.

Sec. 1956.004. CIVIL PENALTY. (a) A person who owns or operates a metal recycling entity and does not hold a license or permit required by a county, municipality, or other political subdivision as authorized under Section 1956.003(b) is subject to a civil penalty of not more than \$1,000 for each violation. In determining the amount of the civil penalty, the court shall consider:

- (1) any other violations by the person; and
- (2) the amount necessary to deter future violations.

(b) A district attorney, county attorney, or municipal attorney may institute an action to collect the civil penalty provided by this section.

(c) Each day a violation occurs or continues to occur is a separate violation.

(d) The district attorney, county attorney, or municipal attorney may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 4,



eff. March 1, 2012.

#### **SUBCHAPTER A-1. POWERS AND DUTIES**

Sec. 1956.011. ADMINISTRATION OF CHAPTER. The department shall administer this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Sec. 1956.012. DEPARTMENT STAFF. The department may employ administrative and clerical staff as necessary to carry out this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Sec. 1956.013. RULES. The commission may adopt rules to administer this chapter, including rules:

- (1) establishing minimum requirements for registration under this chapter; and
- (2) adopting forms required by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Sec. 1956.014. FEES; REPORTS. (a) The commission by rule shall prescribe fees in reasonable amounts sufficient to cover the costs of administering this chapter, including fees for:

- (1) an initial application for a certificate of registration;
- (2) issuance of a certificate of registration;
- (3) issuance of a renewal certificate of registration; and
- (4) issuance of a duplicate certificate of registration or duplicate renewal certificate of registration.

(b) The commission may not impose a fee for issuance of a certificate of registration that exceeds \$250 annually. The department shall report annually to the legislature, not later than

December 1, any costs associated with administering this chapter that are not covered by the fees assessed under this chapter.

(c) The department annually shall submit to both houses of the legislature a report on the number of metal recycling entities who have complied with the registration requirements under this chapter and the total number of metal recycling entities identified statewide. The report must include the information on metal recycling entities submitted to the department by municipalities, counties, and other political subdivisions of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. [1154](#)), Sec. 2, eff. September 1, 2007.

Sec. 1956.015. STATEWIDE ELECTRONIC REPORTING SYSTEM. (a) The department shall establish a statewide electronic reporting system to track the sales of regulated metal reported to the department under Section 1956.036.

(b) The department shall post a summary of the reports provided to the department under Section 1956.036 on the department's Internet website. The summary must include by county or region the frequency with which a person presents regulated materials for sale to a metal recycling entity. The summary may not identify any person to which the metal recycling entity sells the regulated materials.

(c) Subsection (b) does not apply to regulated material sold by a utility company, municipality, manufacturer, railroad, cemetery, cable or satellite entity, or other business entity that routinely has access to regulated metal.

(d) Information provided under this section is not subject to disclosure under Chapter 552, Government Code. The department may use information provided under this section for law enforcement purposes. Except as provided by this subsection, the department shall maintain the confidentiality of all information provided under this section, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased.

(e) The department may enter into contracts relating to the operation of the statewide electronic reporting system established by this section. A contract under this subsection must:

(1) require that any contractor, subcontractor, or third

party that has access to, comes into possession of, or otherwise obtains information provided under this section maintain the confidentiality of all information provided under this section, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased; and

(2) provide that the department may terminate the contract of any contractor, subcontractor, or third party that violates the confidentiality provision required by Subdivision (1).

(f) The department shall investigate a complaint alleging that a contractor, subcontractor, or third party has failed to maintain the confidentiality of information relating to a sale of regulated material.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 5, eff. September 1, 2011.

Sec. 1956.016. REGISTRATION DATABASE. The department shall make available on its Internet website a publicly accessible list of all registered metal recycling entities. The list must contain the following for each registered metal recycling entity:

- (1) the entity's name;
- (2) the entity's physical address; and
- (3) the name of and contact information for a representative of the entity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 6, eff. September 1, 2011.

Sec. 1956.017. ADVISORY COMMITTEE. (a) The department shall establish an advisory committee to advise the department on matters related to the department's regulation of metal recycling entities under this chapter.

(b) The advisory committee consists of 12 members appointed by the director as follows:

- (1) one representative of the department;

(2) two representatives of local law enforcement agencies located in different municipalities, each with a population of 500,000 or more;

(3) two representatives of local law enforcement agencies located in different municipalities, each with a population of 200,000 or more but less than 500,000;

(4) one representative of a local law enforcement agency located in a municipality with a population of less than 200,000;

(5) four representatives of metal recycling entities; and

(6) two members who represent industries that are impacted by theft of regulated material.

(c) The director shall ensure that the members of the advisory committee reflect the diverse geographic regions of this state.

(d) The advisory committee shall elect a presiding officer from among its members to serve a two-year term. A member may serve more than one term as presiding officer.

(e) The advisory committee shall meet annually and at the call of the presiding officer or the director.

(f) An advisory committee member is not entitled to compensation or reimbursement of expenses.

(g) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee or to the appointment of the committee's presiding officer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 6, eff. September 1, 2011.

#### **SUBCHAPTER A-2. CERTIFICATE OF REGISTRATION**

Sec. 1956.021. REGISTRATION REQUIRED. A person may not act as a metal recycling entity or represent to the public that the person is a metal recycling entity unless the person is registered under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Sec. 1956.022. ISSUANCE OF CERTIFICATE; QUALIFICATIONS. (a) The department shall issue a certificate of registration to an applicant who:

- (1) applies and pays a registration fee; and
- (2) presents any relevant evidence relating to the applicant's qualifications as required by commission rule.

(b) The commission by rule may establish qualifications for the holder of a certificate of registration under this chapter, which may include accepting copies of a license or permit issued by a county or municipality authorizing a metal recycling entity to conduct business in that county or municipality.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Sec. 1956.023. TERM OF CERTIFICATE. (a) A certificate of registration is valid for two years after the date of issuance.

(b) The department shall adopt a system under which certificates of registration expire and are renewed on various dates.

(c) Not later than the 45th day before the date a person's certificate of registration is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

(d) A person whose certificate of registration has expired may not make a representation for which a certificate of registration is required under Section 1956.021 or perform collections services until the certificate has been renewed.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Sec. 1956.024. RENEWAL OF CERTIFICATE. (a) To renew a certificate of registration, a person must submit an application for renewal in the manner prescribed by the department.

(b) A person who is otherwise eligible to renew a certificate of registration may renew an unexpired certificate by paying the required renewal fee to the department before the expiration date of the certificate.

(c) A person whose certificate of registration has been expired for 90 days or less may renew the certificate by paying to the department a renewal fee that is equal to 1-1/2 times the normally

required renewal fee.

(d) A person whose certificate of registration has been expired for more than 90 days but less than one year may renew the certificate by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(e) A person whose certificate of registration has been expired for one year or more may not renew the certificate. The person may obtain a new certificate of registration by complying with the requirements and procedures, including the examination requirements, for an original certificate.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

### **SUBCHAPTER A-3. PRACTICE BY CERTIFICATE HOLDERS**

Sec. 1956.031. NOTICE TO SELLERS. (a) A metal recycling entity shall at all times maintain in a prominent place in the entity's place of business, in open view to a seller of regulated material, a notice in two-inch lettering that:

(1) includes the following language:

"A PERSON ATTEMPTING TO SELL ANY REGULATED MATERIAL MUST PRESENT SUFFICIENT IDENTIFICATION AND WRITTEN PROOF OF OWNERSHIP REQUIRED BY STATE LAW."

"WARNING: STATE LAW PROVIDES A CRIMINAL PENALTY FOR A PERSON WHO INTENTIONALLY PROVIDES A FALSE DOCUMENT OF IDENTIFICATION OR OTHER FALSE INFORMATION TO A METAL RECYCLING ENTITY WHILE ATTEMPTING TO SELL ANY REGULATED MATERIAL."; and

(2) states the metal recycling entity's usual business hours.

(b) The notice required by this section may be contained on a sign that contains another notice if the metal recycling entity is required to display another notice under applicable law.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Sec. 1956.032. INFORMATION REGARDING SELLER. (a) Except as provided by Subsection (f), a person attempting to sell regulated material to a metal recycling entity shall:

(1) display to the metal recycling entity the person's personal identification document;

(2) provide to the metal recycling entity the make, model, color, and license plate number of the motor vehicle used to transport the regulated material and the name of the state issuing the license plate;

(3) either:

(A) present written documentation evidencing that the person is the legal owner or is lawfully entitled to sell the regulated material; or

(B) sign a written statement provided by the metal recycling entity that the person is the legal owner of or is lawfully entitled to sell the regulated material offered for sale;

(4) if the regulated material includes condensing or evaporator coils for central heating or air conditioning units, display to the metal recycling entity:

(A) the person's air conditioning and refrigeration contractor license issued under Subchapter F or G, Chapter 1302;

(B) the person's air conditioning and refrigeration technician registration issued under Subchapter K, Chapter 1302;

(C) a receipt, bill of sale, or other documentation showing that the seller purchased the coils the seller is attempting to sell; or

(D) a receipt, bill of sale, or other documentation showing that the seller has purchased a replacement central heating or air conditioning unit; and

(5) if the regulated material includes insulated communications wire that has been burned wholly or partly to remove the insulation, display to the metal recycling entity documentation acceptable under the rules adopted under Subsection (h) that states that the material was salvaged from a fire.

(b) A person required by a municipality to prepare a signed statement consisting of the information required by Subsection (a)(3) may use the statement required by the municipality to comply with Subsection (a)(3).

(c) The metal recycling entity or the entity's agent shall visually verify the accuracy of the identification presented by the seller at the time of the purchase of regulated material and make a copy of the identification to be maintained by the entity in the entity's records, except as otherwise provided by Subsection (f).

(d) The metal recycling entity or the entity's agent for recordkeeping purposes may photograph the seller's entire face, not including any hat, and obtain the name of the seller's employer.

(e) The metal recycling entity or the entity's agent for recordkeeping purposes may take a photograph of the motor vehicle of the seller in which the make, model, and license plate number of the motor vehicle are identifiable in lieu of the information required under Subsection (a)(3).

(f) The metal recycling entity is not required to make a copy of the identification as required under Subsection (c) or collect the information required under Subsection (a)(3) if:

(1) the seller signs the written statement as required under Subsection (a)(3);

(2) the seller has previously provided the information required under Subsection (a); and

(3) the previously provided information has not changed.

(g) Notwithstanding Section 1956.002, the metal recycling entity shall verify the registration of a person attempting to sell regulated material who represents that the person is a metal recycling entity as follows:

(1) by using the database described by Section 1956.016; or

(2) by obtaining from the person a copy of the person's certificate of registration issued under Section 1956.022 in addition to the information required under Subsection (a).

(h) The commission shall adopt rules establishing the type of documentation that a seller of insulated communications wire described by Subsection (a)(5) must provide to a metal recycling entity to establish that the wire was salvaged from a fire.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. [1154](#)), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. [694](#)), Sec. 7, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. [694](#)), Sec. 8, eff. September 1, 2011.

Sec. 1956.033. RECORD OF PURCHASE. (a) Each metal recycling entity in this state shall keep an accurate electronic record or an



accurate and legible written record of each purchase of regulated material made in the course of the entity's business from an individual.

(b) The record must be in English and include:

(1) the place and date of the purchase;

(2) the name and address of the seller in possession of the regulated material purchased;

(3) the identifying number of the seller's personal identification document;

(4) a description made in accordance with the custom of the trade of the commodity type and quantity of regulated material purchased;

(5) the information required by Sections 1956.032(a)(2) and (3);

(6) as applicable:

(A) the identifying number of the seller's air conditioning and refrigeration contractor license displayed under Section 1956.032(a)(4)(A);

(B) a copy of the seller's air conditioning and refrigeration technician registration displayed under Section 1956.032(a)(4)(B);

(C) a copy of the documentation described by Section 1956.032(a)(4)(C); or

(D) a copy of the documentation described by Section 1956.032(a)(4)(D);

(7) if applicable, a copy of the documentation described by Section 1956.032(a)(5); and

(8) a copy of the documentation described by Section 1956.032(g).

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. [1154](#)), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. [694](#)), Sec. 9, eff. September 1, 2011.

Sec. 1956.0331. PHOTOGRAPH OR RECORDING REQUIREMENT FOR REGULATED METAL TRANSACTION. (a) In addition to the requirements of Sections 1956.032 and 1956.033, for each purchase by a metal

recycling entity of an item of regulated metal, the entity shall obtain a digital photograph or video recording that accurately depicts the seller's entire face and each type of regulated metal purchased.

(b) A metal recycling entity shall preserve a photograph or recording required under Subsection (a) as follows:

(1) for a video recording, until the 91st day after the date of the transaction; and

(2) for a digital photograph, until the 181st day after the date of the transaction.

(c) The photograph or recording must be made available for inspection as provided by Section 1956.035 not later than 72 hours after the time of purchase.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 10, eff. September 1, 2011.

Sec. 1956.034. PRESERVATION OF RECORDS. A metal recycling entity shall preserve each record required by Sections 1956.032 and 1956.033 until the second anniversary of the date the record was made. The records must be kept in an easily retrievable format and must be available for inspection as provided by Section 1956.035 not later than 72 hours after the time of purchase.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 11, eff. September 1, 2011.

Sec. 1956.035. INSPECTION OF RECORDS. (a) On request, a metal recycling entity shall permit a peace officer of this state, a representative of the department, or a representative of a county, municipality, or other political subdivision that issues a license or permit under Section 1956.003(b) to inspect, during the entity's usual business hours:

(1) a record required by Section 1956.033;

(2) a digital photograph or video recording required by Section 1956.0331; or

(3) regulated material in the entity's possession.

(b) The person seeking to inspect a record or material shall:

(1) inform the entity of the officer's status as a peace officer; or

(2) if the person is a representative of the department or a representative of a county, municipality, or other political subdivision, inform the entity of the person's status and display to the entity an identification document or other appropriate documentation establishing the person's status as a representative of the department or of the appropriate county, municipality, or political subdivision.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 12, eff. September 1, 2011.

Sec. 1956.036. FURNISHING OF REPORT TO DEPARTMENT. (a) Except as provided by Subsections (b) and (d), not later than the close of business on a metal recycling entity's second working day after the date of the purchase or other acquisition of material for which a record is required under Section 1956.033, the entity shall send an electronic transaction report to the department via the department's Internet website. The report must contain the information required to be recorded under Section 1956.033.

(b) If a metal recycling entity purchases bronze material that is a cemetery vase, receptacle, memorial, or statuary or a pipe that can reasonably be identified as aluminum irrigation pipe, the entity shall:

(1) not later than the close of business on the entity's first working day after the purchase date, notify the department by telephone, by e-mail, or via the department's Internet website; and

(2) not later than the close of business on the entity's second working day after the purchase date, submit to the department electronically via the department's Internet website or file with the department a report containing the information required to be recorded under Section 1956.033.

(c) Subsection (b) does not apply to a purchase from:

(1) the manufacturer or fabricator of the material or pipe;  
 (2) a seller bearing a bill of sale for the material or pipe; or

(3) the owner of the material or pipe.

(d) A metal recycling entity may submit the transaction report required under Subsection (a) by facsimile if:

(1) the entity submits to the department annually:

(A) an application requesting an exception to the electronic reporting requirement; and

(B) an affidavit stating that the entity does not have an available and reliable means of submitting the transaction report electronically; and

(2) the department approves the entity's application under this subsection.

(e) The department, after notice and an opportunity for a hearing, may prohibit a metal recycling entity from paying cash for a purchase of regulated material for a period determined by the department if the department finds that the entity has failed to comply with this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 13, eff. September 1, 2011.

Sec. 1956.037. PLACEMENT OF ITEMS ON HOLD. (a) A metal recycling entity may not dispose of, process, sell, or remove from the premises an item of regulated metal unless:

(1) the entity acquired the item more than:

(A) eight days, excluding weekends and holidays, before the disposal, processing, sale, or removal, if the item is a cemetery vase, receptacle, or memorial made from a regulated material other than aluminum material; or

(B) 72 hours, excluding weekends and holidays, before the disposal, processing, sale, or removal, if the item is not an item described by Paragraph (A); or

(2) the entity purchased the item from a manufacturing, industrial, commercial, retail, or other seller that sells regulated

material in the ordinary course of its business.

(b) A peace officer who has reasonable suspicion to believe that an item of regulated material in the possession of a metal recycling entity is stolen may place the item on hold by issuing to the entity a written notice that:

(1) specifically identifies the item alleged to be stolen and subject to the hold; and

(2) informs the entity of the requirements of Subsection (c).

(c) On receiving the notice, the entity may not, except as provided by Subsection (e), process or remove from the entity's premises the identified item before the 60th day after the date the notice is issued unless the hold is released at an earlier time in writing by a peace officer of this state or a court order.

(d) After the holding period expires, the entity may dispose of the item unless disposition violates a court order.

(e) If a hold is placed on a purchase of regulated material, a metal recycling entity may not dispose of, process, sell, or remove from the premises any item from the purchased material unless the hold on the material is released.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. [1154](#)), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. [694](#)), Sec. 14, eff. September 1, 2011.

Sec. 1956.038. PROHIBITED ACTS. (a) A person may not, with the intent to deceive:

(1) display to a metal recycling entity a false or invalid personal identification document in connection with the person's attempted sale of regulated material;

(2) make a false, material statement or representation to a metal recycling entity in connection with:

(A) that person's execution of a written statement required by Section 1956.032(a)(3); or

(B) the entity's efforts to obtain the information required under Section 1956.033(b);

(3) display or provide to a metal recycling entity any

information required under Section 1956.032 that the person knows is false or invalid; or

(4) display another individual's personal identification document in connection with the sale of regulated material.

(b) A metal recycling entity may not pay for a purchase of regulated material in cash if:

(1) the entity does not hold a certificate of registration under Subchapter A-2 and, if applicable, a license or permit required by a county, municipality, or other political subdivision as authorized under Section 1956.003(b); or

(2) the entity has been prohibited by the department from paying cash under Section 1956.036(e).

(c) Notwithstanding Section 1956.003(a) or any other law, a county, municipality, or other political subdivision may not adopt or enforce a rule, charter, or ordinance or issue an order or impose standards that limit the use of cash by a metal recycling entity in a manner more restrictive than that provided by Subsection (b).

(d) Subsection (c) does not apply to a rule, charter, ordinance, or order of a county, municipality, or other political subdivision in effect on January 1, 2011.

(e) The department or a county, municipality, or other political subdivision may bring an action in the county in which a metal recycling entity is located to enjoin the business operations of the owner or operator of the metal recycling entity for a period of not less than 30 days and not more than 90 days if the owner or operator has not submitted an application for a certificate of registration or the appropriate license or permit required by a county, municipality, or other political subdivision.

(f) An action under Subsection (e) must be brought in the name of the state. If judgment is in favor of the state, the court shall:

(1) enjoin the owner or operator from maintaining or participating in the business of a metal recycling entity for a definite period of not less than 30 days and not more than 90 days, as determined by the court; and

(2) order that the place of business of the owner or operator be closed for the same period.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. [1154](#)), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 15, eff. September 1, 2011.

Sec. 1956.039. HOURS FOR PURCHASING MATERIAL. (a) Subject to Subsection (b), a county, municipality, or political subdivision may establish the hours during which a metal recycling entity may purchase regulated material.

(b) A metal recycling entity may not purchase from the general public regulated material:

- (1) more than 15 consecutive hours in one day; or
- (2) later than 9 p.m.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Sec. 1956.040. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates Section 1956.038.

An offense under this subsection is a Class A misdemeanor unless it is shown on trial of the offense that the person has previously been convicted of a violation of this subchapter, in which event the offense is a state jail felony.

(a-1) A person commits an offense if the person knowingly violates Section 1956.021, 1956.023(d), 1956.036(a), or 1956.039.

(a-2) An offense under Subsection (a-1) is a Class A misdemeanor, except that any fine imposed may not exceed \$10,000. If it is shown on trial of an offense under Subsection (a-1) that the person has previously been convicted of a violation of that subsection, the offense is a state jail felony.

(a-3) It is an affirmative defense to prosecution of a violation of Section 1956.021 or 1956.023(d) that the person made a diligent effort to obtain or renew a certificate of registration at the time of the violation.

(a-4) A municipality or county may retain 10 percent of the money collected from a fine for a conviction of an offense under Subsection (a-1) as a service fee for that collection and the clerk of the court shall remit the remainder of the fine collected for conviction of an offense under Subsection (a-1) to the comptroller in the manner provided for the remission of fees to the comptroller

under Subchapter B, Chapter 133, Local Government Code. The comptroller shall deposit proceeds received under this subsection to the credit of an account in the general revenue fund, and those proceeds may be appropriated only to the department and used to:

(1) finance the department's administration of Subchapters A, A-1, A-2, and A-3; and

(2) fund grants distributed under the prevention of scrap metal theft grant program established under Subchapter O, Chapter 411, Government Code.

(b) A person commits an offense if the person knowingly buys:

(1) stolen regulated material; or

(2) insulated communications wire that has been burned wholly or partly to remove the insulation, unless the wire is accompanied by documentation acceptable under the rules adopted under Section 1956.032(h) that states that the material was salvaged from a fire.

(b-1) An offense under Subsection (b) is a Class A misdemeanor unless it is shown on trial of the offense that the person has previously been convicted under Subsection (b), in which event the offense is a state jail felony.

(c) A person commits an offense if the person knowingly sells stolen regulated material. An offense under this subsection is a state jail felony unless it is shown on trial of the offense that the person has previously been convicted under this subsection, in which event the offense is a third degree felony.

(d) On the conviction of a metal recycling entity for an offense punishable under Subsection (b), a court, in addition to imposing any other applicable penalty, may order that the entity cease doing business as a metal recycling entity for a period not to exceed:

(1) 30 days from the date of the order for each violation that forms the basis of the conviction for a first offense; and

(2) 180 days from the date of the order for each violation that forms the basis of the conviction if it is shown on trial of the offense that the person has previously been convicted under this section.

(e) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.



Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 16, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(27), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 864 (H.B. 555), Sec. 1, eff. September 1, 2013.

#### **SUBCHAPTER B. SALE OF CRAFTED PRECIOUS METAL TO DEALERS**

Sec. 1956.051. DEFINITIONS. In this subchapter:

- (1) "Commission" means the Finance Commission of Texas.
- (2) "Commissioner" means the consumer credit commissioner.
- (3) "Crafted precious metal" means jewelry, silverware, an art object, or another object, made wholly or partly from precious metal, other than a coin, a bar, a commemorative medallion, or scrap or a broken item selling at five percent or more than the scrap value of the item.
- (4) "Dealer" means a person registered to engage in the business of purchasing and selling crafted precious metal, including purchases or sales made through the mail.
- (5) "Department" means the Texas Department of Public Safety.
- (6) "Precious metal" means gold, silver, platinum, palladium, iridium, rhodium, osmium, ruthenium, or an alloy of those metals.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 1, eff. September 1, 2011.

Sec. 1956.0511. ADMINISTRATION BY COMMISSION. (a) Notwithstanding any other provision of this chapter, the commission shall administer and enforce this subchapter, unless the context clearly requires another state agency to perform a specific duty.

(b) To the extent of any conflict between this subchapter and

other provisions of this chapter, this subchapter prevails.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 2, eff. September 1, 2011.

Sec. 1956.052. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to crafted precious metal that has been sold or used primarily for personal, family, or household purposes.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.053. EXCEPTION: PRECIOUS METAL EXTRACTED, RECOVERED, OR SALVAGED FROM INDUSTRIAL BY-PRODUCTS OR INDUSTRIAL WASTE PRODUCTS. This subchapter does not apply to a person whose purchase or sale of precious metal or a product made of precious metal is merely incidental to the person's business of extracting, recovering, or salvaging precious metal from industrial by-products or industrial waste products.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.054. EXCEPTION: DENTAL, PHARMACEUTICAL, OR MEDICAL APPLICATION OF CRAFTED PRECIOUS METAL. This subchapter does not apply to a dental, pharmaceutical, or medical application of crafted precious metal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.055. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED FROM ANOTHER DEALER WHO PREVIOUSLY MADE REQUIRED REPORTS. This subchapter does not apply to crafted precious metal acquired in good faith in a transaction involving the stock-in-trade of another dealer who previously made the reports concerning that metal as required by this subchapter if:

- (1) the selling dealer delivers to the acquiring dealer a written document stating that the reports have been made;
- (2) the acquiring dealer submits a copy of the statement to

the chief of police of the municipality or the sheriff of the county in which the selling dealer is located; and

(3) each dealer involved in the transaction retains a copy of the statement until the third anniversary of the date of the transaction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.056. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED IN DISSOLUTION OR LIQUIDATION SALE. This subchapter does not apply to crafted precious metal acquired in a nonjudicial sale, transfer, assignment, assignment for the benefit of creditors, or consignment of the assets or stock-in-trade, in bulk, or a substantial part of those assets, of an industrial or commercial enterprise, other than a dealer, for the voluntary dissolution or liquidation of the seller's business, or for disposing of an excessive quantity of personal property, or property that has been acquired in a nonjudicial sale or transfer from an owner other than a dealer, the seller's entire household of personal property, or a substantial part of that property, if the dealer:

(1) gives written notice to the chief of police of the municipality or the sheriff of the county in which the dealer's business is located that a reporting exemption is being claimed under this section;

(2) retains in the dealer's place of business, until the third anniversary of the date of the transaction, a copy of the bill of sale, receipt, inventory list, or other transfer document; and

(3) makes the record retained available for inspection by a peace officer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.057. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED IN JUDICIAL SALE. This subchapter does not apply to crafted precious metal acquired in a sale made:

(1) by any public officer in the officer's official capacity as a trustee in bankruptcy, executor, administrator, receiver, or public official acting under judicial process or authority; or

(2) on the execution of, or by virtue of, any process issued by a court.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.058. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED AS PAYMENT FOR OTHER CRAFTED PRECIOUS METAL BY PERSON IN BUSINESS OF SELLING TO CONSUMERS. This subchapter does not apply to crafted precious metal acquired in good faith as part or complete payment for other crafted precious metal by a person whose principal business is primarily that of selling directly to the consumer crafted precious metal that has not been subject to a prior sale.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.059. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED FROM OR REPORTED TO GOVERNMENTAL AGENCY. This subchapter does not apply to crafted precious metal:

- (1) acquired as surplus property from the United States, a state, a subdivision of a state, or a municipal corporation; or
- (2) reported by a dealer as an acquisition or a purchase, or reported as destroyed or otherwise disposed of, to:
  - (A) a state agency under another law of this state; or
  - (B) a municipal or county office or agency under another law of this state or a municipal ordinance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.060. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED BY PERSON LICENSED UNDER TEXAS PAWNSHOP ACT. This subchapter does not apply to crafted precious metal acquired by:

- (1) a person licensed under Chapter 371, Finance Code; or
- (2) an entity affiliated with a person licensed under Chapter 371, Finance Code, if the entity's recordkeeping practices satisfy the requirements of that chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 3, eff. September 1, 2011.

Sec. 1956.061. EFFECT ON OTHER LAWS AND ORDINANCES. This subchapter does not:

(1) excuse noncompliance with another state law or municipal ordinance covering the reporting, holding, or releasing of crafted precious metal;

(2) prohibit a municipality from enacting, amending, or enforcing an ordinance relating to a dealer; or

(3) supersede a municipal ordinance except to the extent the ordinance does not require reporting for transactions involving crafted precious metal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.0611. RULEMAKING. The commission may adopt rules necessary to implement and enforce this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 4, eff. September 1, 2011.

Sec. 1956.0612. REGISTRATION AS DEALER. (a) A person may not engage in the business of purchasing and selling crafted precious metal unless the person is registered with the commissioner as a dealer under this section.

(b) To register as a dealer, a person must provide to the commissioner, on or before December 31 preceding each calendar year in which the person seeks to act as a dealer:

(1) a list of each location in this state at which the person will conduct business as a dealer; and

(2) a processing fee for each location included on the list furnished under Subdivision (1).

(c) The commissioner shall prescribe the processing fee in an amount necessary to cover the costs of administering this section.

(d) After the December 31 deadline, a dealer may amend the registration required under Subsection (a) to reflect any change in the information provided by the registration.

(e) The commissioner shall make available to the public a list of dealers registered under this section.

(f) The commissioner may prescribe the registration form.

(g) A reference to a registration in another subchapter of this chapter does not apply to a person to the extent the person is registered under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 4, eff. January 1, 2012.

Sec. 1956.0613. INVESTIGATION BY COMMISSIONER. The commissioner shall:

(1) monitor the operations of a dealer to ensure compliance with this chapter; and

(2) receive and investigate complaints against a dealer or a person acting as a dealer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 4, eff. September 1, 2011.

Sec. 1956.0614. REVOCATION OF REGISTRATION. (a) The commissioner may revoke the registration of a dealer if the commissioner concludes that the dealer has violated this chapter. The commissioner shall recite the basis of the decision in an order revoking the registration.

(b) If the commissioner proposes to revoke a registration, the dealer is entitled to a hearing before the commissioner or a hearings officer, who shall propose a decision to the commissioner. The commissioner or hearings officer shall prescribe the time and place of the hearing. The hearing is governed by Chapter 2001, Government Code.

(c) A dealer aggrieved by a ruling, order, or decision of the commissioner is entitled to appeal to a district court in the county in which the hearing was held. An appeal under this subsection is governed by Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 4, eff. September 1, 2011.

Sec. 1956.0615. ADMINISTRATIVE PENALTY. The commissioner may assess an administrative penalty not to exceed \$500 against a person for each knowing and wilful violation of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 4, eff. September 1, 2011.

Sec. 1956.062. REPORT OF PURCHASE REQUIRED. (a) A dealer shall, as required by Section 1956.063, report all identifiable crafted precious metal that the dealer purchases, takes in trade, accepts for sale on consignment, or accepts for auction.

(b) Before crafted precious metal is offered for sale or exchange, a dealer must notify each person intending to sell or exchange the metal that, before the dealer may accept any of the person's property, the person must file with the dealer a list describing all of the person's crafted precious metal to be accepted by the dealer. The list must contain:

(1) the proposed seller's name and address;

(2) a complete and accurate description of the crafted precious metal; and

(3) the proposed seller's certification that the information is true and complete.

(c) The dealer shall record the proposed seller's driver's license number or department personal identification certificate number on physical presentation of the license or personal identification certificate by the seller. The record must accompany the list.

(d) The dealer shall:

(1) provide to a peace officer, on demand, the list required by Subsection (b); and

(2) mail or deliver a complete copy of the list to the chief of police or the sheriff as provided by Section 1956.063 not later than 48 hours after the list is filed with the dealer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.063. FORM OF REPORT; FILING. (a) A report required by this subchapter must comply with this section unless a similar report is required by another state law or a municipal ordinance, in

which event the required report must comply with the applicable law or ordinance.

(b) If a transaction regulated by this subchapter occurs in a municipality that maintains a police department, the original and a copy of the report required by this subchapter shall be submitted to the municipality's chief of police. If the transaction does not occur in such a municipality, the original and a copy of the report shall be submitted to the sheriff of the county in which the transaction occurs.

(c) For each transaction regulated by this subchapter, the dealer shall submit a report on a preprinted and prenumbered form prescribed by the commissioner. The form must include the following:

- (1) the date of the transaction;
- (2) a description of the crafted precious metal purchased by the dealer;
- (3) the name and physical address of the dealer; and
- (4) the name, physical description, and physical address of the seller or transferor.

(d) The dealer shall retain a copy of the report until the third anniversary of the date the report is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 5, eff. September 1, 2011.

Sec. 1956.064. REQUIRED RETENTION OF CRAFTED PRECIOUS METAL.

(a) A dealer may not melt, deface, alter, or dispose of crafted precious metal that is the subject of a report required by this subchapter before the 11th day after the date the report is filed unless:

- (1) the peace officer to whom the report is submitted, for good cause, authorizes disposition of the metal;
- (2) the dealer obtains the name, address, and description of the buyer and retains a record of that information; or
- (3) the dealer is a pawnbroker and the disposition is the redemption of pledged property by the pledgor.

(b) A peace officer who has reasonable suspicion to believe that an item of crafted precious metal in the possession of a dealer



is stolen may place the item on hold for a period not to exceed 60 days by issuing to the dealer a written notice that:

(1) specifically identifies the item alleged to be stolen and subject to the hold; and

(2) informs the dealer of the requirements of Subsection (c).

(c) On receiving the notice, the dealer may not melt, deface, alter, or dispose of the identified crafted precious metal until the hold is released in writing by a peace officer of this state or a court order.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 6, eff. September 1, 2011.

Sec. 1956.065. INSPECTION OF CRAFTED PRECIOUS METAL BY PEACE OFFICER. (a) A dealer shall make crafted precious metal purchased by the dealer available for inspection by a peace officer during regular business hours while in the dealer's possession.

(b) Information obtained under this section is confidential except for use in a criminal investigation or prosecution or a civil court proceeding.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.066. PURCHASE FROM MINOR. (a) A dealer may not purchase crafted precious metal from a person younger than 18 years of age unless the seller delivers to the dealer before the purchase a written statement from the seller's parent or legal guardian consenting to the transaction.

(b) The dealer shall retain the statement with the records required to be kept under this subchapter. The dealer may destroy the statement after the later of:

(1) the date the item is sold; or

(2) the first anniversary of the date the dealer purchased the item.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.067. PURCHASE AT TEMPORARY LOCATION OF DEALER. (a) A dealer who conducts business at a temporary location for a period of less than one year may not engage in the business of buying precious metal or used items made of precious metal unless, within a 12-month period at least 30 days before the date on which each purchase is made, the dealer has filed:

- (1) a registration statement with the department;
- (2) a copy of the registration statement and a copy of the dealer's certificate of registration issued under this subchapter with the local law enforcement agency of:
  - (A) the municipality in which the temporary location is located; or
  - (B) if the temporary location is not located in a municipality, the county in which the temporary location is located; and
- (3) a copy of the dealer's certificate of registration issued under this subchapter with the county and, if applicable, the municipality in which the temporary location is located.

(b) The registration statement must contain:

- (1) the name and address of the dealer;
- (2) the location where business is to be conducted;
- (3) if the dealer is an association, the name and address of each member of the association;
- (4) if the dealer is a corporation, the name and address of each officer and director of the corporation; and
- (5) other relevant information required by the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 7, eff. January 1, 2012.

Sec. 1956.068. PURCHASE OF MELTED ITEMS. A dealer, in the course of business, may not purchase from a person other than a manufacturer of or a regular dealer in crafted precious metal an object formed as the result of the melting of crafted precious metal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.069. CRIMINAL PENALTY. (a) A person commits an offense if the person:

- (1) fails to make or permit inspection of a report as required by Section 1956.062 or 1956.063;
  - (2) violates Section 1956.0612 or 1956.064;
  - (3) fails to obtain or retain a statement as required by Section 1956.066;
  - (4) fails to file a registration statement as required by Section 1956.067; or
  - (5) purchases an object in violation of Section 1956.068.
- (b) An offense under this section is a Class B misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 8, eff. January 1, 2012.

**SUBCHAPTER C. RESTRICTIONS ON SALE OF CERTAIN ITEMS TO METAL  
RECYCLING ENTITIES**

Sec. 1956.101. DEFINITIONS. In this subchapter:

- (1) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 5, eff. September 1, 2007.
- (2) "Motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.
- (3) "PCB-containing capacitor" means a capacitor that contains polychlorinated biphenyls and is regulated under the federal Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.).
- (4) "Person" means an individual, corporation, partnership, sole proprietorship, or other business entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 5, eff. September 1, 2007.

Sec. 1956.102. EXCEPTION. This subchapter does not apply to a sale or transfer by or on behalf of a metal recycling entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.103. RESTRICTIONS ON TRANSFER OF CERTAIN PROPERTY.

(a) A person may not sell or otherwise transfer to a metal recycling entity:

(1) a lead-acid battery, fuel tank, or PCB-containing capacitor that is included with another type of scrap, used, or obsolete metal without first obtaining from the metal recycling entity a written and signed acknowledgment that the scrap, used, or obsolete metal includes one or more lead-acid batteries, fuel tanks, or PCB-containing capacitors;

(2) any of the following items that contain or enclose a lead-acid battery, fuel tank, or PCB-containing capacitor or of which a lead-acid battery, fuel tank, or PCB-containing capacitor is a part:

(A) a motor vehicle;

(B) a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle;

(C) an appliance; or

(D) any other item of scrap, used, or obsolete metal;

(3) a motor vehicle or a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle if the motor vehicle includes, contains, or encloses a tire or scrap tire; or

(4) a metal alcoholic beverage keg, regardless of condition, unless the seller is the manufacturer of the keg, the brewer or distiller of the beverage that was contained in the keg, or an authorized representative of the manufacturer, brewer, or distiller.

(b) Subsection (a)(3) does not apply to the sale or other transfer of a motor vehicle or a junked, flattened, dismantled, or changed motor vehicle from another state.

(c) Subsection (a) does not apply to a fuel tank that has been completely drained and rendered unusable in accordance with Texas Commission on Environmental Quality rules regardless of whether the fuel tank is attached to a motor vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 47 (S.B. 1298), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 17, eff. September 1, 2011.

Sec. 1956.104. NOTICE OF RESTRICTIONS. A metal recycling entity shall post in a conspicuous location a notice that:

(1) is readily visible to a person selling material to the metal recycling entity;

(2) is at least 24 inches horizontally by 18 inches vertically; and

(3) contains the following language:

TEXAS LAW PROHIBITS:

1. THE SALE OF A WHOLE, FLATTENED, OR JUNKED MOTOR VEHICLE, AN APPLIANCE, OR ANY OTHER SCRAP METAL ITEM CONTAINING A LEAD-ACID BATTERY, FUEL TANK THAT HAS NOT BEEN COMPLETELY DRAINED AND RENDERED UNUSABLE, OR PCB-CONTAINING CAPACITOR; AND

2. THE SALE OF LEAD-ACID BATTERIES, FUEL TANKS THAT HAVE NOT BEEN COMPLETELY DRAINED AND RENDERED UNUSABLE, OR PCB-CONTAINING CAPACITORS INCLUDED WITH OTHER SCRAP METALS WITHOUT OUR PRIOR WRITTEN ACKNOWLEDGMENT.

VIOLATION OF THIS LAW IS A MISDEMEANOR.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 47 (S.B. 1298), Sec. 2, eff. September 1, 2005.

Sec. 1956.105. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not more than \$1,000;

(2) confinement in the county jail for not more than 60 days; or

(3) both the fine and the confinement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

**SUBCHAPTER D. DISCIPLINARY PROCEDURES**

Sec. 1956.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. The department shall deny an application for a certificate of registration, suspend or revoke a certificate of registration, or reprimand a person who is registered under this chapter if the person:

- (1) obtains a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;
- (2) sells, barter, or offers to sell or barter a certificate of registration;
- (3) violates a provision of this chapter or a rule adopted under this chapter; or
- (4) violates Section 1956.021.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 4, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 18, eff. September 1, 2011.

Sec. 1956.152. INVESTIGATION. Within the limits of available resources, the department may investigate:

- (1) a person who engages in a practice that violates this chapter; and
- (2) a complaint filed with the department against a person registered under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 4, eff. September 1, 2007.

Sec. 1956.153. HEARING. (a) A person whose application for a certificate of registration is denied, whose certificate of registration is suspended or revoked, or who is reprimanded is entitled to a hearing before the department if the person submits to the department a written request for the hearing.

(b) A hearing is governed by department rules for a contested hearing and by Chapter 2001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 4, eff. September 1, 2007.

**SUBCHAPTER E. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 1956.201. ENFORCEMENT PROCEEDINGS; INJUNCTION. (a) The department, the attorney general, or the district, county, or city attorney for the county or municipality in which an alleged violation of this chapter occurs may, on receipt of a verified complaint, bring an appropriate administrative or judicial proceeding to enforce this chapter or a rule adopted under this chapter.

(b) The attorney general or an attorney representing the state may initiate an action for an injunction to prohibit a person from violating this chapter or a rule adopted under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 4, eff. September 1, 2007.

Sec. 1956.202. CIVIL PENALTY. (a) Except as provided by Subsection (d), a person who violates this chapter or a rule adopted under this chapter is liable to this state for a civil penalty of not more than \$1,000 for each violation.

(b) The amount of the penalty shall be based on:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation; and
- (4) any other matter that justice may require.

(c) The attorney general may sue to collect a civil penalty under this section. In the suit the attorney general may recover, on behalf of the state, the reasonable expenses incurred in obtaining the penalty, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses.

(d) A civil penalty may not be assessed under this section for conduct described by Section 1956.021, 1956.023(d), 1956.036(a), 1956.038, or 1956.039.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 4, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 19, eff.

September 1, 2011.

Sec. 1956.203. CRIMINAL PENALTY FOR CERTAIN SOLICITATION. (a) A person commits an offense if the person solicits the purchase of regulated material at a location other than a business location at which the material is produced as a by-product in the ordinary course of that business.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 4, eff. September 1, 2007.

Sec. 1956.204. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter, including a rule, charter, or ordinance adopted, an order issued, or a standard imposed by a county, municipality, or political subdivision under Section 1956.003.

(b) An offense under this section is a Class C misdemeanor.

(c) If conduct that constitutes an offense under this section also constitutes an offense under another section in this chapter, the person may be prosecuted only under that other section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 864 (H.B. 555), Sec. 2, eff. September 1, 2013.

#### **CHAPTER 1957. INDUSTRIAL HYGIENISTS**

Sec. 1957.001. SHORT TITLE. This chapter may be cited as the Industrial Hygiene Title Recognition Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1957.002. INDUSTRIAL HYGIENE CERTIFICATION ORGANIZATION.

(a) In this chapter, "industrial hygiene certification organization" means a nonprofit corporation established to improve the practice and educational standards of the profession of industrial hygiene by certifying individuals who meet its education, experience, and examination requirements.



(b) The organization must maintain criteria at least as stringent as those adopted by the American Board of Industrial Hygiene.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1957.003. CERTIFICATION REQUIRED. (a) A person may not use the title of or represent to the public that the person is a "certified industrial hygienist" or use the initials "CIH" unless the person is certified by the American Board of Industrial Hygiene as a certified industrial hygienist.

(b) A person may not use the title of or represent to the public that the person is an "industrial hygienist in training" or use the initials "IHIT" unless the person is certified by the American Board of Industrial Hygiene as an industrial hygienist in training.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1957.004. CIVIL PENALTY. (a) A person who violates Section 1957.003 is subject to a civil penalty of not more than \$1,000 for each violation.

(b) The attorney general may bring an action to recover the civil penalty.

(c) A penalty recovered under this section shall be deposited to the credit of the general revenue fund.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

## **CHAPTER 1958. MOLD ASSESSORS AND REMEDIATORS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1958.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the commissioner of public health.
- (3) "Department" means the Texas Department of Health.
- (4) "License" means a license issued under this chapter.
- (5) "Mold" means any living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.

(6) "Mold assessment" means:

(A) an inspection, investigation, or survey of a dwelling or other structure to provide the owner or occupant with information regarding the presence, identification, or evaluation of mold;

(B) the development of a mold management plan or remediation protocol; or

(C) the collection or analysis of a mold sample.

(7) "Mold remediation" means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter that was not purposely grown at that location.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.002. SCOPE OF AUTHORITY. (a) This chapter applies only to the regulation of mold-related activities that affect indoor air quality, including a mold-related activity performed by a third party for compensation at a property owned or operated by a governmental entity.

(b) This chapter does not apply to:

(1) the following activities when not conducted for the purpose of mold assessment or mold remediation:

(A) routine cleaning;

(B) the diagnosis, repair, cleaning, or replacement of plumbing, heating, ventilation, air conditioning, electrical, or air duct systems or appliances;

(C) commercial or residential real estate inspections; and

(D) the incidental discovery or emergency containment of potential mold contamination during the conduct or performance of services listed in this subsection;

(2) the repair, replacement, or cleaning of construction materials during the building phase of the construction of a structure;

(3) the standard performance of custodial activities for, preventive maintenance of, and the routine assessment of property owned or operated by a governmental entity; or

(4) a pest control inspection conducted by a person

regulated under Chapter 1951.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

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

Sec. 1958.051. GENERAL POWERS AND DUTIES OF DEPARTMENT; SCOPE OF AUTHORITY. The department shall administer this chapter to protect the public from the adverse health effects of mold.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.052. PUBLIC EDUCATION PROGRAM. (a) The department shall conduct a statewide education and outreach program regarding the importance of, and ways to improve, air quality in buildings, including the importance of, and the ways to recognize, prevent, control, and mitigate, mold occurrence and other indoor air quality factors that adversely affect human health.

(b) The program may include:

(1) the development and distribution of information to the public concerning indoor air quality and mold;

(2) educational programs;

(3) informational or educational exhibits; and

(4) any other methods of education or communication that the department considers appropriate.

(c) The department may contract with governmental entities or other persons to provide the program.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.053. GENERAL RULEMAKING AUTHORITY. The board shall adopt substantive and procedural rules as necessary or desirable for the board, department, and commissioner to discharge their powers and duties under this chapter.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.054. RULES REGARDING PERFORMANCE STANDARDS AND WORK

PRACTICES. The board by rule shall establish minimum performance standards and work practices for conducting a mold assessment or mold remediation in this state.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.055. FEES. (a) The board shall establish reasonable and necessary fees to administer this chapter, including fees for licenses, registrations, and examinations. The board shall set the fees in an amount sufficient to recover the costs of administering this chapter, not to exceed the caps established under Subsection (b).

(b) A fee set under this section may not exceed:

- (1) \$400 for a license issued to an individual;
- (2) \$750 for a license issued to a person who is not an individual; and
- (3) \$60 for a registration issued to an employee of a license holder.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.056. INSPECTIONS. (a) The department shall conduct inspections as necessary to ensure compliance with this chapter.

(b) The board shall adopt rules regarding compliance investigations.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.057. COMPLAINTS. The department shall investigate any complaint regarding mold-related activities.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.058. SAFETY STANDARDS. The board may develop and establish mold safety standards for license holders if appropriate scientific information exists regarding the effect of mold.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.059. CODE OF ETHICS. The board by rule shall adopt a code of ethics for license holders that promotes the education of mold assessors and mold remediators concerning the ethical, legal, and business principles that should govern their conduct.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

#### **SUBCHAPTER C. LICENSE AND REGISTRATION REQUIREMENTS**

Sec. 1958.101. LICENSE REQUIRED; RULES. (a) A person may not engage in:

- (1) mold assessment unless the person holds a mold assessment license; or
- (2) mold remediation unless the person holds a mold remediation license.

(b) The board shall adopt rules regarding:

- (1) the scope of mold-related work for which a license is required, including the supervision of employees or other persons by license holders; and
- (2) renewal requirements for a license issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.102. EXEMPTIONS. (a) An owner or tenant, or a managing agent or employee of an owner or tenant, is not required to be licensed under this chapter to perform mold assessment or mold remediation on property owned or leased by the owner or tenant. This exemption does not apply:

- (1) if the managing agent or employee engages in the business of performing mold assessment or mold remediation for the public;
- (2) if the mold remediation is performed in an area in which the mold contamination affects a total surface area of 25 contiguous square feet or more; or
- (3) to a person who is exempt under Subsection (e).

(b) An employee of a license holder is not required to be

licensed under this chapter to perform mold assessment or mold remediation while supervised by the license holder, as provided by rules adopted under Section 1958.101.

(c) A person is not required to be licensed under this chapter to perform mold remediation in an area in which the mold contamination affects a total surface area for the project of less than 25 contiguous square feet.

(d) A person is not required to be licensed under this chapter to perform mold assessment or mold remediation in a one-family or two-family dwelling that the person constructed or improved if the person performs the mold assessment or mold remediation at the same time the person performs the construction or improvement or at the same time the person performs repair work on the construction or improvement. This exemption does not apply if the person engages in the business of performing mold assessment or mold remediation for the public.

(e) An owner, or a managing agent or employee of an owner, is not required to be licensed under this chapter to perform mold assessment or mold remediation on a residential property owned by that person with fewer than 10 dwelling units. This exemption does not apply if the managing agent or employee engages in the business of performing mold assessment or mold remediation for the public.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.103. REGISTRATION REQUIREMENTS FOR EMPLOYEES. The board may adopt rules to require the registration of employees supervised by license holders.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.104. RULES REGARDING LICENSE APPLICATION. The board shall adopt rules regarding a license application. The board shall adopt rules that establish minimum requirements for a license, including:

- (1) the type of license;
- (2) the term of the license;
- (3) the qualifications for the license, including any previous training required under Section 1958.106;

- (4) renewal requirements for the license, including ongoing continuing education required under Section 1958.106; and
- (5) liability insurance requirements for the license.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.105. EXAMINATION. (a) The department may require that an applicant for a license pass a competency examination to qualify for the license.

(b) If the department requires an examination, the applicant must pass the examination with a score of 70 percent or more.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 642 (H.B. [2746](#)), Sec. 1, eff. September 1, 2005.

Sec. 1958.106. TRAINING; CONTINUING EDUCATION. (a) The board shall adopt rules regarding training required under this chapter and continuing education required for a license holder under this chapter.

(b) The rules may include requirements regarding training and continuing education providers, including rules establishing:

- (1) accreditation by the department;
- (2) curriculum requirements; and
- (3) qualifications.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.107. RECIPROCITY. The board may adopt rules that facilitate reciprocity and communication with other states that have a similar licensing program.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

#### **SUBCHAPTER D. PRACTICE BY LICENSE HOLDER**

Sec. 1958.151. SCOPE OF WORK ANALYSIS. (a) A license holder

who intends to perform mold assessment on a mold remediation project shall prepare a work analysis for the project. The license holder shall provide the analysis to the client before the mold remediation begins.

(b) The work analysis must specify:

- (1) the rooms or areas where the work will be performed;
- (2) the quantities of materials to be removed or cleaned at the project;
- (3) the proposed methods for each type of remediation in each type of area in the project; and
- (4) the proposed clearance criteria for each type of remediation in each type of area in the project.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.152. REMEDIATION WORK PLAN. (a) A license holder who intends to perform mold remediation shall prepare a work plan providing instructions for the remediation efforts to be performed for the mold remediation project. The license holder shall provide the work plan to the client before the mold remediation begins.

(b) The license holder shall maintain a copy of the work plan at the job site where the remediation is being performed.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.153. NOTICE OF PROJECT. (a) Except as provided by Subsection (b), not later than the fifth day before the date on which a license holder starts mold remediation at a property, the license holder shall notify the department in writing about the project.

(b) In an emergency, notice to the department under Subsection (a) may be made verbally but must be made not later than the next business day after the license holder identifies the emergency. For purposes of this subsection, an emergency exists if a delay in mold remediation services in response to a water damage occurrence would increase mold contamination.

(c) The board shall adopt rules to implement this section, including rules:

- (1) describing the information that must be provided in the notice; and



(2) authorizing verbal notification to the department in an emergency.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.154. CERTIFICATE OF MOLD REMEDIATION; DUTY OF PROPERTY OWNER. (a) Not later than the 10th day after the date on which a license holder completes mold remediation at a property, the license holder shall provide a certificate of mold remediation to the property owner. The certificate must include a statement by a mold assessment license holder that, based on visual, procedural, and analytical evaluation, the mold contamination identified for the project has been remediated as outlined in the mold management plan or remediation protocol. If the mold assessment license holder determines that the underlying cause of the mold has been remediated so that it is reasonably certain that the mold will not return from that remediated cause, the mold assessment license holder shall indicate on the certificate that the underlying cause of the mold has been remediated.

(b) If a property owner sells property, the property owner shall provide to the buyer a copy of each certificate issued for the property under this section during the five years preceding the date the property owner sells the property.

(c) The board shall adopt rules to implement this section, other than rules described by Subsection (d).

(d) The commissioner of insurance shall adopt rules describing the information that must be provided in the certificate of mold remediation. In adopting the rules, the commissioner shall design the certificate as necessary to comply with any requirements imposed under Subchapter G, Chapter 544, Insurance Code.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 149 (H.B. 1328), Sec. 2, eff. May 24, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.153, eff. September 1, 2005.

Sec. 1958.155. CONFLICT OF INTEREST; DISCLOSURE REQUIRED. (a)

A license holder may not perform both mold assessment and mold remediation on the same project.

(b) A person may not own an interest in both the entity that performs assessment services and an entity that performs remediation services on the same project.

(c) A license holder who is not an individual shall disclose to the department the name, address, and occupation of each person that has an ownership interest in the license holder. The license holder shall report any changes in ownership to the department. The board shall adopt rules to implement this section, including rules regarding the form of the disclosure and the time required to make disclosures or to report a change in ownership.

(d) This section does not apply to a license holder employed by a school district working on a project for that school district.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 126 (H.B. 74), Sec. 1, eff. May 24, 2005.

Sec. 1958.156. RECORD REQUIREMENTS; DUTIES OF MOLD REMEDIATORS. (a) A mold remediator shall maintain a record regarding each mold remediation performed for at least three years after the date of completion of the mold remediation on a property.

(b) The mold remediator shall make the record available for inspection by the department or any law enforcement entity.

(c) The record must contain:

(1) photographs of the scene of the mold remediation taken before and after the remediation;

(2) the written contract between the mold remediator or any other party regarding the mold remediation;

(3) all invoices issued regarding the mold remediation;  
and

(4) any other material required by the department.

(d) Not later than one week after completion of a mold remediation, the mold remediator license holder shall provide the property owner with copies of all photographs required by this section.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.157. OFFICE LOCATION. A license holder shall maintain an office in this state.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

#### **SUBCHAPTER E. DISCIPLINARY PROCEDURES**

Sec. 1958.201. DISCIPLINARY ACTION. If a license holder violates this chapter or an order or rule adopted under this chapter, the department, after providing the person with notice and an opportunity for a hearing, shall take one or more of the following actions:

- (1) revoke, suspend, or refuse to renew the license;
- (2) impose an administrative penalty;
- (3) bring an action to collect a civil penalty; or
- (4) reprimand the person.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

#### **SUBCHAPTER F. ADMINISTRATIVE PENALTY**

Sec. 1958.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The commissioner may impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.252. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues under Section 1958.101 or 1958.155 may be considered a separate violation for purposes of imposing a penalty.

(b) In determining the amount of the penalty, the commissioner shall consider:

- (1) whether the violation was committed knowingly, intentionally, or fraudulently;
- (2) the seriousness of the violation;

- (3) any hazard created to the health and safety of the public;
- (4) the person's history of previous violations; and
- (5) any other matter that justice may require.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.253. EXCEPTION TO ADMINISTRATIVE PENALTY. (a) The commissioner may choose not to impose an administrative penalty under this subchapter if, not later than the 10th day after the date of written notice of the violation under Section 1958.254, the person provides conclusive evidence that the circumstances giving rise to the violation have been corrected and all actual damages are paid.

(b) This section does not apply to a violation alleged under Section 1958.101 or 1958.155.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.254. NOTICE; OPPORTUNITY FOR HEARING; ORDER. (a) The commissioner may impose an administrative penalty under this subchapter only after the person charged with a violation is given a written notice and the opportunity for a hearing.

(b) The written notice must state the facts that constitute the alleged violation and the law or rule on which the violation is based.

(c) If a hearing is held, the commissioner shall make findings of fact and issue a written decision as to:

- (1) the occurrence of the violation; and
- (2) the amount of any penalty that is warranted.

(d) If the person charged with a violation fails to exercise the opportunity for a hearing, the commissioner, after determining that a violation occurred and the amount of the penalty that is warranted, may impose a penalty and shall issue an order requiring the person to pay any penalty imposed.

(e) Not later than the 30th day after the date the commissioner issues an order after determining that a violation occurred, the commissioner shall inform the person charged with the violation of the amount of any penalty imposed.

(f) The commissioner may consolidate a hearing under this

section with another proceeding.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.255. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the commissioner's decision or order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the administrative penalty; or  
(2) file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(2) may stay enforcement of the penalty by:

(1) paying the penalty to the commissioner for placement in an escrow account; or

(2) giving the commissioner a bond in a form approved by the commissioner that:

(A) is for the amount of the penalty; and

(B) is effective until judicial review of the commissioner's decision or order is final.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.256. COLLECTION OF PENALTY. At the request of the commissioner, the attorney general may bring a civil action to recover an administrative penalty imposed under this subchapter.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.257. JUDICIAL REVIEW. Judicial review of a decision or order of the commissioner imposing a penalty under this subchapter is instituted by filing a petition with a district court in Travis County and is under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.258. REMITTANCE OF PENALTY AND INTEREST OR RELEASE OF BOND. If after judicial review the administrative penalty is reduced or is not upheld by the court, the commissioner shall:

- (1) remit the appropriate amount, plus accrued interest, to the person not later than the 30th day after the date of the determination, if the person paid the penalty; or
- (2) execute a release of the bond, if the person gave a bond.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

**SUBCHAPTER G. OTHER PENALTIES; ENFORCEMENT PROVISIONS; EXEMPTIONS FROM CIVIL LIABILITY**

Sec. 1958.301. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty in an amount not to exceed \$2,000 for the first violation or \$10,000 for a second or later violation.

(b) The commissioner may request the attorney general or the district, county, or city attorney having jurisdiction to bring an action to collect a civil penalty under this section.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.302. INJUNCTIVE RELIEF. The commissioner may request the attorney general or the district, county, or city attorney having jurisdiction to bring an action for a restraining order, injunction, or other relief the court determines is appropriate if it appears to the department that a person is violating or has violated this chapter or a rule adopted under this chapter.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.303. EXEMPTION FROM CIVIL LIABILITY FOR CERTAIN PROPERTY OWNERS. A property owner is not liable for damages related to mold remediation on a property if:

- (1) a certificate of mold remediation has been issued under this chapter for that property; and
- (2) the damages accrued on or before the date of the

issuance of the certificate.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.304. EXEMPTION FROM CIVIL LIABILITY FOR CERTAIN GOVERNMENTAL ENTITIES. A person is not liable in a civil lawsuit for damages related to a decision to allow occupancy of a property after mold remediation has been performed on the property if:

(1) a certificate of mold remediation has been issued under this chapter for the property;

(2) the property is owned or occupied by a governmental entity, including a school; and

(3) the decision was made by the owner, occupier, or any person authorized by the owner or occupier to make the decision.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

## **TITLE 13. SPORTS, AMUSEMENTS, AND ENTERTAINMENT**

### **SUBTITLE A. GAMING**

#### **CHAPTER 2001. BINGO**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2001.001. SHORT TITLE. This chapter may be cited as the Bingo Enabling Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.002. DEFINITIONS. In this chapter:

(1) "Authorized commercial lessor" means a person eligible for a commercial license to lease bingo premises under Subchapter D.

(2) "Authorized organization" means a person eligible for a license to conduct bingo.

(3) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(1), eff. October 1, 2009.

(4) "Bingo" or "game" means, except as provided by Section 2001.551, a specific game of chance, commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols conforming to randomly selected numbers or symbols.

(4-a) "Bingo chairperson" means an officer or member of the

board of directors of a licensed authorized organization who is designated in writing by the organization as responsible for overseeing the organization's bingo activities and reporting to the membership relating to those activities.

(5) "Bingo equipment" means equipment used, made, or sold for the purpose of use in bingo. The term:

(A) includes:

(i) a machine or other device from which balls or other items are withdrawn to determine the letters and numbers or other symbols to be called;

(ii) an electronic or mechanical cardminding device;

(iii) a pull-tab dispenser;

(iv) a bingo card;

(v) a bingo ball; and

(vi) any other device commonly used in the direct operation of a bingo game; and

(B) does not include:

(i) a bingo game set commonly manufactured and sold as a child's game for a retail price of \$20 or less unless the set or a part of the set is used in bingo subject to regulation under this chapter; or

(ii) a commonly available component part of bingo equipment such as a light bulb or fuse.

(6) "Bingo occasion" means a single gathering or session at which a bingo game or a series of bingo games, including selling and redeeming pull-tab bingo tickets, are conducted on the day and at the times listed on the license issued to a licensed authorized organization.

(7) "Charitable purpose" means a purpose described by Section 2001.454.

(8) "Commission" means the Texas Lottery Commission.

(8-a) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 993, Sec. 42(2), eff. September 1, 2013.

(9) "Distributor" means a person who obtains, by purchase or otherwise, bingo equipment or supplies for use in bingo in this state and sells or furnishes the items to another person for use, resale, display, or operation.

(10) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(1), eff. October 1, 2009.



(11) "Fraternal organization" means:

(A) a nonprofit organization organized to perform and engaged primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions that meet the other requirements of this chapter; or

(B) a nonprofit National Historical District Association representing the owners and lessees of a majority of the real property located in a National Historical District designated for not less than five years by the National Register of Historic Places, Heritage Conservation and Recreation Service of the United States Department of the Interior, if the association's net proceeds are used for restoration, construction, maintenance, and security in the district. The term "fraternal organization" does not include an organization whose members are predominantly veterans or dependents of veterans of the armed services of the United States.

(12) "Governing body" means the commissioners court with regard to a county or justice precinct or the city council or other chief legislative body with regard to a municipality.

(13) "Gross receipts" means the total amount received from the sale, rental, transfer, or use of bingo cards and entrance fees charged at premises at which bingo is conducted.

(14) "Licensed authorized organization" means an authorized organization that holds a license to conduct bingo.

(15) "Licensed commercial lessor" means a person licensed to lease premises and act as a commercial lessor.

(16) "Manufacturer" means:

(A) a person who assembles from raw materials or subparts a completed piece of bingo equipment or supplies for use in bingo games in this state; or

(B) a person who converts, modifies, adds to, or removes parts from any bingo equipment, item, or assembly to further its promotion or sale for or use in a bingo game in this state.

(17) "Municipal secretary" means the officer of a municipality performing the duties of municipal secretary.

(18) "Net proceeds" means:

(A) in relation to the gross receipts from one or more bingo occasions, the amount remaining after deducting the reasonable sums necessarily and actually expended for expenses under Section 2001.458 and the fee on prizes under Section 2001.502; and

(B) in relation to the gross rent or other

consideration received by a licensed authorized organization for the use of its premises, fixtures, or equipment by another license holder, the amount remaining after deducting the reasonable sums necessarily and actually expended for any janitorial services and utility supplies directly attributable to the use of the premises, fixtures, or equipment.

(19) "Nonprofit organization" means an unincorporated association or a corporation that is incorporated or holds a certificate of authority under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes). The organization:

(A) may not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services; and

(B) must have obtained tax exempt status under Section 501(c), Internal Revenue Code of 1986.

(20) "Person" means an individual, partnership, corporation, or other group.

(21) "Political subdivision" means a county, justice precinct, or municipality.

(22) "Premises" means the area subject to the direct control of and actual use by a licensed authorized organization or group of licensed authorized organizations to conduct bingo. The term includes a location or place.

(23) "Primary business office" means the location at which all records relating to the primary purpose of a licensed authorized organization are maintained in the ordinary course of business.

(24) "Pull-tab bingo" means a form of bingo played using tickets with perforated break-open tabs, made of paper or paper products, the face of which is covered or otherwise hidden from view to conceal numbers, letters, or symbols, some of which have been designated in advance as prize winners. The term includes games commonly known as "instant bingo" and "break-open bingo."

(25) "Pull-tab dispenser" means an electronic or mechanical device that dispenses a pull-tab bingo ticket after a person inserts money into the device and includes a device commonly known as a "ticket dispenser."

(25-a) "Regular license" means a license to conduct bingo that is issued by the commission and that expires on the first or second anniversary of the date of issuance unless revoked or

suspended before that date by the commission. The term includes an annual license.

(26) "Religious society" means a church, synagogue, or other organization organized primarily for religious purposes.

(27) "Veterans organization" means a nonprofit organization:

(A) whose members are veterans or dependents of veterans of the armed services of the United States; and

(B) that is chartered by the United States Congress and organized to advance the interests of veterans or active duty personnel of the armed forces of the United States and their dependents.

(28) "Volunteer fire department" means a fire-fighting organization that:

(A) operates fire-fighting equipment;

(B) is organized primarily to provide fire-fighting service;

(C) is actively providing fire-fighting service; and

(D) does not pay its members compensation other than nominal compensation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 1, eff. October 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(1), eff. October 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1023 (H.B. 2728), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 42(2), eff. September 1, 2013.

#### **SUBCHAPTER B. COMMISSION POWERS AND DUTIES**

Sec. 2001.051. CONTROL AND SUPERVISION OF BINGO; BINGO DIVISION. (a) The commission shall administer this chapter.

(b) The commission has broad authority and shall exercise strict control and close supervision over all bingo conducted in this state so that bingo is fairly conducted and the proceeds derived from

bingo are used for an authorized purpose.

(c) The commission shall execute its authority through a bingo division established by the commission to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.052. DIRECTOR OF BINGO OPERATIONS. (a) The commission shall employ a director of bingo operations.

(b) The director of bingo operations shall administer the bingo division under the direction of the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.053. OFFICERS AND INVESTIGATORS. The commission may employ officers or investigators the commission considers necessary to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.054. RULEMAKING AUTHORITY. The commission may adopt rules to enforce and administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.0541. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The commission shall adopt rules and guidelines as necessary to comply with Chapter 53 when using criminal history record information under this chapter to issue or renew a bingo license or to list or renew the listing of an individual in the registry of approved bingo workers.

Added by Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. [2197](#)), Sec. 18, eff. September 1, 2013.

Sec. 2001.055. REGULATION OF GAMES. The commission by rule may establish the number and type of bingo games that may be played

during a bingo occasion.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.056. APPROVAL OF BINGO CARDS. (a) The commission by rule shall provide procedures for the approval of bingo cards.

(b) A license holder may not use or distribute a bingo card unless the card has been approved by the commission.

(c) The commission may set the price or adopt a schedule of prices for the sale or provision of bingo cards by a licensed authorized organization.

(d) A licensed authorized organization may not sell or provide a bingo card at a price other than a price authorized by the commission or a schedule adopted by the commission.

(e) The commission by rule may require a licensed authorized organization to notify the commission of the price for bingo cards the organization will use for one or more reporting periods.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.057. BINGO ADVISORY COMMITTEE. (a) The commission may appoint a bingo advisory committee consisting of nine members. The commission shall appoint members representing a balance of interests including representatives of:

- (1) the public;
- (2) charities that operate bingo games; and
- (3) commercial and charity lessors that participate in the bingo industry.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(2), eff. October 1, 2009.

(c) A committee member serves at the pleasure of the commission.

(d) A committee member is not entitled to receive compensation for serving as a member. A committee member is entitled to reimbursement for reasonable expenses incurred in performing duties as a member.

(e) The committee may:

- (1) advise the commission on the needs and problems of the state's bingo industry;

(2) comment on rules involving bingo during their development and before final adoption unless an emergency requires immediate action by the commission;

(3) report annually to the commission on the committee's activities; and

(4) perform other duties as determined by the commission.

(f) The committee may meet quarterly or at the commission's request.

(g) The commission may adopt rules to govern the operations of the committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(2), eff. October 1, 2009.

Sec. 2001.058. PUBLIC INFORMATION. (a) The commission shall provide to any person on request a printed copy of this chapter and the rules applicable to the enforcement of this chapter.

(b) The commission may charge a reasonable amount for a copy provided under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.059. ADVISORY OPINIONS. (a) An officer, bingo chairperson, or authorized representative of a license holder or an attorney, accountant, or bookkeeper employed or retained by a license holder may request from the commission an advisory opinion regarding compliance with this chapter and the rules of the commission.

(b) The commission shall respond to a request under Subsection (a) not later than the 60th day after the date a request is received, unless the commission determines that the request does not contain sufficient facts to provide an answer on which the requestor may rely. In that event, the commission shall request additional information from the requestor not later than the 10th day after the date the request is received. If the commission requests additional information, the commission shall respond to the request not later than the 60th day after the date additional information is received pursuant to the request for additional information.

(c) A person who requests an advisory opinion under Subsection (a) may act in reliance on the opinion in the conduct of any activity under any license issued under this chapter if the conduct is substantially consistent with the opinion and the facts stated in the request.

(d) An advisory opinion issued under this section is not a rule under Subchapter B, Chapter 2001, Government Code, and the rulemaking requirements of that subchapter do not apply to a request for an advisory opinion or any advisory opinion issued by the commission.

(e) Nothing in this section precludes the commission from requesting an attorney general opinion under Section 402.042, Government Code. In the event the commission requests an attorney general opinion on a matter that is the subject of an advisory opinion request under this section, the deadlines established under Subsection (b) are tolled until 30 days following the issuance of the attorney general opinion.

(f) The commission may delegate all or part of the authority and procedures for issuing advisory opinions under this section to an employee of the commission.

(g) The commission may refuse to issue an advisory opinion under this section on a matter that the commission knows to be in active litigation.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 2, eff. October 1, 2009.

Sec. 2001.060. REPORTING. (a) On or before June 1 of each even-numbered year, the commission shall prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and house of representatives with primary jurisdiction over charitable bingo a report stating for each of the preceding two calendar years:

(1) the total amount of adjusted gross receipts reported by licensed authorized organizations from their bingo operations;

(2) the total amount of net proceeds reported by licensed authorized organizations from their bingo operations; and

(3) a comparison of the amounts reported under Subdivisions (1) and (2), including the percentage that the net proceeds represents of the adjusted gross receipts.

(b) For purposes of Subsection (a), "adjusted gross receipts" means the amount remaining after deducting prizes paid, excluding prize fees collected from bingo players.

(c) For purposes of Subsection (a), the commission shall determine the total amount of net proceeds in a manner that does not reduce gross receipts by the amount of rent paid for the rental of bingo premises by a licensed authorized organization to another licensed authorized organization if the other organization pays rent for the premises to a licensed commercial lessor.

Added by Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 3, eff. October 1, 2009.

Sec. 2001.061. LICENSE RENEWAL PROCESS. The commission shall adopt rules governing each part of the license renewal process for all licenses issued under this chapter, from application submission to completion of the renewal process. The process must require a license holder renewing a license to submit to the commission the information required in the initial license application.

Added by Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 19, eff. September 1, 2013.

#### **SUBCHAPTER C. LICENSE TO CONDUCT BINGO**

Sec. 2001.101. AUTHORIZED ORGANIZATION. (a) The commission may license a person who is an authorized organization eligible for a license to conduct bingo if the person is:

- (1) a religious society that has existed in this state for at least three years;
- (2) a nonprofit organization:
  - (A) whose predominant activities are for the support of medical research or treatment programs; and
  - (B) that for at least three years:
    - (i) must have had a governing body or officers elected by a vote of members or by a vote of delegates elected by the members; or



(ii) must have been affiliated with a state or national organization organized to perform the same purposes as the nonprofit organization;

(3) a fraternal organization;

(4) a veterans organization that has existed in this state for at least three years;

(5) a volunteer fire department that has existed in this state for at least three years; or

(6) a volunteer emergency medical services provider that has existed in this state for at least three years.

(b) A fraternal organization:

(1) must have been organized in this state for at least three years;

(2) must have had during the three-year period a bona fide membership actively and continuously engaged as an organization in furthering its authorized purposes; and

(3) may not have authorized a person on behalf of its membership, governing body, or officers to support or oppose a particular candidate for public office by:

(A) making political speeches;

(B) passing out cards or other political literature;

(C) writing letters;

(D) signing or circulating petitions;

(E) making campaign contributions; or

(F) soliciting votes.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 4, eff. October 1, 2009.

Sec. 2001.102. LICENSE APPLICATION. (a) An applicant for a license to conduct bingo must file with the commission an application on a form prescribed by the commission.

(b) The application must include:

(1) the name and address of the applicant;

(2) the names and addresses of the applicant's officers and directors;

(3) the address of the premises where and the time when the

applicant intends to conduct bingo under the license sought;

(4) the name and address of the licensed commercial lessor of the premises, if the applicant intends to lease premises to conduct bingo from a person other than an authorized organization;

(5) a statement that the net proceeds of bingo will go to one or more of the authorized charitable purposes under this chapter;

(6) a designation of the applicant organization's bingo chairperson under whom bingo will be conducted accompanied by a statement signed by the chairperson stating that the chairperson will be responsible for the conduct of bingo under the terms of the license and this chapter;

(7) sufficient facts relating to the applicant's incorporation and organization to enable the commission to determine whether the applicant is an authorized organization;

(8) a copy of the applicant organization's most recently filed Internal Revenue Service Form 990, if applicable;

(9) a letter of good standing from the applicant organization's parent organization, if the organization receives an exemption from federal income taxes as a member of a group of organizations;

(10) copies of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation;

(11) verification of the applicant organization's good standing with the secretary of state if the organization is organized under the law of this state; and

(12) information necessary to conduct criminal background checks on the applicant organization's officers and directors.

(c) A copy of the Internal Revenue Service letter that approves an applicant's exemption from taxation under Section 501(c), Internal Revenue Code of 1986, is adequate evidence of the person's tax-exempt status. A letter of good standing from a parent organization that holds an exemption from taxation under Section 501(c), Internal Revenue Code of 1986, for both the parent organization and its affiliate is adequate evidence of the affiliate organization's tax-exempt status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. [1474](#)), Sec. 5, eff.

October 1, 2009.

Sec. 2001.103. TEMPORARY LICENSE. (a) An authorized organization may receive a temporary license to conduct bingo by filing with the commission an application, on a form prescribed by the commission, accompanied by a \$25 license fee.

(b) A temporary license is valid for four hours during any one day.

(c) An organization may not receive more than six temporary licenses in a calendar year.

(d) An organization operating under a temporary license is subject to:

(1) the taxes and fees authorized or imposed by this chapter; and

(2) the other provisions of this chapter to the extent they can be made applicable.

(e) Notwithstanding Subsection (c), an authorized organization that holds an annual license to conduct bingo may receive not more than 24 temporary licenses during the 12-month period following the issuance or renewal of the license. The holder of a license that is effective for two years may receive not more than 24 temporary licenses for each 12-month period that ends on an anniversary of the date the license was issued or renewed.

(f) An authorized organization that holds a regular license to conduct bingo may apply for all or any portion of the total number of temporary licenses to which the organization is entitled under Subsection (e) in one application without stating the days or times for which the organization will use the temporary licenses.

(g) An organization that has been issued a temporary license under Subsection (f) shall notify the commission of the specific date and time of the bingo occasion for which the temporary license will be used before using the license. If the commission receives the notification by noon of the day before the day the temporary license will be used, the commission shall verify receipt of the notice before the end of the business day on which the notice is received. If the commission does not receive the notification by noon of the day before the day the temporary license will be used, the commission shall verify receipt of the notice before noon of the business day that follows the day the commission received the notice.

(h) A verification under Subsection (g) may be delivered by facsimile, e-mail, or any other means reasonably contemplated to arrive before the time the temporary license will be used.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 6, eff. October 1, 2009.

Sec. 2001.104. LICENSE FEES. (a) The commission shall set the fees for a license to conduct bingo in an amount reasonable to defray administrative costs but not less than the following:

- (1) Class A (annual gross receipts of \$25,000 or less)-\$100;
- (2) Class B (annual gross receipts of more than \$25,000 but not more than \$50,000)-\$200;
- (3) Class C (annual gross receipts of more than \$50,000 but not more than \$75,000)-\$300;
- (4) Class D (annual gross receipts of more than \$75,000 but not more than \$100,000)-\$400;
- (5) Class E (annual gross receipts of more than \$100,000 but not more than \$150,000)-\$600;
- (6) Class F (annual gross receipts of more than \$150,000 but not more than \$200,000)-\$900;
- (7) Class G (annual gross receipts of more than \$200,000 but not more than \$250,000)-\$1,200;
- (8) Class H (annual gross receipts of more than \$250,000 but not more than \$300,000)-\$1,500;
- (9) Class I (annual gross receipts of more than \$300,000 but not more than \$400,000)-\$2,000; and
- (10) Class J (annual gross receipts of more than \$400,000)-\$2,500.

(b) The commission by rule shall establish procedures to determine if the appropriate license fee was paid.

(c) The commission by rule shall provide for:

- (1) the payment of any additional fee amount determined to be due under Subsection (b); and
- (2) credit to be given to the license holder for any excess

fee amount determined under Subsection (b) to have been paid by the license holder.

(d) An applicant shall pay the fees established under Subsection (a) annually. An applicant for a license or renewal of a license may obtain a license that is effective for two years by paying an amount equal to two times the amount of the annual license fee.

(e) A licensed authorized organization may pay in advance, or establish an escrow account with the commission to cover, fees assessed under this chapter for the amendment of a license or issuance of a temporary license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 7, eff. October 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 20, eff. September 1, 2013.

Sec. 2001.105. LICENSE ISSUANCE OR RENEWAL. (a) The commission shall issue or renew a license to conduct bingo on payment of the license fee provided by Section 2001.104 if the commission determines that:

(1) the member or members of the applicant designated in the application to conduct bingo are active members of the applicant;

(2) the bingo is to be conducted in accordance with this chapter;

(3) the proceeds of the bingo are to be disposed in accordance with this chapter;

(4) the applicant has made and can demonstrate significant progress toward the accomplishment of the purposes of the organization during the 12 months preceding the date of application for a license or license renewal;

(5) all persons who will conduct, promote, or administer the proposed bingo are active members of the applicant organization and all other persons who will assist in conducting, promoting, or administering the proposed bingo games are persons authorized to do so by Section 2001.411; and

(6) no person under whose name bingo will be conducted and no person working at the proposed bingo has been convicted of a gambling offense or criminal fraud.

(b) The commission may not issue a license to an authorized organization to conduct bingo if an officer or member of the board of directors of the organization has been convicted of criminal fraud or a gambling or gambling-related offense.

(c) Except as provided by Section 2001.104(d), a license issued under this subchapter is effective for one year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 8, eff. October 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 21, eff. September 1, 2013.

Sec. 2001.106. FORM AND CONTENTS OF LICENSE. A license to conduct bingo must include:

- (1) the name and address of the license holder;
- (2) the name and address of the bingo chairperson of the license holder under whom the bingo will be conducted; and
- (3) the address of the premises where and the time when bingo is to be conducted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 9, eff. October 1, 2009.

Sec. 2001.107. TRAINING PROGRAM. (a) Unless the organization is a member of a unit that designates a unit manager under Section 2001.437, the bingo chairperson for a licensed authorized organization shall complete the training required by commission rule. For a unit operating under Subchapter I-1, the unit manager shall complete the training if the unit designates a unit manager under Section 2001.437.

(b) A training program approved by the commission must include

training related to:

- (1) conducting bingo;
- (2) administering and operating bingo; and
- (3) promoting bingo.

(c) The commission by rule shall establish:

- (1) the content of the training course;
- (2) information concerning training to be reported to the commission; and
- (3) other training program requirements that the commission determines to be necessary to promote the fair conduct of bingo and compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. [1474](#)), Sec. 10, eff. October 1, 2009.

Sec. 2001.108. LICENSE AMENDMENT FOR CHANGE OF BINGO PREMISES OR OCCASIONS. (a) A licensed authorized organization and the licensed commercial lessor at which the organization conducts or will conduct bingo may file a joint application with the commission to change the premises at which the organization may conduct bingo or the times of the organization's bingo occasions to allow the organization to conduct bingo at the same time and premises that another licensed authorized organization is licensed to conduct bingo if the other organization has ceased, or will cease, conducting bingo at that time and premises. The application must state whether the other organization has ceased or will cease conducting bingo at that time and premises because:

- (1) the organization has abandoned or will abandon its licensed time or premises; or
- (2) the organization's lease has been or will be terminated.

(b) If the other organization ceased or will cease conducting bingo for the reason stated in Subsection (a)(1), the commission must act on the joint application filed under Subsection (a) not later than the 14th day after the date the application is filed with the commission.

(c) If the other organization ceased or will cease conducting

bingo for the reason stated in Subsection (a)(2), the commission must act on the joint application filed under Subsection (a) not later than the 14th day after the date the application is filed with the commission or the date on which the termination takes effect, whichever is later.

(d) If the commission fails to act within the time provided by Subsection (b) or (c), the licensed authorized organization may act as if the change in premises or bingo occasions has been approved by the commission and may conduct bingo at the new premises or during the new bingo occasion until the commission acts on the application.

(e) Notwithstanding Subsection (d), the commission may issue temporary licenses to one or more licensed authorized organizations that conduct bingo at the same location as an organization that has ceased or will cease to conduct bingo, which are in addition to the number of temporary licenses each organization is entitled to under another provision of this chapter. The commission is not required to act on a joint application under Subsection (a) within the time provided by this section if the number of additional temporary licenses is sufficient to allow the other organizations at the location to conduct bingo during the licensed times of the organization that has ceased or will cease to conduct bingo.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 6, eff. Sept. 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 11, eff. October 1, 2009.

#### **SUBCHAPTER D. COMMERCIAL LESSOR LICENSE**

Sec. 2001.151. LICENSE REQUIRED. A person who leases premises on which bingo is conducted directly to a licensed authorized organization must be a licensed commercial lessor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.152. ELIGIBILITY. (a) The commission may issue a commercial lessor license only to:

(1) a licensed authorized organization that owns or leases a premises where bingo is or will be conducted or an association of licensed authorized organizations that jointly own or lease premises



where bingo is or will be conducted and that the organization or association leases or offers for lease to one or more other authorized organizations for the conduct of bingo;

(2) a person who leases premises to a single licensed authorized organization that subleases or will sublease the premises to one or more other licensed authorized organizations for the conduct of bingo; or

(3) a person who leases premises for the total control and exclusive use of only one licensed authorized organization as that organization's primary business office.

(b) Notwithstanding Subsection (a), a person who was a licensed commercial lessor on June 10, 1989, whose license has been in effect continuously since that date, and who is otherwise eligible for the license may renew the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 7, eff. Sept. 1, 2003.

Sec. 2001.153. RESTRICTIONS ON SOURCE OF FUNDS. (a) The commission may not issue a commercial lessor license to a person unless the commission receives evidence the commission considers adequate that funds used by the person seeking the license to obtain the premises, provide the premises with furniture, fixtures, or equipment, renovate the premises, or provide utilities to the premises are:

(1) the person's own funds; or

(2) the funds of another person, including loan proceeds, that:

(A) were obtained in an arms-length transaction that was commercially reasonable under the circumstances; and

(B) were not obtained under an expectation or obligation that the person from whom the funds were obtained would directly participate in, or have a legal interest in, rents obtained under the license or revenues or profits from the conduct of bingo on the premises.

(b) Subsection (a) does not prohibit a group of licensed authorized organizations from combining the organizations' funds or combining or jointly obtaining funds described by Subsection (a)(2).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.154. INELIGIBLE PERSONS. (a) The commission may not issue a commercial lessor license to or renew a commercial lessor license of:

- (1) a person convicted of criminal fraud or a gambling or gambling-related offense;
- (2) a public officer who receives any consideration, direct or indirect, as owner or lessor of premises offered for conducting bingo;
- (3) a person who extends credit to, loans money to, or pays or provides for the payment of license fees for an authorized organization;
- (4) a distributor or manufacturer;
- (5) a person in which a person covered by Subdivision (1), (2), (3), or (4) or a person married or related in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to one of those persons has greater than a 10 percent proprietary, equitable, or credit interest or in which one of those persons is active or employed;
- (6) a foreign corporation or other foreign legal entity;
- (7) an individual who is not a resident of this state;
- (8) a corporation or other legal entity owned or controlled

by:

- (A) a foreign corporation; or
- (B) an individual who is not a resident of this state;

or

- (9) a corporation or other legal entity:
  - (A) whose shares are publicly traded; or
  - (B) owned or controlled by a corporation whose shares are publicly traded.

(b) Subsection (a)(5) does not prevent an authorized organization or other person that is not organized for pecuniary profit and no part of the net earnings of which inure to the benefit of an individual, member, or shareholder from being licensed as a commercial lessor solely because a public officer or a person married or related in the first degree by consanguinity or affinity to a public officer is a member of, active in, or employed by the authorized organization or other person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 22, eff. September 1, 2013.

Sec. 2001.156. LICENSE APPLICATION. (a) An applicant for a commercial lessor license must file with the commission a written verified application on a form prescribed by the commission.

(b) The license application must include:

(1) the name and address of the applicant and each other person who has a financial interest in or who is in any capacity a real party in interest in the applicant's business as it pertains to this chapter;

(2) a designation and address of the premises intended to be covered by the license;

(3) the lawful capacity of the premises for public assembly purposes;

(4) a statement that a copy of the application has been sent to the appropriate governing body; and

(5) a statement that the applicant complies with the conditions for eligibility for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.157. SUPPLEMENTAL INFORMATION. At any time the commission, the appropriate governing body, or the attorney general may make a written request of a commercial lessor to disclose:

(1) the cost of the premises and appraised value for property tax purposes or annual net lease rent, whichever is applicable;

(2) gross rentals received and itemized expenses for the preceding calendar or fiscal year, if any;

(3) gross rentals, if any, derived from bingo during the preceding calendar or fiscal year;

(4) the computation by which the proposed rental schedule was determined;

(5) the number of occasions on which the lessor anticipates receiving rent for bingo during the next year or shorter period if

applicable and the proposed rent for each of those occasions;

(6) estimated gross rental income from all other sources during the next year; and

(7) estimated expenses itemized for the current year and the amount of each item allocated to bingo rentals.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.158. LICENSE FEES. (a) The commission shall set the fees for a commercial lessor license in an amount reasonable to defray administrative costs but not less than the following:

(1) Class A (annual gross rentals from licensed organizations of not more than \$12,000)-\$100;

(2) Class B (annual gross rentals from licensed organizations of more than \$12,000 but not more than \$20,000)-\$200;

(3) Class C (annual gross rentals from licensed organizations of more than \$20,000 but not more than \$30,000)-\$300;

(4) Class D (annual gross rentals from licensed organizations of more than \$30,000 but not more than \$40,000)-\$400;

(5) Class E (annual gross rentals from licensed organizations of more than \$40,000 but not more than \$50,000)-\$600;

(6) Class F (annual gross rentals from licensed organizations of more than \$50,000 but not more than \$60,000)-\$900;

(7) Class G (annual gross rentals from licensed organizations of more than \$60,000 but not more than \$70,000)-\$1,200;

(8) Class H (annual gross rentals from licensed organizations of more than \$70,000 but not more than \$80,000)-\$1,500;

(9) Class I (annual gross rentals from licensed organizations of more than \$80,000 but not more than \$90,000)-\$2,000;

and

(10) Class J (annual gross rentals from licensed organizations of more than \$90,000)-\$2,500.

(b) The commission by rule shall establish procedures for determining if the appropriate license fee was paid.

(c) The commission by rule shall provide for:

(1) the payment of any additional fee amount determined to be due not paid under Subsection (b); and

(2) credit to be given to the license holder for any excess fee amount determined under Subsection (b) to have been paid by the

license holder.

(d) An applicant for a commercial lessor license shall pay the fees established under Subsection (a) annually. An applicant for a license or renewal of a license may obtain a license that is effective for two years by paying an amount equal to two times the amount of the annual license fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 8, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 12, eff. October 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 23, eff. September 1, 2013.

Sec. 2001.159. LICENSE ISSUANCE OR RENEWAL. (a) The commission shall issue or renew a commercial lessor license if the commission determines that:

(1) the applicant has paid the license fee as provided by Section 2001.158;

(2) the applicant qualifies to be licensed under this chapter;

(3) the rent to be charged is fair and reasonable;

(4) there is no diversion of the funds of the proposed lessee from the lawful purposes under this chapter;

(5) the person whose signature or name appears in the application is in all respects the real party in interest and is not an undisclosed agent or trustee for the real party in interest; and

(6) the applicant will lease the premises for the conduct of bingo in accordance with this chapter.

(b) The commission shall issue a commercial lessor license under this section for the period specified in the license application or for a shorter period as the commission determines.

(c) Except as provided by Section 2001.158(d), the period may not exceed one year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 9, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 13, eff.

October 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 14, eff. October 1, 2009.

Sec. 2001.160. TRANSFER OF LICENSE. (a) On approval by the commission, a licensed commercial lessor may transfer a commercial lessor license if the person to whom the license will be transferred otherwise meets the requirements of this subchapter.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(3), eff. October 1, 2009.

(d) Subject to Subsections (e) and (f), if an individual who holds a commercial lessor license dies or becomes incapacitated as determined by a court of this state, the individual's license is part of the individual's estate and is subject to the applicable laws governing the disposition and control of the person's property. The license is not considered to have been transferred, subject to compliance with Subsection (g). The individual's estate may take any action with respect to the individual's license that the individual could have taken while the individual was alive or had capacity.

(e) Unless the commission revokes or suspends the license under this chapter, or an injunction is issued under this section, a licensed authorized organization that conducts bingo lawfully at premises under a license to which Subsection (d) applies may continue conducting bingo at the premises after the death or incapacity of the commercial lessor license holder.

(f) On the showing by the commission of a cause that would be sufficient for the commission to revoke or suspend a license under this chapter or an applicable commission rule, a district court in the county for which a commercial lessor license was issued or the commission by order may temporarily or permanently enjoin the conduct of bingo at premises under a license to which Subsection (d) applies.

(g) The estate or guardian of an individual to whom Subsection (d) applies shall notify the commission not later than one year after the date the individual dies or is determined to be incapacitated by a court of this state. The estate or guardian and the heirs or other appropriate person shall promptly take all necessary steps to complete a transfer of the license to the heirs or other appropriate person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(3), eff. October 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1023 (H.B. 2728), Sec. 2, eff. September 1, 2011.

Sec. 2001.161. LICENSED AUTHORIZED ORGANIZATION AS COMMERCIAL LESSOR. (a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(4), eff. October 1, 2009.

(b) A licensed authorized organization may obtain only one commercial lessor license.

(c) The commission may issue a commercial lessor license to a licensed authorized organization only for the same premises where the organization is licensed to conduct bingo.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(4), eff. October 1, 2009.

#### **SUBCHAPTER E. MANUFACTURER'S AND DISTRIBUTOR'S LICENSES**

Sec. 2001.201. MANUFACTURER'S LICENSE REQUIRED. A manufacturer may not sell or supply to a person in this state or for use in this state bingo cards, boards, sheets, pads, or other supplies, or equipment designed to be used in playing bingo, or engage in any intrastate activity involving those items, unless the manufacturer holds a manufacturer's license under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.202. ELIGIBILITY FOR MANUFACTURER'S LICENSE. The following persons are not eligible for a manufacturer's license:

(1) a person convicted of criminal fraud or a gambling or gambling-related offense;

(2) a person who is or has been a professional gambler or gambling promoter;

(3) an elected or appointed public officer or a public

employee;

(4) an owner, officer, director, shareholder, agent, or employee of a licensed commercial lessor;

(5) a person who conducts, promotes, or administers, or assists in conducting, promoting, or administering, bingo for which a license is required by this chapter;

(6) a distributor required to be licensed under this chapter;

(7) a person who has had a license to manufacture, distribute, or supply bingo equipment or supplies revoked within the preceding year by another state;

(8) an owner, officer, director, or shareholder of, or a person holding an equitable or credit interest in, another manufacturer or distributor licensed or required to be licensed under this chapter; or

(9) a person:

(A) in which a person described by Subdivision (1), (2), (3), (4), (5), (6), (7), or (8) or in which a person married or related in the first degree by consanguinity or affinity to one of those persons has greater than a 10 percent proprietary, equitable, or credit interest or in which one of those persons is active or employed; or

(B) in whose application for a manufacturer's license a person described by Subdivision (1), (2), (3), (4), (5), (6), (7), or (8) is required to be named.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. [2197](#)), Sec. 24, eff. September 1, 2013.

Sec. 2001.203. MANUFACTURER'S LICENSE APPLICATION. (a) An applicant for a manufacturer's license must file with the commission an application on a form prescribed by the commission.

(b) The application must include:

(1) the name and address of the applicant and the name and address of each of its locations where bingo supplies or equipment are manufactured;

(2) a full description of each type of bingo supply or



equipment that the applicant intends to manufacture or market in this state and the brand name, if any, under which each item will be sold;

(3) if the applicant:

(A) is not a corporation, the name and home address of each owner; or

(B) is a corporation, the name and home address of each officer and director and each person owning more than 10 percent of a class of stock in the corporation;

(4) if the applicant is a foreign corporation or other foreign legal entity, the name, business name and address, and address of its registered agent for service in this state;

(5) the name and address of each manufacturer, supplier, and distributor in which the applicant has a financial interest and the details of that financial interest, including any indebtedness between the applicant and the manufacturer, supplier, or distributor of \$5,000 or more;

(6) information regarding whether the applicant or a person required to be named in the application has been convicted in this state or another state of criminal fraud or a gambling or gambling-related offense;

(7) information regarding whether the applicant or a person required to be named in the application is an owner, officer, director, shareholder, agent, or employee of a licensed commercial lessor or conducts, promotes, administers, or assists in conducting, promoting, or administering bingo for which a license is required by this chapter;

(8) information regarding whether the applicant or a person required to be named in the application is a public officer or public employee in this state;

(9) the name of each state in which the applicant is or has been licensed to manufacture, distribute, or supply bingo equipment or supplies, each license number, the period of time licensed under each license, and whether a license has been revoked, suspended, withdrawn, canceled, or surrendered and, if so, the reasons for the action taken;

(10) information regarding whether the applicant or a person required to be named in the application is or has been a professional gambler or gambling promoter;

(11) the names and addresses of each manufacturer, supplier, or distributor of bingo equipment or supplies in which the

applicant or a person required to be named in the application is an owner, officer, shareholder, director, agent, or employee; and  
(12) any other information the commission requests.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 15, eff. October 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 25, eff. September 1, 2013.

Sec. 2001.204. MANUFACTURER'S LICENSE BOND. (a) An applicant for a manufacturer's license must give the commission a cash bond or a bond in the amount of \$10,000 issued by a surety company chartered or authorized to do business in this state.

(b) The bond must provide for forfeiture to the state on the manufacturer's failure to comply with this chapter or a commission rule or on suspension or revocation of the manufacturer's license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.205. MANUFACTURER'S LICENSE FEE. (a) The commission by rule shall set the annual manufacturer's license fee in an amount reasonable to defray administrative costs.

(b) In addition to the annual license fee, the commission may require an additional fee in an amount necessary to defray the cost of a background investigation, including the inspection of manufacturing plants and locations. The commission by rule may establish the conditions and procedure for payment of the additional fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 26, eff. September 1, 2013.

Sec. 2001.206. DISTRIBUTOR'S LICENSE REQUIRED. A distributor may not sell, distribute, or supply bingo equipment or supplies for

use in bingo in this state unless the distributor holds a distributor's license under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.207. ELIGIBILITY FOR DISTRIBUTOR'S LICENSE. The following persons are not eligible for a distributor's license:

- (1) a person convicted of criminal fraud or a gambling or gambling-related offense;
- (2) a person who is or has been a professional gambler or gambling promoter;
- (3) an elected or appointed public officer or a public employee;
- (4) an owner, officer, director, shareholder, agent, or employee of a licensed commercial lessor;
- (5) a person who conducts, promotes, or administers, or assists in conducting, promoting, or administering bingo for which a license is required by this chapter;
- (6) a manufacturer required to be licensed under this chapter;
- (7) a person who has had a license to manufacture, distribute, or supply bingo equipment or supplies revoked within the preceding year by another state;
- (8) an owner, officer, director, or shareholder of, or a person having an equitable or credit interest in, another manufacturer or distributor licensed or required to be licensed under this chapter; or
- (9) a person:
  - (A) in which a person described by Subdivision (1), (2), (3), (4), (5), (6), (7), or (8) or in which a person married or related in the first degree by consanguinity or affinity, as determined under Subchapter B, Chapter 573, Government Code, to one of those persons has greater than a 10 percent proprietary, equitable, or credit interest or in which one of those persons is active or employed; or
  - (B) in whose application a person described by Subdivision (1), (2), (3), (4), (5), (6), (7), or (8) is required to be named.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 27, eff. September 1, 2013.

Sec. 2001.208. DISTRIBUTOR'S LICENSE APPLICATION. (a) An applicant for a distributor's license must file with the commission an executed verified application on a form prescribed by the commission.

(b) The application must include:

- (1) the full name and address of the applicant;
- (2) the name and address of each location operated by the distributor from which bingo supplies or equipment are distributed or at which bingo supplies or equipment are stored;
- (3) if a noncorporate distributor, the name and home address of each owner;
- (4) if a corporate distributor, the name and home address of each officer or director and of each person owning more than 10 percent of a class of stock in the corporation;
- (5) if a foreign corporation or other foreign legal entity, the name, business name and address, and address of its registered agent for service in this state;
- (6) a full description of the type of bingo supply or equipment that the applicant intends to store or distribute in this state and the name of the manufacturer of each item and the brand name, if any, under which the item will be sold or marketed;
- (7) the name and address of a manufacturer, supplier, or distributor in which the applicant has a financial interest and the details of that financial interest, including an indebtedness between the applicant and the manufacturer, supplier, or distributor of \$5,000 or more;
- (8) information regarding whether the applicant or a person required to be named in the application has been convicted in this state or another state of criminal fraud or a gambling or gambling-related offense;
- (9) information regarding whether the applicant or a person required to be named in the application is an owner, officer, director, shareholder, agent, or employee of a licensed commercial lessor or conducts, promotes, administers, or assists in conducting, promoting, or administering bingo for which a license is required

under this chapter;

(10) information regarding whether the applicant or a person required to be named in the application is a public officer or public employee in this state;

(11) the name of each state in which the applicant is or has been licensed to manufacture, distribute, or supply bingo equipment or supplies, each license number, the period of time licensed under each license, and whether a license was revoked, suspended, withdrawn, canceled, or surrendered and, if so, the reasons for the action taken;

(12) information regarding whether the applicant or a person required to be named in the application is or has been a professional gambler or gambling promoter;

(13) the name and address of each manufacturer, supplier, or distributor of bingo equipment or supplies in which the applicant or a person required to be named in the application is an owner, officer, shareholder, director, agent, or employee; and

(14) any other information the commission requests.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 16, eff. October 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 28, eff. September 1, 2013.

Sec. 2001.209. DISTRIBUTOR'S LICENSE FEE. (a) The commission by rule shall set the annual distributor's license fee in an amount reasonable to defray administrative costs.

(b) In addition to the annual license fee, the commission may require an additional fee in an amount necessary to defray the cost of a background investigation of the applicant, including the inspection of storage, distribution, or operating locations. The commission by rule may establish the conditions and procedure for payment of the additional fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 29, eff. September 1, 2013.

Sec. 2001.210. GENERAL PROVISIONS. A license issued under this subchapter is subject to the restrictions under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.211. AMENDMENT OF APPLICATION. (a) An applicant for a manufacturer's or distributor's license shall, during pendency of the application, notify the commission immediately of any change relating to a fact stated in the application.

(b) If a change occurs after issuance of a manufacturer's or distributor's license, the license holder shall report the change to the commission not later than the 14th day after the date of the change.

(c) Not later than the 14th day after the date of the change, a license holder shall notify the commission of a change in:

(1) the license holder's organization, structure, or mode of operation;

(2) the identity of persons named or required to be named in the application and the nature or extent of those persons' interest; or

(3) any other facts stated in the application.

(d) Failure to give a notice required under this section is cause for:

(1) denial, suspension, or revocation of a license; or

(2) imposition of an administrative penalty or other administrative action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. [1474](#)), Sec. 17, eff. October 1, 2009.

Sec. 2001.212. DENIAL OF LICENSE. The commission may deny an application for or renewal of a license for a cause that would permit or require the suspension or revocation of the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.213. COMMISSION ACTION NOT REQUIRED. If, for reasons beyond the control of the commission, sufficient information is not available to allow the commission to determine the eligibility of an applicant for a manufacturer's or distributor's license issued under this chapter, the commission is not required to take action on the application until the applicant provides the required information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.214. LICENSE TERM. (a) Except as provided by Subsection (b), a manufacturer's or distributor's license is effective for one year unless revoked or suspended by the commission.

(b) A manufacturer or distributor may obtain a license that is effective for two years by paying an amount equal to two times the amount of the annual license fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 10, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 30, eff. September 1, 2013.

Sec. 2001.215. RECORDS AND REPORTS. The commission by rule may require a holder of a manufacturer's or distributor's license to keep records and file reports.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.216. EXAMINATION OF RECORDS. (a) The commission may examine the books and records of the holder of or an applicant for a manufacturer's or distributor's license.

(b) The commission may not disclose information obtained during the examination except as necessary to carry out this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.217. OFFENSE. A person who does not hold a manufacturer's or distributor's license commits an offense if the person sells or attempts to induce the sale of bingo equipment or supplies to a licensed authorized organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.218. PAYMENT DUE. (a) Each sale or lease of bingo supplies or equipment to a license holder under this chapter must be on terms of immediate payment or on terms requiring payment not later than the 30th day after the date of actual delivery.

(b) If a payment is not made when due, the seller shall immediately notify the commission. The commission shall notify all manufacturers and distributors licensed in this state of the default.

(c) In the event of a default, a person may not sell or transfer bingo equipment or supplies to the purchaser in default on terms other than immediate payment on delivery until otherwise authorized by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 11, eff. Sept. 1, 2003.

#### **SUBCHAPTER G. GENERAL PROVISIONS RELATING TO COMMISSION LICENSES**

Sec. 2001.301. LICENSE INVESTIGATION. Promptly after the filing of the application for a license under this chapter, the commission shall investigate the qualifications of each applicant and the merits of the application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.302. PROVISION OF SUPPLEMENTAL INFORMATION. (a) In addition to any required application form, a license applicant or license holder shall submit any supplemental information requested by the commission.

(b) The commission may deny a license application or revoke a license based on a failure to submit requested supplemental information when required.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.3025. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION. The commission is entitled to conduct an investigation of and is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation identification division, or another law enforcement agency to assist in the investigation of:

- (1) an applicant for or holder of a license issued under this chapter;
  - (2) a person required to be named in a license application;
- or
- (3) an employee or other person who works or will work for a license holder and who is required by another provision of this chapter to undergo a criminal background check.

Added by Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 18, eff. October 1, 2009.

Sec. 2001.304. TEMPORARY AUTHORIZATION. (a) The commission shall issue a temporary authorization for the activity requested if a license for the activity is not issued or denied before the 31st day after the earliest date on which each of the following has occurred:

- (1) the filing of an application for the license;
  - (2) the payment of the proper license fee;
  - (3) the filing of a copy of a tax exemption statement issued by the Internal Revenue Service under Section 501(c), Internal Revenue Code of 1986, if required; and
  - (4) the completion of a criminal background investigation.
- (b) A temporary authorization is effective for not more than 60 days, subject to automatic revocation, if a denial letter is issued.
- (c) The commission may extend the effective period of the temporary authorization on written request filed before the end of the period.
- (d) A temporary authorization may not be effective for more than one year from the date of its original issuance.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.305. NOTICE TO LOCAL AUTHORITIES. (a) The commission may not issue a license to an applicant for an authorized organization license or a commercial lessor license until the applicant has sent a copy of the license application to the appropriate governing body.

(b) Immediately after receiving a license, a license holder shall send a copy of the license to the appropriate governing body. The governing body shall file the copy of the license in a central file containing licenses issued under this chapter.

(c) Not later than the 10th day after the date a license is issued, the license holder shall give written notice of the issuance of the license to:

(1) the police department of the municipality in which bingo will be conducted, if bingo is to be conducted in a municipality; or

(2) the sheriff of the county in which bingo will be conducted, if bingo is to be conducted outside a municipality.

(d) Bingo may not be played until notification has been given under Subsections (b) and (c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.306. AMENDMENT OF LICENSE. (a) A license issued under this chapter may be amended on application to the commission and on payment of a fee in the amount required by the commission if the subject matter of the proposed amendment could properly have been included in the original license.

(a-1) The commission by rule shall establish an amendment fee schedule. The amount of a fee charged by the commission may vary based on the complexity of the proposed license amendment.

(b) An amended license is effective only for the period remaining under the original license.

(c) The holder of a license to conduct bingo may not change the location at which it conducts bingo until it has:

(1) returned its original license if available, or certified that the license is not available; and

(2) received an amended license for the new location.

(d) The holder of a license to conduct bingo shall notify the commission before changing the time or date of a game. The license

holder may provide notice to the commission regarding the change by use of telephone or facsimile.

(e) The commission by rule shall provide a method for a license holder to pay the amendment fee required by Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 19, eff. October 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 31, eff. September 1, 2013.

Sec. 2001.307. MAXIMUM LICENSE TERM. Except as otherwise provided by this chapter, a license issued under this chapter may not be effective for more than one year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 12, eff. Sept. 1, 2003.

Sec. 2001.308. PAPERWORK REDUCTION. The commission may not require a person who has held a license under this chapter for five or more years to complete a license renewal application that is more than two pages long.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.309. SEPARATE LICENSE. Each location for conducting bingo must be separately licensed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.310. DISPLAY OF LICENSE. (a) A licensed authorized organization or licensed commercial lessor shall conspicuously display a license issued under this chapter and a license to lease premises for conducting bingo at the premises at which bingo is conducted at all times during the conduct of bingo.

(b) Each commercial lessor license shall contain a statement of

the name and address of the license holder and the address of the premises.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.311. RIGHTS NOT VESTED. The issuance of a license or temporary authorization by the commission does not grant a vested right in the license, the temporary authorization, or the privileges conferred.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.312. FAILURE TO FILE TAX OR FEE REPORTS. A person is not eligible for a license or a license renewal unless all required reports, tax returns, and requested information have been filed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.313. REGISTRY OF APPROVED BINGO WORKERS. (a) To minimize duplicate criminal history background checks by the commission and the costs incurred by organizations and individuals, the commission shall maintain a registry of individuals on whom the commission has conducted a criminal history background check and who are approved to be involved in the conduct of bingo or to act as a bingo operator.

(b) An individual listed in the registry may be involved in the conduct of bingo or act as an operator at any location at which bingo is lawfully conducted.

(b-1) An individual's listing on the registry expires on the third anniversary of the date the individual was initially included on the registry. The individual may renew the listing before the expiration date. If the individual fails to renew the listing, the commission shall remove the individual's name from the registry. An individual whose name is removed from the registry may reapply for listing on the registry.

(b-2) The commission by rule may impose a fee for an initial registration application and renewal application submitted under this

section. The commission shall set the fee in an amount sufficient to cover the application processing costs, including a criminal history background check, identification card, and other administrative costs the commission considers appropriate.

(c) The commission shall make the registry information available to the public by publishing it on the commission's website and by responding to telephone, e-mail, and facsimile requests. This subsection does not require the commission to disclose information that is confidential by law.

(d) An individual who is not listed on the registry established by this section may not act, and a licensed authorized organization may not allow the individual to act, as an operator, manager, cashier, usher, caller, bingo chairperson, bookkeeper, or salesperson for the licensed authorized organization.

(e) The commission may refuse to add an individual's name to, or remove an individual's name from, the registry established by this section if, after notice and, if requested by the individual, a hearing, the individual is finally determined to have:

(1) been convicted of an offense listed under Section 2001.105(b);

(2) converted bingo equipment in a premises to an improper use;

(3) converted funds that are in, or that should have been in, the bingo account of any licensed authorized organization;

(4) taken any action, individually or in concert with another person, that affects the integrity of any bingo game to which this chapter applies;

(5) acted as an operator, manager, cashier, usher, caller, bingo chairperson, bookkeeper, or salesperson for a licensed authorized organization without being listed on the registry established under this section;

(6) failed to provide a complete application; or

(7) participated in any violation of this chapter or rules adopted by the commission for the administration of this chapter.

(f) A licensed authorized organization shall report to the commission or its designee the discovery of any conduct on the part of an individual registered or required to be registered under this section where there is substantial basis for believing that the conduct would constitute grounds for removal of the individual's name from, or refusal to add the individual's name to, the registry

established by this section. A statement made in good faith to the commission or to an adjudicative body in connection with any such report may not be the basis for an action for defamation of character.

(g) An individual who has been finally determined to have taken action prohibited by Subsection (e)(2), (3), (4), (5), (6), or (7) cannot be listed on the registry of approved bingo workers and cannot work as a bingo worker for one year from the date of such determination. Upon expiration of the one-year period, the individual is eligible for listing on the registry provided a licensee subject to this chapter makes application to list the individual. In such event, the commission shall take into consideration the facts and circumstances that occurred that led to the applicable action under Subsections (e)(2)-(7) in deciding whether to list the individual on the registry.

(h) A licensed authorized organization may employ an individual who is not on the registry established by this section as an operator, manager, cashier, usher, caller, or salesperson on a provisional basis if the individual is awaiting the results of a background check by the commission:

(1) for a period not to exceed 14 days if the individual is a resident of this state; or

(2) for a period to be established by commission rule if the individual is not a resident of this state.

(i) An individual who has been removed from the registry under Subsection (e) and has not subsequently been listed on the registry under Subsection (g) may not be employed under Subsection (h).

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 13, eff. Sept. 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 20, eff. October 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 32, eff. September 1, 2013.

Sec. 2001.314. IDENTIFICATION CARD FOR APPROVED BINGO WORKER.

(a) The commission may require an individual listed in the registry maintained under Section 2001.313 to wear an identification card to identify the individual to license holders, bingo players, and

commission staff while the individual is on duty during the conduct of bingo. The commission by rule shall prescribe the form and content of the card.

(b) The commission shall provide the identification card and shall provide a form to be completed by an individual that allows the individual to prepare the identification card. The commission may collect a reasonable charge to cover the cost of providing the card or form.

(c) An identification card required by the commission under this section to be worn by an individual while on duty during the conduct of bingo must be in substantial compliance with the form and content requirements prescribed by the commission under this section.

(d) The commission may not require any other individual licensed under this chapter, or an individual acting on the license holder's behalf, to wear an identification card, whether or not the individual is present or performing the individual's duties during the conduct of bingo.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 13, eff. Sept. 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. [1474](#)), Sec. 21, eff. October 1, 2009.

Sec. 2001.315. LATE LICENSE RENEWAL. (a) A person who fails to renew the person's license under this chapter before the date the license expires may renew the license after the expiration date by:

(1) filing a license renewal application with the commission not later than the 14th day after the date the license expires, paying the applicable annual license fee, and paying a late license renewal fee equal to 10 percent of the annual license fee; or

(2) filing a license renewal application with the commission not later than the 60th day after the date the license expires, paying the applicable annual license fee, and paying a late license renewal fee equal to 10 percent of the annual license fee for each 14-day period occurring after the date the license expires and before the date the renewal application is filed with the commission.

(b) A person who files a renewal application with the commission under Subsection (a) may continue to perform the bingo activities authorized under the license as if the license has not

expired until the license is renewed or renewal of the license is denied.

(c) To renew a license after the 60th day after the date the license expires, the person must file an application for an original license and cease all bingo activities for which the license is required as of the 61st day after the date the license expires until a new license is issued.

Added by Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 22, eff. October 1, 2009.

Sec. 2001.316. DELIVERY OF COMMISSION NOTICE. If notice under this chapter is required to be given to an authorized organization, the commission shall send the notice to the bingo chairperson of the authorized organization and to the appropriate commercial lessor, if applicable.

Added by Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 22, eff. October 1, 2009.

#### **SUBCHAPTER H. DENIAL, REVOCATION, AND SUSPENSION OF LICENSE**

Sec. 2001.351. DENIAL OF LICENSE. The commission may deny an application for a license or renewal of a license issued under this chapter for a cause that would permit or require the suspension or revocation of a license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.352. HEARING. (a) A person whose application for a license is denied by the commission may make a written request for a hearing. At the hearing the applicant is entitled to be heard on the qualifications of the applicant and the merits of the application.

(b) The burden of proof is on the applicant to establish by a preponderance of the evidence its eligibility for a license.

(c) A hearing under this section must be conducted by the State Office of Administrative Hearings and is subject to Section 2001.058(e), Government Code.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 33, eff. September 1, 2013.

Sec. 2001.353. DISCIPLINE OF LICENSE AND REGISTRATION HOLDERS.

(a) After a hearing, the commission may suspend, revoke, or refuse to renew a license or registration issued under this chapter for:

(1) failure to comply with this chapter or a commission rule; or

(2) a reason that would allow or require the commission to refuse to issue or renew a license or registration of the same class.

(b) The commission may place on probation a person whose license or registration is suspended. If a license or registration suspension is probated, the commission may require the person:

(1) to report regularly to the commission on the matters that are the basis of the probation;

(2) to limit the person's activities under the license or registration in the manner prescribed by the commission; or

(3) to take any other reasonable action prescribed by the commission to address the matters that are the basis of the probation.

(c) If the person fails to comply with the conditions of probation, the commission may suspend or revoke the person's license or registration.

(d) The commission by rule shall:

(1) adopt written guidelines to ensure that probation is administered consistently; and

(2) develop a system to track compliance with probation requirements.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 34, eff. September 1, 2013.

Sec. 2001.354. FINAL HEARING. (a) The commission shall hold a final hearing on the suspension or revocation of a license, if

requested by the license holder, not later than the 30th day after the date the commission receives written notice of the request.

(b) A final hearing on suspension or revocation is governed by the same rules as a hearing on any other suspension or revocation under this chapter.

(c) A hearing under this section must be conducted by the State Office of Administrative Hearings and is subject to Section 2001.058(e), Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 35, eff. September 1, 2013.

Sec. 2001.355. TEMPORARY SUSPENSION. (a) The commission may temporarily suspend a license issued under this chapter for failure to comply with this chapter or a commission rule.

(b) Before temporarily suspending a license, the director of bingo operations must follow any prehearing rules adopted by the commission to determine if the license holder's continued operation may constitute:

(1) an immediate threat to the health, safety, morals, or welfare of the public; or

(2) a financial loss to this state, which includes a license holder's failure to remit taxes under Section 2001.501 or prize fee payments under Section 2001.502 to the commission as required by those sections.

(c) Chapter 2001, Government Code, does not apply to the director of bingo operations or to the commission in the enforcement and administration of a temporary suspension under this section.

(d) The commission shall adopt rules to govern the temporary suspension of a license under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 36, eff. September 1, 2013.

Sec. 2001.356. NOTICE OF TEMPORARY SUSPENSION. (a) A

proceeding to temporarily suspend a license issued under this chapter is initiated by the director of bingo operations by serving notice to the license holder informing the holder of:

(1) the alleged violations that constitute grounds for temporary suspension;

(2) the rules adopted by the commission regarding the prehearing temporary suspension process; and

(3) the license holder's right to a hearing before the commission.

(b) The notice must be:

(1) personally served on an officer, operator, or agent of the license holder; or

(2) sent by certified or registered mail, return receipt requested, to the license holder's mailing address as it appears on the commission's records.

(c) If a notice of temporary suspension is served on a license holder, the director of bingo operations shall simultaneously serve notice of a hearing, to be held not later than the 14th day after the date the notice is served, at which the license holder must show cause why the license should not be temporarily suspended on the 14th day after the date the notice is served. If the license holder does not show cause, the license is suspended.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 23, eff. October 1, 2009.

Sec. 2001.357. JUDICIAL REVIEW. (a) An applicant for or the holder of a license issued or to be issued under this chapter whose application has been denied, whose license has been revoked or suspended, or who is otherwise aggrieved by an action of the commission relating to licensing under this chapter may appeal the decision of the commission to a district court in Travis County not later than the 30th day after the date on which the commission's decision becomes final and appealable.

(b) Judicial review of a commission decision is under the substantial evidence rule as provided by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.358. SCHEDULE OF SANCTIONS. (a) The commission by rule shall adopt a schedule of sanctions that defines and summarizes violations of this chapter or commission rules adopted under this chapter to ensure that the sanctions imposed are appropriate to the violation.

(b) The schedule must:

- (1) allow deviations from the schedule for mitigating circumstances clearly established by the commission;
- (2) include a list of the most common violations and the sanctions assessed for those violations, including revocation, suspension, and denial of license or registration renewal; and
- (3) establish the sanctions in accordance with the seriousness or frequency of each type of violation.

Added by Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. [2197](#)), Sec. 37, eff. September 1, 2013.

#### **SUBCHAPTER I. OPERATION OF BINGO**

Sec. 2001.401. RESTRICTIONS ON PREMISES PROVIDERS. A person may not, for direct or indirect consideration, lease or otherwise make a premises available for conducting bingo unless the person is:

- (1) a licensed commercial lessor; or
- (2) a person who leases or otherwise makes available premises to an organization that has been issued a temporary license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.402. SINGLE PREMISES. (a) Bingo may not be conducted at more than one premises on property owned or leased by a licensed authorized organization.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(6), eff. October 1, 2009.

(c) No more than seven licensed authorized organizations may conduct bingo at the same premises.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(6), eff. October 1, 2009.

Sec. 2001.403. COMMON ROOF OR FOUNDATION. (a) Except as provided by this section, no more than one bingo premises may exist under a common roof or over a common foundation.

(b) This section does not apply if more than one premises lawfully exists under a common roof or over a common foundation under a license application filed with the commission on or before May 23, 1997. The commission shall renew a license at the premises that is otherwise in compliance with this chapter.

(c) Subsection (b) does not apply if a premises under a common roof or over a common foundation ceases to lawfully exist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.404. PRINCIPAL LOCATION. A licensed authorized organization may conduct bingo only in:

(1) the county where the organization has its primary business office or another county contiguous to that county; or

(2) if the organization does not have a business office, in the county of the principal residence of its chief executive officer, or a contiguous county of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 24, eff. October 1, 2009.

Sec. 2001.405. PROHIBITED RENTAL PAYMENTS. Bingo may not be conducted at a leased premises if rental under the lease is to be paid, in whole or part, on the basis of a percentage of the receipts or net proceeds derived from the operation of the game or by reference to the number of people attending a game.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.406. RENT FOR PREMISES. (a) The rent charged by a licensed commercial lessor to a licensed authorized organization to conduct bingo may not exceed \$600 for each bingo occasion conducted on the lessor's premises unless the organization subleases the premises to one or more other licensed authorized organizations to conduct bingo, in which event the rent charged by the licensed commercial lessor may not exceed \$600 for each day.

(b) Rent for premises used for the conduct of bingo must be paid in a lump sum. Except as otherwise provided by this section, the lump sum must include all expenses authorized by Section 2001.458 that are paid by the licensed authorized organization to the lessor in connection with the use of the premises. A licensed authorized organization or unit may pay as a separate expense, based on the percentage of the total area of the lessor's facility that the organization or unit uses as the bingo premises for the conduct of bingo, the organization's or unit's pro rata share of:

(1) property taxes on the facility that are paid by the lessor, excluding any penalties and interest on the taxes;

(2) water, electric, and gas utility expenses for the facility that are paid by the lessor, excluding any late fees or other penalties; and

(3) property and casualty insurance premiums for the facility that are paid by the lessor, excluding any late fees or other penalties.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(7), eff. October 1, 2009.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 25, eff. October 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(7), eff. October 1, 2009.

Sec. 2001.407. EQUIPMENT AND SUPPLY TRANSACTIONS. (a) A licensed manufacturer may furnish, by sale or otherwise, bingo equipment or supplies to a licensed distributor. A licensed manufacturer may not furnish, by sale or otherwise, bingo equipment or supplies to a person other than a licensed distributor.

(b) A licensed distributor may not furnish by sale, lease, or otherwise, bingo equipment or supplies to a person other than a licensed authorized organization, another licensed distributor, or a person authorized to conduct bingo under Section 2001.551(b)(3) or (4). A sale of bingo equipment or supplies authorized by this section must be made on terms requiring immediate payment or payment not later than the 30th day after the date of actual delivery.

(c) A licensed distributor may not receive by purchase or otherwise bingo equipment or supplies from a person other than a licensed manufacturer or another licensed distributor.

(d) A licensed authorized organization may lease or purchase electronic or mechanical card-minding devices, pull-tab dispensers, bingo machines, consoles, blowers, and flash boards directly from a licensed distributor.

(e) Except for a purchase made by a licensed authorized organization under Subsection (f), a licensed authorized organization or a person authorized to conduct bingo under Section 2001.551(b)(3) or (4) may not obtain by purchase or otherwise bingo equipment or supplies from a person other than a licensed distributor.

(f) With the prior written consent of the commission, a licensed authorized organization may make an occasional sale of bingo cards or of a used bingo flash board or blower to another licensed authorized organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 26, eff. October 1, 2009.

Sec. 2001.408. OTHER METHODS FOR PLAYING BINGO. Subject to the commission's rules, bingo may be played using a pull-tab bingo ticket.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.409. CARD-MINDING DEVICES. (a) A person may not use a card-minding device:

(1) to generate or determine the random letters, numbers, or other symbols used in playing the bingo card played with the

device's assistance;

(2) as a receptacle for the deposit of tokens or money in payment for playing the bingo card played with the device's assistance; or

(3) as a dispenser for the payment of a bingo prize, including coins, paper currency, or a thing of value for the bingo card played with the device's assistance.

(b) Repealed by Acts 2003, 78th Leg., ch. 1114, Sec. 33, eff. Sept. 1, 2003.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 33, eff. Sept. 1, 2003.

Sec. 2001.410. PULL-TAB DISPENSER. (a) A person may not use a pull-tab dispenser:

(1) to generate or determine the random letters, numbers, or other symbols used in playing bingo;

(2) to affect the chances of winning at bingo; or

(3) as a dispenser for the payment of a bingo prize, including coins, paper currency, or a thing of value for the game played.

(b) The price of a pull-tab ticket sold by a pull-tab dispenser may not exceed \$1.

(c) Not more than five pull-tab dispensers may be operated on one premises.

(d) A bingo game representation or combination of bingo games must be shown on a ticket dispensed from a pull-tab dispenser.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.411. PERSONS OPERATING OR CONDUCTING BINGO. (a) Except as provided by this section, a person other than a bona fide member of a licensed authorized organization may not conduct, promote, or administer, or assist in conducting, promoting, or administering, bingo.

(b) Only an active member of a licensed authorized organization may be an operator responsible for conducting, promoting, or administering bingo.

(c) A person may not assist in conducting, promoting, or



administering bingo except a person who is:

- (1) an active member of the licensed authorized organization;
- (2) a member of an organization that is an auxiliary to the licensed authorized organization;
- (3) a member of an organization of which the licensed authorized organization is an auxiliary;
- (4) a member of an organization that is affiliated with the licensed authorized organization by being, with it, auxiliary to another organization; or
- (5) a bookkeeper, an accountant, a cashier, an usher, or a caller.

(c-1) An organization may designate as members of the organization one or more individuals who elect to become members, including all of the organization's directors, and the designated members are bona fide members of the organization for purposes of this section and other law.

(d) The commission, without regard to a person's membership status in a licensed authorized organization, by rule may restrict involvement in the conduct, promotion, or administration of bingo by:

- (1) a licensed commercial lessor;
- (2) a person having an interest in or who is active in a licensed commercial lessor; or
- (3) a person related in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a person having an interest in or active in a licensed commercial lessor.

(e) The commission may not prohibit an operator responsible for conducting, promoting, or administering bingo from acting as a bingo caller for a licensed authorized organization during a bingo occasion. This subsection does not relieve the operator of the duty to be available to a commission employee or bingo player if required by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 14, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 27, eff. October 1, 2009.

Sec. 2001.4115. JOINT EMPLOYMENT OF BINGO EMPLOYEES. Two or more licensed authorized organizations conducting bingo at the same premises may jointly hire bingo employees. One organization may act as the employee's employer and the other organization may reimburse the employing organization for the other organization's share of the employee's compensation and other employment-related costs. A reimbursement under this section is an authorized expense and must be made from the bingo account of the reimbursing organization.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 15, eff. Sept. 1, 2003.

Sec. 2001.412. ADMISSION TO BINGO GAMES. A person may not be denied admission to a bingo game or the opportunity to participate in a game because of race, color, creed, religion, national origin, sex, or disability or because the person is not a member of the licensed authorized organization conducting the bingo game.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.413. ADMISSION CHARGE REQUIRED. Except as provided by Section 2001.4155, a licensed authorized organization may not offer or provide to a person the opportunity to play bingo without charge.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 16, eff. Sept. 1, 2003.

Sec. 2001.414. BINGO RECORDS. (a) The commission by rule may provide for different recordkeeping procedures for licensed authorized organizations by class based on the amount of gross receipts of the organization.

(b) An organization conducting bingo must record on a cash register all transactions for which it receives bingo gross receipts in conformance with commission rules relating to transaction recording specifications.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.415. ADVERTISEMENTS. (a) A person other than a licensed authorized organization, licensed commercial lessor, or the commission may not advertise bingo.

(b) A licensed authorized organization, licensed commercial lessor, or the commission may include in an advertisement or promotion the amount of a prize or series of prizes offered at a bingo occasion.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 17, eff. Sept. 1, 2003.

Sec. 2001.4155. GIFT CERTIFICATES. (a) Nothing in this chapter prohibits a licensed authorized organization from selling or redeeming a gift certificate that entitles the bearer of the certificate to play a bingo game, including instant bingo.

(b) A licensed authorized organization that sells or redeems a gift certificate must keep adequate records relating to the gift certificate as provided by commission rule.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 18, eff. Sept. 1, 2003.

Sec. 2001.416. OTHER GAMES. (a) A game of chance other than bingo or a raffle conducted under Chapter 2002 may not be conducted or allowed during a bingo occasion.

(b) A person authorized to conduct a raffle under this section must be a member of a licensed authorized organization as provided by Section 2001.411.

(c) The commission shall adopt rules for the implementation of this section.

(d) This section does not prohibit the exhibition and play of an amusement machine that is not a gambling device as defined by Section 47.01, Penal Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.418. MINORS. (a) An individual younger than 18 years of age may not play bingo conducted under a license issued under this chapter unless the individual is accompanied by the

individual's parent or guardian.

(b) A license holder may prohibit all individuals younger than 18 years of age or individuals of an age younger than 18 years of age as determined by the license holder from entering the licensed premises by posting a written notice to that effect at the premises.

(c) An individual younger than 18 years of age may not conduct or assist in the conduct of bingo under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.419. BINGO OCCASIONS. (a) A licensed authorized organization may not conduct more than three bingo occasions during a calendar week under an annual license.

(b) A bingo occasion may not exceed four hours.

(c) No more than two bingo occasions may be conducted at the same premises during one day except that a third bingo occasion may be conducted under a temporary license held by a licensed authorized organization at that premises.

(d) If more than one bingo occasion is conducted at the same premises on the same day:

(1) the bingo occasions must be announced separately;

(2) the licensed times may not overlap; and

(3) bingo cards may be sold during a bingo occasion for play during a subsequent bingo occasion that is scheduled to begin at the same premises in not more than eight hours after the sale of cards for the subsequent occasion begins.

(e) Bingo paper for a bingo occasion may be sold at the licensed premises before the bingo occasion begins.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 28, eff. October 1, 2009.

Sec. 2001.420. PRIZES. (a) A bingo prize may not have a value of more than \$750 for a single game.

(b) A person may not offer or award on a single bingo occasion prizes with an aggregate value of more than \$2,500 for all bingo games other than:

- (1) pull-tab bingo; or
- (2) bingo games that award individual prizes of \$50 or

less.

(c) A licensed authorized organization or other person may not award or offer to award a door prize with a value of more than \$250.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 634 (H.B. 394), Sec. 1, eff. June 14, 2013.

#### **SUBCHAPTER I-1. UNIT ACCOUNTING**

Sec. 2001.431. DEFINITIONS. In this subchapter:

(1) "Unit" means two or more licensed authorized organizations that conduct bingo at the same location joining together to share revenues, authorized expenses, and inventory related to bingo operations.

(2) "Unit accounting" means a method by which licensed authorized organizations that are members of a unit account for the sharing of revenues, authorized expenses, and inventory related to bingo operations.

(3) "Unit accounting agreement" means a written agreement by all the licensed authorized organizations that are members of a unit that contains, at a minimum:

(A) the taxpayer name and number of each licensed authorized organization that is a member of the unit;

(B) the method by which the net proceeds of the bingo operations of the unit will be apportioned among the members of the unit;

(C) the name of the unit manager or designated agent of the unit; and

(D) the methods by which the unit may be dissolved and by which one or more members of the unit may withdraw from participation in the unit, including the distribution of funds, records, and inventory and the allocation of authorized expenses and liabilities on dissolution or withdrawal of one or more members of the unit.

(4) "Unit manager" means an individual licensed under this subchapter to be responsible for the revenues, authorized expenses,

and inventory of a unit.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.

Sec. 2001.432. FORMING ACCOUNTING UNIT. (a) Two or more licensed authorized organizations may form and operate a unit as provided by this subchapter by:

(1) executing a unit accounting agreement; and  
(2) stating in the unit accounting agreement whether the unit will use:

- (A) a unit manager; or
- (B) a designated agent.

(b) More than one unit may be formed at a single location. A licensed authorized organization may not be a member of more than one unit.

(c) This subchapter does not require a licensed authorized organization to join a unit. Except as provided by Subsection (d), whether to join or withdraw from a unit is at the discretion of each licensed authorized organization.

(d) The members of a unit may determine whether to allow another licensed authorized organization to join the unit. The terms of the withdrawal of a member from the unit are governed by the unit accounting agreement.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.

Sec. 2001.433. APPLICABILITY OF CHAPTER. A licensed authorized organization that uses unit accounting is subject to the other provisions of this chapter to the extent the provisions are applicable and are not inconsistent with this subchapter.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.

Sec. 2001.4335. EXEMPTION FROM FRANCHISE TAX. A unit formed under this subchapter is exempt from the tax imposed under Chapter 171, Tax Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. [1474](#)), Sec. 29,

eff. October 1, 2009.

Sec. 2001.434. CONDUCT OF BINGO. (a) Each licensed authorized organization that is a member of a unit shall conduct its bingo games separately from the bingo games of the other members of the unit.

(b) A unit may purchase or lease bingo supplies and equipment in the same manner as a licensed authorized organization.

(c) A licensed distributor may sell or lease bingo supplies or equipment to a unit in the same manner as the distributor sells or leases bingo supplies and equipment to a licensed authorized organization.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.

Sec. 2001.435. UNIT ACCOUNTING. (a) A unit:

(1) shall establish and maintain one checking account designated as the unit's bingo account;

(2) shall maintain one inventory of bingo supplies and equipment for use in the bingo operations of members of the unit; and

(3) may maintain an interest-bearing savings account designated as the unit's bingo savings account.

(b) Each member of a unit shall deposit into the unit's bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes under Sections 2001.420(a) and (b). The deposit shall be made not later than the second business day after the day of the bingo occasion on which the receipts were obtained.

(c) All authorized expenses and distributions of the unit and its members shall be paid from the unit's bingo checking account.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. [1474](#)), Sec. 30, eff. October 1, 2009.

Sec. 2001.436. DISBURSEMENT OF FUNDS BY DISSOLVED UNIT. (a) Sections 2001.457(a) and (b) apply to a unit formed under this subchapter. For purposes of this subchapter, the requirements of

Sections 2001.457(a) and (b) that are applicable to a licensed authorized organization shall be applied to a unit.

(b) A unit that has dissolved for any reason and has unexpended bingo funds shall disburse those funds to the bingo account of each member of the unit before the end of the next calendar quarter after the calendar quarter in which the unit dissolves.

(c) For purposes of the application of Sections 2001.457(a) and (b) to a unit under this section:

(1) "Adjusted gross receipts" means gross receipts less the amount of cost of goods purchased by a unit and prizes paid in the preceding quarter; and

(2) "Cost of goods purchased by a unit" means the cost of bingo paper and pull-tab bingo tickets purchased by the unit and payments to distributors for electronic cardminding devices.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.

Sec. 2001.437. UNIT MANAGER; LICENSE. (a) If the unit accounting agreement of a unit states that a unit manager is responsible for compliance with commission rules and this chapter, the unit manager is responsible for:

(1) the filing of one quarterly report for the unit on a form prescribed by the commission; and

(2) the payment of taxes and fees and the maintenance of the bingo inventory and financial records of the unit.

(b) A unit with a unit manager shall notify the commission of the name of the unit manager and immediately notify the commission of any change of unit manager.

(c) A person may not provide services as a unit manager to licensed authorized organizations that form a unit unless the person holds a unit manager license under this subchapter. A person designated as an agent under Section 2001.438(b) is not a unit manager on account of that designation for purposes of this section.

(d) An applicant for a unit manager license must file with the commission a written application on a form prescribed by the commission that includes:

(1) the name and address of the applicant;

(2) information regarding whether the applicant, or any officer, director, or employee of the applicant, has been convicted



of criminal fraud or a gambling or gambling-related offense; and

(3) any other information required by commission rule.

(e) The commission by rule shall establish an annual license fee for a unit manager license in an amount reasonable to defray administrative costs plus any costs incurred to conduct a criminal background check.

(f) A person who holds a unit manager license shall post a bond or other security pursuant to Section 2001.514.

(g) A person is not eligible for a unit manager license under this subchapter if the person, or any officer, director, or employee of the person:

(1) has been convicted of criminal fraud or a gambling or gambling-related offense;

(2) is an owner, officer, or director of a licensed commercial lessor, is employed by a licensed commercial lessor, or is related to a licensed commercial lessor within the second degree by consanguinity or affinity, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations; or

(3) holds or is listed on another license under this chapter, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations.

(h) A unit manager must complete the training required by Section 2001.107.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 38, eff. September 1, 2013.

Sec. 2001.438. AGREEMENT WITHOUT UNIT MANAGER. (a) This section applies to a unit if the unit accounting agreement for the unit:

(1) does not state that a unit manager will be responsible for compliance with the rules of the commission and this chapter; or

(2) states that the unit will use a designated agent.

(b) The unit shall designate with the commission an agent who will be responsible for providing the commission access to all inventory and financial records of the unit on request of the

commission.

(c) The agent designated under Subsection (b) may not:

(1) hold or be listed on another license issued under this chapter, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations; or

(2) be an owner, officer, or director of a licensed commercial lessor, be employed by a licensed commercial lessor, or be related to a licensed commercial lessor within the second degree by consanguinity or affinity, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations.

(d) The unit shall immediately notify the commission of any change in the agent designated under Subsection (b).

(e) The designated agent must complete the training required by Section 2001.107.

(f) Each licensed authorized organization that is a member of the unit shall be jointly and severally liable for:

(1) compliance with the requirements of this subchapter and the rules of the commission relating to the filing of required reports;

(2) the maintenance of bingo inventory and financial records; and

(3) the payment of taxes, fees, and any penalties imposed for a violation of this subchapter or commission rules related to the operations of the unit.

(g) Each licensed authorized organization that is a member of the unit may be made a party to any administrative or judicial action relating to the enforcement of this subchapter or the rules of the commission pertaining to the operation of the unit.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.

Sec. 2001.439. TRUST AGREEMENT. (a) Notwithstanding any other provision of this subchapter, a unit may be formed pursuant to a trust agreement between two or more licensed authorized organizations that conduct bingo at the same location. The agreement must:

(1) designate one of the organizations as the trustee;

(2) designate a person who will carry out the duties

described by Section 2001.438(b);

(3) specify the method by which the unit will comply with the requirements of Section 2001.436(a); and

(4) state that the trustee is responsible for compliance with the rules of the commission and this chapter.

(b) The commission by rule may prohibit a person from serving as a unit manager or as a designated agent for a unit that does not use a unit manager if the person has failed to comply with the duties required of the person as a unit manager or designated agent.

(c) The commission may prohibit a person who serves as a designated agent that is listed on a license under this chapter, including having been approved by the commission to work in the bingo operations of a licensed authorized organization or as an operator, from holding or being listed on any license or from being approved to work in the bingo operations of any licensed authorized organization or to serve as an operator if the person has failed to comply with the duties required of the person as a unit manager or designated agent.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.

#### **SUBCHAPTER J. BINGO ACCOUNTS AND USE OF PROCEEDS**

Sec. 2001.451. ORGANIZATION BINGO ACCOUNTS. (a) A licensed authorized organization shall establish and maintain one regular checking account designated as the organization's "bingo account." The organization may maintain a separate interest-bearing savings account designated as the "bingo savings account."

(b) A licensed authorized organization shall deposit in the bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes under Sections 2001.420(a) and (b). Except as provided by Subsection (b-1), a deposit must be made not later than the second business day after the day of the bingo occasion on which the receipts were obtained.

(b-1) A licensed authorized organization may deposit funds derived from the conduct of bingo that are paid through a debit card transaction in the bingo fund not later than 72 hours after the transaction.

(c) A licensed authorized organization may transfer money from its general fund or other account to the organization's bingo account

or to the bingo account of a unit of which the organization is a member under Subchapter I-1, if applicable, if:

(1) the balance in the bingo account to which the funds are transferred is less than the maximum amount permitted by this section; and

(2) the organization notifies the commission of the transfer not later than the 14th day after the date of the transfer.

(d) Except as permitted by Subsection (c), a licensed authorized organization may not commingle gross receipts derived from the conduct of bingo with other funds of the organization.

(e) Except as permitted by Subsection (c) of this section and by Section 2001.453(2), a licensed authorized organization may not transfer gross receipts derived from the conduct of bingo to another account maintained by the organization.

(f) A licensed authorized organization shall maintain all of its savings and checking accounts in a financial institution in this state.

(g) The bingo operations of a licensed authorized organization must:

(1) result in net proceeds over the organization's license period; or

(2) if the organization has a two-year license, result in net proceeds over each 12-month period that ends on an anniversary of the date the two-year license was issued.

(h) Except as provided by Subsection (j), a licensed authorized organization or a unit of licensed authorized organizations may retain operating capital in the organization's or unit's bingo account in an amount that:

(1) is equal to the organization's or unit's actual average bingo expenses per quarter based on the preceding license period, excluding prizes paid; and

(2) does not exceed a total of \$50,000 for a single organization or \$50,000 for each member of a unit unless:

(A) the commission by rule establishes a higher amount for all organizations or units or one or more classes of organizations or units; or

(B) the bingo operations director, on request, raises the operating capital limit for one organization or unit as necessary to facilitate the operation of the organization or unit.

(i) Prize fees held in escrow for remittance to the commission

are not included in the calculation of operating capital under Subsection (h).

(j) The commission shall adopt rules allowing a licensed authorized organization to retain a maximum amount of operating capital in the bingo account in excess of the amount provided by Subsection (h) if the organization:

- (1) has conducted bingo for less than one year;
- (2) experiences circumstances beyond the control of the organization, including force majeure, that necessitate an increase in operating capital; or
- (3) provides to the commission a credible business plan for the conduct of bingo or for the organization's existing or planned charitable purposes that an increase in operating capital will reasonably further.

(k) A licensed authorized organization may apply to the commission for a waiver of the requirements of this section and Section 2001.457. The commission may grant the waiver on a showing of good cause by the organization that compliance with this section and Section 2001.457 is detrimental to the organization's existing or planned charitable purposes. An organization applying for a waiver establishes good cause by providing to the commission:

- (1) credible evidence of circumstances beyond the control of the organization, including force majeure; or
- (2) a credible business plan for the organization's conduct of bingo or the organization's existing or planned charitable purposes.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 20, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 31, eff. October 1, 2009.

Sec. 2001.452. BINGO ACCOUNT WITHDRAWALS. (a) Funds from the bingo account must be withdrawn by electronic funds transfer or by preprinted, consecutively numbered checks or withdrawal slips, signed by an authorized representative of the licensed authorized organization and made payable to a person. A check or withdrawal slip may not be made payable to "cash," "bearer," or a fictitious

payee. The nature of the payment made must also be noted on the face of the check or withdrawal slip. The purpose, amount, and payee for each electronic funds transfer must be recorded in accordance with rules adopted by the commission.

(b) The checks for the bingo account must be imprinted with the words "Bingo Account" and must contain the organization's bingo license number on the face of each check.

(c) A licensed authorized organization shall account for all checks and withdrawal slips, including voided checks and withdrawal slips.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 32, eff. October 1, 2009.

Sec. 2001.453. AUTHORIZED USES OF BINGO ACCOUNT. A licensed authorized organization may withdraw funds from its bingo account only for:

(1) the payment of necessary or reasonable bona fide expenses, including compensation of personnel, as permitted under Section 2001.458 incurred and paid in connection with the conduct of bingo; or

(2) the disbursement of net proceeds derived from the conduct of bingo as provided by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 33, eff. October 1, 2009.

Sec. 2001.454. USE OF NET PROCEEDS FOR CHARITABLE PURPOSES.

(a) A licensed authorized organization shall devote to the charitable purposes of the organization its net proceeds of bingo and any rental of premises.

(b) Except as otherwise provided by law, the net proceeds derived from bingo and any rental of premises are dedicated to the charitable purposes of the organization only if directed to a cause, deed, or activity that is consistent with the federal tax exemption

the organization obtained under 26 U.S.C. Section 501 and under which the organization qualifies as a nonprofit organization as defined by Section 2001.002. If the organization is not required to obtain a federal tax exemption under 26 U.S.C. Section 501, the organization's net proceeds are dedicated to the charitable purposes of the organization only if directed to a cause, deed, or activity that is consistent with the purposes and objectives for which the organization qualifies as an authorized organization under Section 2001.002.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 21, eff. Sept. 1, 2003.

Sec. 2001.455. USE OF PROCEEDS BY RECIPIENT. A person given bingo proceeds for a charitable purpose may not use the donation:

- (1) to pay for services rendered or materials purchased in connection with the conduct of bingo by the donor organization; or
- (2) for a purpose that would not constitute a charitable purpose if the activity were conducted by the donor organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.456. USE OF PROCEEDS BY LICENSED AUTHORIZED ORGANIZATION. A licensed authorized organization may not use the net proceeds from bingo directly or indirectly to:

- (1) support or oppose a candidate or slate of candidates for public office;
- (2) support or oppose a measure submitted to a vote of the people; or
- (3) influence or attempt to influence legislation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.457. REQUIRED DISBURSEMENTS TO CHARITY. (a) Before the end of each quarter, a licensed authorized organization shall disburse all of the organization's net proceeds from the preceding quarter, other than amounts retained under Section 2001.451, as provided by this subchapter.

(b) If a licensed authorized organization fails to meet the requirements of Subsection (a) for a quarter, the commission in applying appropriate sanctions shall consider whether, taking into account the amount required to be disbursed during that quarter and the three preceding quarters, the organization has disbursed a total amount sufficient to have met the disbursement requirement for that quarter and the three preceding quarters combined.

(c) A licensed authorized organization that has ceased to conduct bingo for any reason and that has unexpended bingo funds shall disburse those funds as provided by this subchapter before the end of the next calendar quarter after the calendar quarter in which the organization ceases to conduct bingo.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(9), eff. October 1, 2009.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 34, eff. October 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(9), eff. October 1, 2009.

Sec. 2001.458. ITEMS OF EXPENSE. (a) An item of expense may not be incurred or paid in connection with the conduct of bingo except an expense that is reasonable or necessary to conduct bingo, including an expense for:

(1) advertising, including the cost of printing bingo gift certificates;

(2) security;

(3) repairs to premises and equipment;

(4) bingo supplies and equipment;

(5) prizes;

(6) stated rental or mortgage and insurance expenses;

(7) bookkeeping, legal, or accounting services related to bingo;

(8) fees for bingo chairpersons, operators, managers, salespersons, callers, cashiers, ushers, janitorial services, and utility supplies and services;

(9) health insurance or health insurance benefits for bingo



chairpersons, operators, managers, salespersons, callers, cashiers, and ushers, as provided by Subsection (b);

(10) license fees;

(11) attending a bingo seminar or convention required under Section 2001.107; and

(12) debit card transaction fees and electronic funds transfer fees.

(b) The value of health insurance or health insurance benefits provided by a licensed authorized organization to an employee may not exceed 50 percent of the total premium owed. If an employee is employed by more than one licensed authorized organization, the combined value of health insurance or health insurance benefits provided to the employee by the employing organizations may not exceed 50 percent of the total premium owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 22, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 35, eff. October 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 916 (S.B. 1342), Sec. 1, eff. September 1, 2011.

Sec. 2001.459. EXPENSES PAID FROM BINGO ACCOUNT. (a) The following items of expense incurred or paid in connection with the conduct of bingo must be paid from an organization's bingo account:

(1) advertising, including the cost of printing bingo gift certificates;

(2) security during a bingo occasion;

(3) the purchase or repair of bingo supplies and equipment;

(4) prizes, other than authorized cash prizes;

(5) stated rental expenses;

(6) bookkeeping, legal, or accounting services;

(7) fees for callers, cashiers, and ushers;

(8) janitorial services; and

(9) license fees.

(b) Payment for a service under Subsection (a)(10) may be paid from an organization's gross receipts.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2003, 78th Leg., ch. 1114, Sec. 23, eff. Sept. 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 36, eff.  
October 1, 2009.

#### **SUBCHAPTER K. TAXES AND PRIZE FEES**

Sec. 2001.501. GROSS RENTALS TAX. (a) A tax is imposed on the rental of premises for the conduct of bingo under this chapter.

(b) The tax rate is three percent of the gross rentals received by a licensed commercial lessor or other licensed authorized organization for the rental of premises on which bingo is conducted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.502. PRIZE FEE. A licensed authorized organization shall:

(1) collect from a person who wins a bingo prize of more than \$5 a fee in the amount of five percent of the amount or value of the prize; and

(2) remit to the commission a fee in the amount of five percent of the amount or value of all bingo prizes awarded.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 37, eff.  
October 1, 2009.

Sec. 2001.503. LOCAL SHARE OF PRIZE FEE. (a) Except as provided by Subsection (c), a county that imposed a gross receipts tax on the conduct of bingo as of January 1, 1993, is entitled to 50 percent of the fee collected under Section 2001.502 on a prize awarded at a game conducted in the county.

(b) Except as provided by Subsection (c), a municipality that imposed a gross receipts tax on the conduct of bingo as of January 1, 1993, is entitled to 50 percent of the fee collected under Section 2001.502 on a prize awarded at a game conducted in the municipality.

(c) If a county and municipality are both entitled to a share of the fee imposed by Section 2001.502:

(1) the county is entitled to 25 percent of the fee on a prize awarded at a game conducted in the county; and

(2) the municipality is entitled to 25 percent of the fee on a prize awarded at a game conducted in the municipality.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.504. PAYMENT AND REPORTING OF TAX OR FEE. (a) A tax or fee authorized or imposed under this subchapter is due and is payable by the license holder or a person conducting bingo without a license to the commission quarterly on or before the 25th day of the month succeeding each calendar quarter.

(b) The report of a tax or fee must be filed under oath on forms prescribed by the commission.

(c) The commission shall adopt rules for the payment of the taxes and fees.

(d) A license holder required to file a tax return shall deliver the quarterly return with the net amount of the tax due to the commission.

(e) The commission shall deposit the revenue collected under this section to the credit of the general revenue fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 24, eff. Sept. 1, 2003.

Sec. 2001.505. REPORT OF EXPENSES. (a) A licensed authorized organization conducting bingo shall submit quarterly to the commission a report under oath stating:

(1) the amount of the gross receipts derived from bingo;

(2) each item of expense incurred or paid;

(3) each item of expenditure made or to be made, the name and address of each person to whom each item has been paid or is to be paid, and a detailed description of the merchandise purchased or the services rendered;

(4) the net proceeds derived from bingo;

(5) the use to which the proceeds have been or are to be applied; and

(6) a list of prizes offered and given, with their respective values.

(b) A license holder shall maintain records to substantiate the contents of each report.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(10), eff. October 1, 2009.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 38, eff. October 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(10), eff. October 1, 2009.

Sec. 2001.506. RECORD OF PRIZE WINNER. The commission by rule may require a licensed authorized organization to maintain records relating to each person to whom a prize is awarded at a bingo occasion.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.507. COLLECTION AND DISBURSEMENT OF PRIZE FEE. (a) The commission shall deposit the revenue collected from the fee on prizes imposed by Section 2001.502 to the credit of a special account in the general revenue fund.

(b) The commission shall determine the total amount of revenue deposited in the account from prizes awarded at games in a county or municipality entitled to a share under Section 2001.503.

(c) The commission shall send quarterly to a county or municipality entitled to a share of the fee on prizes the county's or municipality's share as provided by Section 2001.503.

(d) The commission shall transfer any remaining amounts in the account to a nondedicated account in the general revenue fund.

(e) The commission shall transmit a jurisdiction's share of the fee on prizes to the treasurer or the officer of the jurisdiction performing the functions of the treasurer's office payable to the jurisdiction. The amount transmitted may be used by the jurisdiction for any purpose for which the general funds of the jurisdiction may be used.

(f) The commission may retain in a jurisdiction's suspense account a portion of the jurisdiction's share of the fee on prizes

collected under this chapter. The amount retained in the suspense account may not exceed five percent of the amount remitted to the jurisdiction. The commission may make refunds from the suspense account of a jurisdiction for overpayments made to those accounts and may redeem dishonored checks and drafts deposited to the credit of the jurisdiction's suspense account.

(g) If a jurisdiction entitled to a share of the fee on prizes prohibits the conduct of bingo under Sections 2001.651-2001.656, the commission may retain in the suspense account of the jurisdiction for one year five percent of the final remittance to that jurisdiction. The amount retained in the suspense account may be used to cover possible overpayment of the jurisdiction's portion of the fee and to redeem dishonored checks and drafts deposited to the credit of the account. One year after the effective date of the prohibition of bingo in the jurisdiction, the commission shall remit the balance in the account to the jurisdiction and close the account.

(h) Interest earned on all fees on prizes collected by the commission under this chapter before distribution to a local jurisdiction, including interest earned from the suspense accounts retained under this section, shall be credited to the general revenue fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.508. PENALTIES FOR FAILURE TO PAY OR REPORT. (a) If a person fails to file a return as required by this chapter or fails to pay to the commission taxes imposed under this chapter when the return or payment is due, the person forfeits five percent of the amount due as a penalty, and after the first 30 days, the person forfeits an additional five percent.

(b) A delinquent tax accrues interest at the rate provided by Section 111.060, Tax Code, beginning on the 60th day after the due date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.509. RECOMPUTATION OF TAX. If the commission is not satisfied with a tax return or the amount of tax required to be remitted under this chapter to the state by a person, the commission

may compute and determine the amount required to be paid on the basis of:

(1) the facts contained in the return or report of receipts and expenses; or

(2) any information possessed by the commission or that may come into the possession of the commission, without regard to the period covered by the information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.510. DETERMINATION IF NO RETURN MADE. (a) If a license holder fails to make a required return, or if a person conducts bingo without a license, the commission shall make an estimate of the prizes awarded at a bingo occasion or of the gross rentals received by a license holder for the rental of premises. The commission shall make the estimate for the period in respect to which the license holder or other person failed to make a return.

(b) The estimate shall be based on any information covering any period possessed by the commission or that may come into the possession of the commission.

(c) On the basis of the commission's estimate, the commission shall compute and determine the amount of taxes or fees required to be paid to the state and shall add to that amount a penalty of 10 percent of the amount.

(d) One or more determinations may be made under this section for one or more periods.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.511. JEOPARDY DETERMINATION. (a) If the commission believes that the collection of a gross rental tax or fee on prizes, an amount of the tax or fee on prizes required to be remitted to the state, or the amount of a determination will be jeopardized by delay, the commission shall make a determination of the tax or fee on prizes or amount of the tax or fee required to be collected, noting the finding of jeopardy on the determination. The determined amount is due and payable immediately.

(b) If a license holder against whom the determination is made does not pay the amount specified by a determination on or before the

20th day after the date of service of the determination on the license holder, the amount becomes final at the end of the 20th day unless the license holder files a petition for redetermination on or before the 20th day after service of notice of the determination.

(c) A delinquency penalty of 10 percent of the tax or fee on prizes or amount of the tax or fee on prizes and interest at the rate of 10 percent a year attaches to the amount of the tax or fee on prizes or the amount of the tax or fee on prizes required to be collected.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.512. APPLICATION OF TAX LAWS. (a) Subtitle B, Title 2, Tax Code, applies to the administration, collection, and enforcement of the gross rentals tax imposed under Section 2001.501 and the fee on prizes imposed under Section 2001.502 except as modified by this chapter.

(b) In applying the provisions of Subtitle B, Title 2, Tax Code, to the gross rentals tax imposed under Section 2001.501 and the fee on prizes imposed under Section 2001.502 only, the fee on prizes is treated as if it were a tax and the powers and duties assigned to the comptroller under that subtitle are assigned to the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.513. DELINQUENCY: SEIZURE AND SALE. (a) At any time within three years after a person is delinquent in the payment of an amount of gross rentals tax or fee on prizes, the commission may collect the amount under this section.

(b) The commission shall seize real or personal property of the license holder not exempt from execution under the laws of this state and sell the property, or a sufficient part of the property, at public auction to pay the amount due and interest or penalties caused by the seizure and sale.

(c) The commission shall give the delinquent person written notice of the sale, including the time and place of the sale, at least 20 days before the date set for the sale. The commission shall mail the notice, postage prepaid, in an envelope addressed to the person at the person's last known address or place of business.

(d) The commission shall publish the notice for at least 10 days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, the commission shall post the notice in three public places in the county at least 20 days before the date set for the sale.

(e) The notice must contain:

- (1) a description of the property to be sold;
- (2) a statement of the amount due, including interest, penalties, and costs;
- (3) the name of the delinquent person; and
- (4) a statement that unless the amount due, interest, penalties, and costs are paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

(f) At the sale, the commission shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for personal property and a deed for real property sold. The bill of sale or deed vests the interest or title of the delinquent person for the amount in the purchaser. The unsold portion of property seized may be left at the place of sale at the risk of the delinquent person for the amount.

(g) Except as provided by Subsection (h), if the money received at the sale exceeds the total amounts, including interest, penalties, and costs due to the state, the commission shall return the excess money to the person liable for the amounts and shall obtain the person's receipt. If the receipt of the delinquent person for the amount is not available, the commission shall deposit the excess money with the comptroller, as trustee for the person, subject to the order of the person, or the person's heirs, successors, or assigns.

(h) If a person having an interest in or lien on the property files with the commission before the sale notice of the person's interest or lien, the commission shall withhold any excess money pending a court determination of the rights of the respective parties to the money.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.514. SECURITY. (a) To secure payment of the tax on



gross rentals or the fee on prizes imposed under this subchapter, each license holder shall furnish to the commission:

- (1) a cash bond;
- (2) a bond from a surety company chartered or authorized to do business in this state;
- (3) certificates of deposit;
- (4) certificates of savings;
- (5) United States treasury bonds;
- (6) subject to the approval of the commission, an assignment of negotiable stocks or bonds; or
- (7) other security as the commission considers sufficient.

(b) The commission shall set the amount of the bond or other security, taking into consideration the amount of money that has or is expected to become due from the license holder. The amount required by the commission may not exceed three times the amount due according to the license holder's average quarterly reports.

(c) On a license holder's failure to pay the gross rentals tax or the fee on prizes imposed under this subchapter, the commission may notify the license holder and any surety of the delinquency by jeopardy or deficiency determination. If payment is not made when due, the commission may forfeit all or part of the bond or security.

(d) If the license holder ceases to conduct bingo and relinquishes the license holder's license, the commission shall authorize the release of all bonds and other security on a determination that no amounts of the gross rentals tax or the fee on prizes remain due and payable under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.515. COMMISSION'S TAX DUTIES. The commission shall perform all functions incident to the administration, collection, enforcement, and operation of a tax imposed under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER L. ENFORCEMENT**

Sec. 2001.551. UNLAWFUL BINGO; OFFENSE. (a) In this section, "bingo" or "game" means a specific game of chance, commonly known as bingo or lotto, in which prizes are awarded on the basis of

designated numbers or symbols on a card conforming to numbers or symbols selected at random, whether or not a person who participates as a player furnishes something of value for the opportunity to participate.

(b) A person conducting, promoting, or administering bingo commits an offense if the person conducts, promotes, or administers bingo other than:

(1) under a license issued under this chapter;

(2) within the confines of a home for purposes of amusement or recreation when:

(A) no player or other person furnishes anything of more than nominal value for the opportunity to participate;

(B) participation in the game does not exceed 15 players; and

(C) the prizes awarded or to be awarded are nominal;

(3) on behalf of an organization of individuals 60 years of age or over, a senior citizens' association, a senior citizens' community center program operated or funded by a governmental entity, the patients in a hospital or nursing home, residents of a retirement home, or the patients in a Veteran's Administration medical center or a military hospital, solely for the purpose of amusement and recreation of its members, residents, or patients, when:

(A) no player or other person furnishes anything of more than nominal value for the opportunity to participate; and

(B) the prizes awarded or to be awarded are nominal;

or

(4) on behalf of a business conducting the game for promotional or advertising purposes if:

(A) the game is conducted by or through a newspaper or a radio or television station;

(B) participation in the game is open to the general public and is not limited to customers of the business;

(C) playing materials are furnished without charge to a person on request; and

(D) no player is required to furnish anything of value for the opportunity to participate.

(c) An offense under Subsection (b) is a felony of the third degree.

(d) This section applies to a political subdivision regardless of local option status.

(e) A game exempted under Subsection (b)(2), (3), or (4) is not required to be licensed under this chapter.

(f) A game exempted under Subsection (b)(4) is subject to the following restrictions:

(1) a person licensed or required to be licensed under this chapter or having an interest in a license under this chapter may not be involved, directly or indirectly, in bingo, except that a licensed manufacturer or licensed distributor may sell or otherwise furnish bingo equipment or supplies for use in a game;

(2) a person conducting bingo may purchase or otherwise obtain bingo equipment or supplies through a newspaper, a radio or television station, or an advertising agency and, unless otherwise authorized by the commission, only from a licensed manufacturer or licensed distributor;

(3) a licensed manufacturer or licensed distributor may sell or otherwise furnish bingo equipment or supplies for use in a game only to or through a newspaper or a radio or television station or through an advertising agency acting on behalf of a person authorized to conduct the game; and

(4) the commission by rule may require a person conducting or involved in conducting the game to:

(A) notify the commission of:

(i) the persons involved in conducting the game;

(ii) the manner in which the game is to be conducted; and

(iii) any other information required by the commission; and

(B) keep records of all transactions connected with the game available for commission inspection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.552. FRAUDULENT AWARD OF PRIZES; OFFENSE. (a) A person commits an offense if the person knowingly participates in the award of a prize to a bingo player in a manner that disregards, to any extent, the random selection of numbers or symbols.

(b) An offense under this section is a felony of the third degree.

(c) It is a defense to prosecution under this section that no

participant in the game furnished anything of value for the opportunity to participate in the game.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.553. UNLICENSED SALES; OFFENSE. (a) A person commits an offense if a person sells or attempts to induce the sale of bingo equipment, supplies, or automated bingo services to a licensed authorized organization and the person is not licensed to do so.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(11), eff. October 1, 2009.

(c) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(11), eff. October 1, 2009.

Sec. 2001.554. OTHER OFFENSES; REVOCATION OF LICENSE. (a) A person commits an offense and the person's license is subject to revocation under this chapter if the person:

(1) makes a false statement or material omission in an application for a license under this chapter;

(2) fails to maintain records that fully and accurately record each transaction connected with the conducting of bingo, the leasing of premises to be used for bingo, or the manufacture, sale, or distribution of bingo supplies or equipment;

(3) falsifies or makes a false entry in a book or record if the entry relates to bingo, the disposition of bingo proceeds, the application of rent received by a licensed authorized organization, or the gross receipts from the manufacture, sale, or distribution of bingo supplies or equipment;

(4) diverts or pays a portion of the net proceeds of bingo to a person except in furtherance of one or more of the lawful purposes provided by this chapter; or

(5) violates this chapter or a term of a license issued under this chapter.

(b) An offense under Subsection (a)(2), (3), or (5) is a Class

C misdemeanor, unless it is shown on the trial of the offense that the person has been convicted previously under this section, in which event the offense is a Class B misdemeanor. An offense under Subsection (a)(1) or (4) is a Class A misdemeanor. This subsection does not apply to an offense committed under Section 2001.551(b) or Section 2001.552.

(c) A person whose license is revoked under this section may not apply for another license under this chapter before the first anniversary of the date of revocation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.555. EXEMPTION FROM PROSECUTION. (a) A person lawfully conducting or participating in bingo or permitting the conduct of bingo on premises owned or leased by the person under a license issued under this chapter is not subject to prosecution or conviction for a violation of a provision of the Penal Code or other law or ordinance to the extent that the person's action is specifically authorized by this chapter.

(b) The immunity granted under this section does not extend to a person:

(1) knowingly conducting or participating in bingo under a license obtained by a false pretense, false statement, or material omission made in an application for license or otherwise; or

(2) knowingly permitting the conduct of bingo on premises owned or leased by the person under a license known to the person to have been obtained by a false pretense or statement.

(c) A license holder under this chapter may possess paraphernalia or equipment that is required to conduct bingo.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.556. PRICE FIXING PROHIBITED. (a) A manufacturer, distributor, or supplier may not by express or implied agreement with another manufacturer or distributor fix the price at which bingo equipment or supplies used or intended to be used in connection with bingo conducted under this chapter may be sold.

(b) The price of bingo supplies and equipment in the competitive marketplace shall be established by the manufacturer,

distributor, or supplier and may not be established in concert with another manufacturer, distributor, or supplier.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.557. INSPECTION OF PREMISES. (a) The commission, its officers or agents, or a state, municipal, or county peace officer may enter and inspect the contents of premises where:

(1) bingo is being conducted or intended to be conducted;  
or

(2) equipment used or intended for use in bingo is found.

(b) The commission by rule shall develop and implement policies and procedures to:

(1) prioritize the inspection of premises where bingo is being conducted or is intended to be conducted in accordance with the risk factors the commission considers important, including:

(A) the amount of money derived from the conduct of bingo at the premises;

(B) the compliance history of the premises; and

(C) the amount of time that has elapsed since the date of the immediately preceding commission inspection of the premises;  
and

(2) inspect premises where bingo is being conducted or is intended to be conducted in accordance with the priorities established under Subdivision (1).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. [2197](#)), Sec. 39, eff. September 1, 2013.

Sec. 2001.558. INJUNCTION; CIVIL PENALTY. (a) If the commission, the appropriate governing body, or the attorney general has reason to believe that this chapter has been or is about to be violated, the commission, the governing body, or the attorney general may petition a court for injunctive relief to restrain the violation.

(b) Venue for an action seeking injunctive relief is in a district court in Travis County.

(c) If the court finds that this chapter has been violated or

is about to be violated, the court shall issue a temporary restraining order and, after due notice and hearing, a temporary injunction, and after a final trial, a permanent injunction to restrain the violation.

(d) If the court finds that this chapter has been knowingly violated, the court shall order all proceeds from the illegal bingo to be forfeited to the appropriate governing body as a civil penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.559. REMEDIES NOT EXCLUSIVE. The commission may suspend or revoke a license under Section 2001.355, impose an administrative penalty under Subchapter M, or both, depending on the severity of the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.560. EXAMINATION OF RECORDS; DISCLOSURE OF INFORMATION. (a) The governing body of the appropriate political subdivision or the attorney general may:

(1) examine or cause to be examined the records of an authorized organization that is or has been licensed to conduct bingo, to the extent the organization's activities relate to bingo, including the maintenance, control, and disposition of net proceeds derived from bingo or from the use of its premises for bingo; and

(2) examine a manager, officer, director, agent, member, or employee of the organization under oath regarding:

(A) the conduct of bingo under a license;

(B) the use of premises; or

(C) the disposition of proceeds derived from bingo.

(b) The governing body of the appropriate political subdivision or the attorney general may:

(1) examine or cause to be examined the records of a licensed commercial lessor if the activities of the lessor may relate to leasing premises for bingo; and

(2) examine the lessor or a manager, officer, director, agent, or employee of the lessor under oath regarding the leasing.

(c) The commission or a person authorized in writing by the commission may examine the books, papers, records, equipment, and

place of business of a license holder and may investigate the character of the license holder's business to verify the accuracy of a return, statement, or report made, or, if no return is made by the license holder, to ascertain and determine the amount required to be paid.

(c-1) The commission by rule shall develop a policy for auditing license holders. The bingo division shall use audit risk analysis procedures established by the commission to:

(1) annually identify which license holders are most at risk of violating this chapter or rules adopted under this chapter; and

(2) develop a plan for auditing the identified license holders that includes:

(A) a schedule for the audits of the identified license holders;

(B) procedures to annually update the plan based on successive risk analyses; and

(C) a completion date for each audit that is not later than the fifth anniversary of the date the license holder was identified as a candidate for audit.

(c-2) The bingo division shall provide to the commission a copy of the auditing plan developed under Subsection (c-1).

(d) The commission may set and charge to the license holder a fee in an amount reasonably necessary to recover the cost of an authorized investigation or audit authorized under this chapter.

(e) If the commission determines that a person is not complying with this chapter, the commission shall notify the attorney general and the governing body of the appropriate political subdivision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. [2197](#)), Sec. 40, eff. September 1, 2013.

Sec. 2001.561. PENAL CODE APPLICATION. Section 47.08, Penal Code, applies to a prosecution for a violation of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



**SUBCHAPTER M. ADMINISTRATIVE PENALTY**

Sec. 2001.601. IMPOSITION OF PENALTY. The commission may impose an administrative penalty against a person who violates this chapter or a rule or order adopted by the commission under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.602. AMOUNT OF PENALTY. (a) The amount of the administrative penalty may not exceed \$1,000 for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty.

(b) In determining the amount of the penalty, the director shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts to correct the violation; and
- (5) any other matter that justice may require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 25, eff. Sept. 1, 2003.

Sec. 2001.603. NOTICE OF VIOLATION AND PENALTY. (a) If, after investigating a possible violation and the facts surrounding that possible violation, the director determines that a violation has occurred, the director may issue a violation report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty be imposed on the person alleged to have committed the violation, and recommending the amount of the proposed penalty. The director shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by consideration of the factors set out in Section 2001.602(b).

(b) Not later than the 21st day after the date on which the report is issued, the director shall give written notice of the report to the person alleged to have committed the violation.

(c) The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the administrative penalty recommended; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 26, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 39, eff. October 1, 2009.

Sec. 2001.604. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person may:

- (1) accept the recommendation of the director, including the recommended administrative penalty; or
- (2) make a written request for a hearing on the determination.

(b) If the person accepts the director's determination, the director by order shall approve the determination and impose the proposed penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 27, eff. Sept. 1, 2003.

Sec. 2001.605. HEARING. (a) If the person timely requests a hearing or does not respond to the notice in the time provided by Section 2001.604(a), the director shall set a hearing and give notice of the hearing to the person.

(b) The hearings examiner shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for decision as to the occurrence of the violation and the amount of the proposed penalty, if a penalty is warranted.

(c) A hearing under this section must be conducted by the State Office of Administrative Hearings and is subject to Section 2001.058(e), Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2003, 78th Leg., ch. 1114, Sec. 28, eff. Sept. 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 41, eff. September 1, 2013.

Sec. 2001.606. DECISION BY DIRECTOR. (a) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the director by order:

(1) may find that a violation has occurred and may impose an administrative penalty; or

(2) may find that a violation has not occurred.

(b) The director shall give notice of the order to the person. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty imposed;

(3) a statement of the right of the person to judicial review of the order; and

(4) other information required by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 29, eff. Sept. 1, 2003.

Sec. 2001.607. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date on which the order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the finding that a violation occurred, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the finding that a violation occurred, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the director by certified mail.

(c) On receipt of a copy of the affidavit as provided by Subsection (b)(2), the director may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 30, eff. Sept. 1, 2003.

Sec. 2001.608. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the director may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 31, eff. Sept. 1, 2003.

Sec. 2001.609. DETERMINATION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.610. REMITTANCE OF PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not upheld by the court, the court shall, after the judgment becomes final:

(1) order the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) if the person posted a supersedeas bond, order the release of the bond:

(A) if the penalty is not upheld; or

(B) after the person pays the reduced penalty, if the amount of the penalty is reduced.

(b) The interest paid under Subsection (a)(1) is accrued at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.611. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER N. ELECTIONS**

Sec. 2001.651. ORDERING ELECTION. The governing body of a county, justice precinct, or municipality:

(1) shall order and hold an election under this chapter in the appropriate political subdivision if the governing body is presented with a petition for an election that meets the requirements of this chapter; and

(2) may order and hold an election on its own motion.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.652. PETITION. (a) A petition for an election to

legalize bingo under this chapter must have a statement substantially as follows preceding the space reserved for signatures on each page: "This petition is to require that an election be held in (name of political subdivision) to legalize bingo games authorized under the Bingo Enabling Act."

(b) A petition for an election to prohibit bingo under this chapter must have a statement substantially as follows preceding the space reserved for signatures on each page: "This petition is to require that an election be held in (name of political subdivision) to prohibit bingo games authorized under the Bingo Enabling Act."

(c) A petition is valid only if it is signed by a number of registered voters of the political subdivision equal to at least 10 percent of the number of votes received in the political subdivision by all candidates for governor in the most recent general election, or the amount specified in the document governing the administration of the political subdivision, whichever is less. If boundaries of the political subdivision do not coincide with boundaries of election precincts in effect for that general election, the officer verifying the petition may use a reasonable method to estimate the number of votes for governor received in that election in the political subdivision.

(d) A signer must enter beside the signer's signature the date of signing the petition. A signature may not be counted if the signer fails to enter the date or if the date of signing is earlier than the 90th day before the date the petition is submitted to the governing body.

(e) In addition to the signature and date of signing, the petition must include each signer's:

- (1) current voter registration number;
- (2) printed name; and
- (3) residence address, including zip code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.653. VERIFICATION OF PETITION. (a) Not later than the fifth day after the date the governing body receives a petition for an election, the governing body shall submit the petition for verification to the county clerk if the petition is applicable to a county or justice precinct or to the municipal secretary if the

petition is applicable to a municipality.

(b) The officer to whom the petition is submitted for verification shall determine whether the petition is signed by the required number of registered voters of the political subdivision in which the election is requested.

(c) Not later than the 30th day after the date the petition is submitted to the officer for verification, the officer shall certify in writing to the governing body whether the petition is valid or invalid. If the officer determines that the petition is invalid, the officer shall state all reasons for that determination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.654. DATE OF ELECTION. (a) If the officer responsible for certifying a petition determines that a petition is valid, the governing body shall:

(1) order that an election be held in the appropriate political subdivision on a date not later than the 60th day after the date of the officer's certification; and

(2) notify the commission by certified mail, return receipt requested, that an election has been ordered.

(b) If a uniform election day as provided by Section 41.001(a), Election Code, does not occur within the 60-day period, the governing body shall order the election to be held on the next uniform election date provided by that section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.655. BALLOT PROPOSITION. (a) In an election to legalize bingo under this chapter in a political subdivision, the ballot shall be prepared to provide for voting for or against the proposition: "Legalizing bingo games for charitable purposes as authorized by the Bingo Enabling Act in (name of political subdivision)."

(b) In an election to prohibit bingo under this chapter in a political subdivision, the ballot shall be prepared to provide for voting for or against the proposition: "Prohibiting bingo games for charitable purposes as authorized by the Bingo Enabling Act in (name of political subdivision)."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.656. EFFECT OF ELECTION. (a) If a majority of the qualified voters voting on the question in a legalization election vote in favor of legalization, bingo is legalized throughout the political subdivision beginning on the 14th day after the date the result of the election is officially declared, except as otherwise provided as to a part of the political subdivision for which Section 2001.657 requires a contrary status.

(b) If a majority of the qualified voters voting on the question in a prohibitory election vote in favor of prohibition, bingo is prohibited throughout the political subdivision beginning on the 14th day after the date the result of the election is officially declared, except as otherwise provided as to a part of the political subdivision for which Section 2001.657 requires a contrary status.

(c) If a majority of the qualified voters voting on the question in a legalization election do not favor legalization, or if a majority of the qualified voters voting on the question in a prohibitory election do not favor prohibition, the election has no effect on the status under this chapter of the political subdivision in which the election is held.

(d) The governing body of a political subdivision in which a bingo election has been held shall not later than the 14th day after the date of the election give written notification to the commission of the results of the election. If as a result of the election bingo is legalized in the political subdivision, the governing body shall furnish the commission with a map prepared by the governing body indicating the boundaries of the political subdivision in which bingo may be conducted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. [1474](#)), Sec. 40, eff. October 1, 2009.

Sec. 2001.657. DETERMINATION OF LOCAL OPTION STATUS. (a) In determining whether bingo under this chapter is permitted in an area, the rules provided by this section apply.



(b) Bingo is permitted in an area only as the result of a successful election held under this chapter.

(c) To the extent that the results of local option elections held by different types of political subdivisions conflict with regard to the same territory, the relative dates of the elections are of no consequence and the following rules apply:

(1) the status of an area as determined by a municipal election prevails over a contrary status as determined by a justice precinct or county election; and

(2) the status of an area as determined by a justice precinct election prevails over the contrary status of the area as determined by a county election.

(d) If two or more local option elections held at the justice precinct level apply to the same territory, the most recent election prevails.

(e) If a municipality has established a status by a municipal election, territory annexed to the municipality after that status is established assumes the status under this chapter of the rest of the municipality. Territory detached from the municipality assumes the status the territory would have had if it had never been a part of the municipality. If the detached territory is added to another municipality that has established a status by a municipal election, the territory assumes the status of the municipality to which it is added.

(f) The addition of territory to or detachment of territory from a justice precinct does not affect the status under this chapter of the added or detached territory, except that in a county with a population of more than 3.3 million the added or detached territory assumes the status of the justice precinct of which it becomes a part. The abolition of a justice precinct does not affect the status under this chapter of the territory formerly within the justice precinct.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 115, eff. Sept. 1, 2001.

**CHAPTER 2002. CHARITABLE RAFFLES**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2002.001. SHORT TITLE. This chapter may be cited as the

Charitable Raffle Enabling Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2002.002. DEFINITIONS. In this chapter:

(1) "Charitable purposes" means:

(A) benefitting needy or deserving persons in this state, indefinite in number, by:

(i) enhancing their opportunities for religious or educational advancement;

(ii) relieving them from disease, suffering, or distress;

(iii) contributing to their physical well-being;

(iv) assisting them in establishing themselves in life as worthy and useful citizens; or

(v) increasing their comprehension of and devotion to the principles on which this nation was founded and enhancing their loyalty to their government;

(B) initiating, performing, or fostering worthy public works in this state; or

(C) enabling or furthering the erection or maintenance of public structures in this state.

(1-a) "Money" means coins, paper currency, or a negotiable instrument that represents and is readily convertible to coins or paper currency.

(2) "Qualified organization" means a qualified religious society, qualified volunteer fire department, qualified volunteer emergency medical service, or qualified nonprofit organization.

(3) "Qualified religious society" means a church, synagogue, or other organization or association organized primarily for religious purposes that:

(A) has been in existence in this state for at least 10 years; and

(B) does not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services or for reimbursement of expenses.

(4) "Qualified volunteer emergency medical service" means an association that:

(A) is organized primarily to provide and actively

provides emergency medical, rescue, or ambulance services;

(B) does not pay its members compensation other than nominal compensation; and

(C) does not distribute any of its income to its members, officers, or governing body other than for reimbursement of expenses.

(5) "Qualified volunteer fire department" means an association that:

(A) operates fire-fighting equipment;

(B) is organized primarily to provide and actively provides fire-fighting services;

(C) does not pay its members compensation other than nominal compensation; and

(D) does not distribute any of its income to its members, officers, or governing body, other than for reimbursement of expenses.

(6) "Raffle" means the award of one or more prizes by chance at a single occasion among a single pool or group of persons who have paid or promised a thing of value for a ticket that represents a chance to win a prize.

(7) "Reverse raffle" means a raffle in which the last ticket or tickets drawn are considered the winning tickets.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 929 (H.B. 541), Sec. 1, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1006 (H.B. 659), Sec. 1, eff. September 1, 2005.

Sec. 2002.003. QUALIFIED NONPROFIT ORGANIZATION. (a) An organization incorporated or holding a certificate of authority under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) is a qualified nonprofit organization for the purposes of this chapter if the organization:

(1) does not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services;

(2) has existed for the three preceding years;

(3) does not devote a substantial part of its activities to attempting to influence legislation and does not participate or intervene in any political campaign on behalf of any candidate for public office in any manner, including by publishing or distributing statements or making campaign contributions;

(4) qualifies for and has obtained an exemption from federal income tax from the Internal Revenue Service under Section 501(c), Internal Revenue Code of 1986; and

(5) does not have or recognize any local chapter, affiliate, unit, or subsidiary organization in this state.

(b) An organization that is formally recognized as and that operates as a local chapter, affiliate, unit, or subsidiary organization of a parent organization incorporated or holding a certificate of authority under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) is a qualified nonprofit organization if:

(1) neither the local organization nor the parent organization distributes any of its income to its members, officers, or governing body, other than as reasonable compensation for services;

(2) the local organization has existed for the three preceding years and during those years has been formally recognized as a local chapter, affiliate, unit, or subsidiary organization of the parent organization;

(3) neither the local organization nor the parent organization:

(A) devotes a substantial part of its activities to attempting to influence legislation; or

(B) participates or intervenes in any political campaign on behalf of any candidate for public office in any manner, including by publishing or distributing statements or making campaign contributions; and

(4) either the local organization or the parent organization qualifies for and has obtained an exemption from federal income tax from the Internal Revenue Service under Section 501(c), Internal Revenue Code of 1986.

(b-1) An organization that is formally recognized as and that operates as a local chapter, affiliate, unit, or subordinate lodge of a grand lodge or other institution or order incorporated under Title 32, Revised Statutes, as authorized by Article 1399, Revised

Statutes, is a qualified nonprofit organization if:

(1) neither the local organization nor the incorporated grand lodge or other institution or order distributes any of its income to its members, officers, or governing body, other than as reasonable compensation for services;

(2) the local organization has existed for the three preceding years and during those years:

(A) has had a governing body or officers elected by a vote of its members or by a vote of delegates elected by its members; or

(B) has been formally recognized as a local chapter, affiliate, unit, or subordinate lodge of the grand lodge or other institution or order;

(3) neither the local organization nor the incorporated grand lodge or other institution or order:

(A) devotes a substantial part of its activities to attempting to influence legislation; or

(B) participates or intervenes in any political campaign on behalf of any candidate for public office in any manner, including by publishing or distributing statements or making campaign contributions; and

(4) either the local organization or the incorporated grand lodge or other institution or order qualifies for and has obtained an exemption from federal income tax from the Internal Revenue Service under Section 501(c), Internal Revenue Code of 1986, or other applicable provision.

(c) An unincorporated organization, association, or society is a qualified nonprofit organization if it:

(1) does not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services;

(2) for the three preceding years has been affiliated with a state or national organization organized to perform the same purposes as the unincorporated organization, association, or society;

(3) does not devote a substantial part of its activities to attempting to influence legislation and does not participate or intervene in any political campaign on behalf of any candidate for public office in any manner, including by publishing or distributing statements or making campaign contributions; and

(4) qualifies for and has obtained an exemption from

federal income tax from the Internal Revenue Service under Section 501(c), Internal Revenue Code of 1986.

(d) An organization, association, or society is considered to devote a substantial part of its activities to attempting to influence legislation for purposes of this section if, in any 12-month period in the preceding three years, more than 10 percent of the organization's expenditures were made to influence legislation.

(e) A nonprofit wildlife conservation association and its local chapters, affiliates, wildlife cooperatives, or units are qualified nonprofit organizations under this chapter if the parent association meets the eligibility criteria under this section other than the requirement prescribed by Subsection (a)(3), (b)(3), (b-1)(3), or (c)(3), as applicable. An association or a local chapter, affiliate, wildlife cooperative, or unit that is eligible under this subsection may not use any proceeds from a raffle conducted under this chapter to attempt to influence legislation or participate or intervene in a political campaign on behalf of a candidate for public office in any manner, including by publishing or distributing a statement or making a campaign contribution. A nonprofit wildlife conservation association may conduct two raffles each year and each local chapter, affiliate, wildlife cooperative, or unit may conduct two raffles each year under this chapter. For purposes of this section, a nonprofit wildlife conservation association includes an association that supports wildlife, fish, or fowl.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 34 (S.B. 766), Sec. 1, eff. May 9, 2005.

Acts 2005, 79th Leg., Ch. 929 (H.B. 541), Sec. 2, eff. June 18, 2005.

Acts 2009, 81st Leg., R.S., Ch. 936 (H.B. 3113), Sec. 1, eff. June 19, 2009.

Sec. 2002.004. IMPUTED ACTIONS OF ORGANIZATION. For purposes of this chapter, an organization performs an act if a member, officer, or agent of the organization performs the act with the consent or authorization of the organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER B. OPERATION OF RAFFLE**

Sec. 2002.051. RAFFLE AUTHORIZED. A qualified organization may conduct a raffle subject to the conditions imposed by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2002.052. TIME AND FREQUENCY RESTRICTIONS. (a) In this section, "calendar year" means a period beginning January 1 and ending on the succeeding December 31.

(b) A raffle is not authorized by this chapter if the organization sells or offers to sell tickets for or awards prizes in the raffle in a calendar year in which the organization has previously sold or offered to sell tickets for or awarded prizes in two or more other raffles.

(c) The organization may not sell or offer to sell tickets for a raffle during a period in which the organization sells or offers to sell tickets for another raffle. If an organization violates this subsection, neither of the raffles is authorized.

(d) Before selling or offering to sell tickets for a raffle, a qualified organization shall set a date on which the organization will award the prize or prizes in a raffle. The organization must award the prize or prizes on that date unless the organization becomes unable to award the prize or prizes on that date.

(e) A qualified organization that is unable to award a prize or prizes on the date set under Subsection (d) may set another date not later than 30 days from the date originally set on which the organization will award the prize or prizes.

(f) If the prize or prizes are not awarded within the 30 days as required by Subsection (e), the organization must refund or offer to refund the amount paid by each person who purchased a ticket for the raffle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 597, Sec. 1, eff. Sept. 1, 2003.

Sec. 2002.053. USE OF RAFFLE PROCEEDS. All proceeds from the

sale of tickets for a raffle must be spent for the charitable purposes of the qualified organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 929 (H.B. 541), Sec. 3, eff. June 18, 2005.

Sec. 2002.054. RESTRICTIONS ON RAFFLE PROMOTION AND TICKET SALES. (a) The organization may not:

(1) directly or indirectly, by the use of paid advertising, promote a raffle through a medium of mass communication, including television, radio, or newspaper;

(2) promote or advertise a raffle statewide, other than on the organization's Internet website or through a publication or solicitation, including a newsletter, social media, or electronic mail, provided only to previously identified supporters of the organization; or

(3) sell or offer to sell tickets for a raffle statewide.

(b) Except as provided by this subsection, the organization may not compensate a person directly or indirectly for organizing or conducting a raffle or for selling or offering to sell tickets to a raffle. A member of the organization who is employed by the organization may organize and conduct a raffle, but the member's work organizing or conducting a raffle may not be more than a de minimis portion of the member's employment with the organization.

(c) Except as provided by Section 2002.0541, the organization may not permit a person who is not authorized by the organization to sell or offer to sell raffle tickets.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 929 (H.B. 541), Sec. 4, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1006 (H.B. 659), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 12.003, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 124 (H.B. 457), Sec. 1, eff. May 27, 2011.



Sec. 2002.0541. REVERSE RAFFLE. (a) A qualified organization may conduct a reverse raffle as provided by this section.

(b) Notwithstanding Section 2002.056(a), a refund of the purchase price of a ticket may be awarded as a raffle prize in a reverse raffle.

(c) Notwithstanding Section 2002.055(3), after the drawing of tickets in a reverse raffle has begun, the qualified organization conducting the raffle may auction off additional tickets to persons who are present at the drawing for a price other than the price printed on the ticket.

(d) After the drawing of tickets in a reverse raffle has begun, the qualified organization may permit a ticket holder present at the drawing to resell the ticket to another person present at the drawing for an amount greater than the original purchase price of the ticket. The sale must be made through a designated representative of the organization, and not less than 10 percent of the sale proceeds must be retained by the organization.

(e) Notwithstanding Section 2002.055(3), after the drawing of tickets in a reverse raffle has begun, the qualified organization may permit the holder of a previously drawn ticket:

(1) to purchase additional chances for the ticket to be selected to win a prize; or

(2) to purchase additional tickets for the raffle.

(f) Only the portion of the proceeds from the resale of a ticket under Subsection (d) retained by the organization are subject to Section 2002.053. All proceeds from the sale of additional chances for a ticket under Subsection (e) are considered to be proceeds from the sale of the ticket for purposes of Section 2002.053.

Added by Acts 2005, 79th Leg., Ch. 1006 (H.B. 659), Sec. 3, eff. September 1, 2005.

Sec. 2002.055. TICKET DISCLOSURES. The following information must be printed on each raffle ticket sold or offered for sale:

(1) the name of the organization conducting the raffle;

(2) the address of the organization or of a named officer

of the organization;

(3) the ticket price;

(4) a general description of each prize having a value of more than \$10 to be awarded in the raffle; and

(5) the date on which the raffle prize or prizes will be awarded.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 597, Sec. 2, eff. Sept. 1, 2003.

Sec. 2002.056. RESTRICTIONS ON PRIZES. (a) A prize offered or awarded at a raffle may not be money.

(b) Except as provided by Subsections (b-1) and (c), the value of a prize offered or awarded at a raffle that is purchased by the organization or for which the organization provides any consideration may not exceed \$50,000.

(b-1) The value of a residential dwelling offered or awarded as a prize at a raffle that is purchased by the organization or for which the organization provides any consideration may not exceed \$250,000.

(c) A raffle prize may consist of one or more tickets in the state lottery authorized by Chapter 466, Government Code, with a face value of \$50,000 or less, without regard to whether a prize in the lottery game to which the ticket or tickets relate exceeds \$50,000.

(d) A raffle is not authorized by this chapter unless the organization:

(1) has the prize to be offered in the raffle in its possession or ownership; or

(2) posts bond with the county clerk of the county in which the raffle is to be held for the full amount of the money value of the prize.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 929 (H.B. 541), Sec. 5, eff. June 18, 2005.

Sec. 2002.057. TICKET SALE ON UNIVERSITY PROPERTY. An institution of higher education, as defined by Section 61.003,

Education Code, shall allow a qualified organization that is a student organization recognized by the institution to sell raffle tickets at any facility of the institution, subject to reasonable restrictions on the time, place, and manner of the sale.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2002.058. INJUNCTIVE ACTION AGAINST UNAUTHORIZED RAFFLE.

(a) A county attorney, district attorney, criminal district attorney, or the attorney general may bring an action in county or district court for a permanent or temporary injunction or a temporary restraining order prohibiting conduct involving a raffle or similar procedure that:

(1) violates or threatens to violate state law relating to gambling; and

(2) is not authorized by this chapter or other law.

(b) Venue for an action under this section is in the county in which the conduct occurs or in which a defendant in the action resides.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**CHAPTER 2003. INSPECTION AND REGULATION OF GAMBLING VESSELS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2003.001. DEFINITION. In this chapter, "department" means the Department of Public Safety of the State of Texas.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2003.002. APPLICATION OF CHAPTER. This chapter applies only to a vessel on which activity described by Section 47.02(a), Penal Code, is regularly conducted, whether or not the activity occurs in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER B. STATE INSPECTION AND REGULATION**

Sec. 2003.051. CRIMINAL HISTORY RECORD INFORMATION. (a) The department may request criminal history record information from the Federal Bureau of Investigation or any other law enforcement agency relating to a person who owns, has a financial interest in, operates, or is employed by a person who operates a vessel in this state, including the territorial waters of this state, whether or not the operation of the vessel is in violation of law.

(b) The department may maintain records of information obtained under Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2003.052. INSPECTION. The department may inspect a vessel located in this state, including the territorial waters of this state, to ensure that the vessel is operated in compliance with state or other law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. MUNICIPAL INSPECTION AND REGULATION**

Sec. 2003.101. REGULATION. (a) A municipality, by ordinance, may impose regulations for the protection of the health and safety of the passengers or crew of a vessel that:

- (1) regularly boards passengers in the municipality; or
- (2) is regularly loaded, fueled, repaired, stored, or docked in the municipality.

(b) A municipal ordinance may not prohibit an activity relating to a vessel that is expressly permitted under Chapter 47, Penal Code, or other state law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2003.102. INSPECTION. A municipality may inspect a vessel docked in the municipality to determine if the vessel is operated in compliance with Chapter 47, Penal Code, a municipal ordinance, or other law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBTITLE B. SPORTS**  
**CHAPTER 2051. ATHLETE AGENTS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2051.001. DEFINITIONS. In this chapter:

(1) "Agent contract" means a contract or an agreement under which an athlete authorizes an athlete agent to negotiate for employment on behalf of the athlete with a professional sports team.

(2) "Athlete" means an individual who:

(A) is eligible to participate in intercollegiate sports contests as a member of a sports team or as an individual competitor in a sport at an institution of higher education; or

(B) has participated as a member of an intercollegiate sports team or as an individual competitor in an intercollegiate sport at an institution of higher education and has never signed an employment contract with a professional sports team.

(3) "Athlete agent" means an individual who:

(A) for compensation, directly or indirectly recruits or solicits an athlete to enter into an agent contract, a financial services contract, or a professional sports services contract with that individual or another person; or

(B) for a fee, procures, offers, promises, or attempts to obtain employment for an athlete with a professional sports team.

(4) "Financial services contract" means a contract or an agreement under which an athlete authorizes the athlete agent to perform financial services for the athlete, including making and executing investment and other financial decisions for the athlete.

(5) "Institution of higher education" means an institution of higher education or a private or independent institution of higher education, as defined by Section 61.003, Education Code, that is a member of a national association for the promotion and regulation of intercollegiate athletics.

(5-a) "National professional sports association" means an organization that licenses or certifies athlete agents to represent athletes in a particular professional sport. The term includes the National Football League Players Association, National Basketball Players Association, Major League Baseball Players Association, National Hockey League Players' Association, and United States Soccer Federation.

(6) "Schedule of fees" includes the fees and percentages charged by an athlete agent for professional services performed for an athlete.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 1, eff. September 1, 2011.

Sec. 2051.002. PARTICIPATION IN INTERCOLLEGIATE SPORTS CONTESTS. An athlete is not eligible to participate in intercollegiate sports contests if the athlete:

(1) declares that the athlete is eligible for recruitment by a professional sports team; or

(2) has concluded, in the athlete's final year of eligibility, the athlete's final intercollegiate sports contest, as determined by the governing body of the national association for the promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 2, eff. Sept. 1, 2003.

Sec. 2051.003. EFFECT OF PERSONAL SERVICE CONTRACT. In this chapter, a personal service contract between an athlete and the owner or prospective owner of a professional sports team in which the athlete agrees to perform future athletic services constitutes employment with a professional sports team.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.004. ATHLETE AGENT CONTACT. (a) An athlete agent may contact an athlete only as provided by this chapter.

(b) Except as provided by Subsection (c), an athlete agent may contact a person who declares that the person is eligible for recruitment by a professional sports team.

(c) If a person eligible for recruitment by a professional

sports team later becomes eligible to participate in intercollegiate sports, an athlete agent may contact the person only as provided by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.005. CERTAIN PROFESSIONAL SERVICES EXEMPT. This chapter does not apply to a person who directly or indirectly recruits or solicits an athlete to enter into a contract with the person in which, for compensation, the person performs financial services for the athlete if:

(1) the person is licensed or registered by the state as:

(A) a dealer, agent, investment adviser, or investment adviser representative;

(B) a real estate broker or salesperson;

(C) an insurance agent; or

(D) another professional;

(2) the financial services performed by the person are of a type that are customarily performed by a person licensed in that profession; and

(3) the person does not:

(A) recruit or solicit the athlete to enter into an agent contract or a professional services contract on behalf of the person, an affiliate, a related entity, or a third party; or

(B) procure, offer, promise, or attempt to obtain for the athlete employment with a professional sports team.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1091, Sec. 4.04, eff. Sept. 1, 2001.

Sec. 2051.006. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying this chapter, consideration must be given to the need to promote uniformity of the law among states that have enacted similar laws.

Added by Acts 2003, 78th Leg., ch. 821, Sec. 3, eff. Sept. 1, 2003.

#### **SUBCHAPTER B. POWERS AND DUTIES OF SECRETARY OF STATE**

Sec. 2051.051. ADMINISTRATION OF CHAPTER. (a) The secretary of state shall:

- (1) actively enforce this chapter;
- (2) set reasonable and necessary fees for the administration of this chapter; and
- (3) conduct investigations necessary to ensure compliance with this chapter.

(b) The secretary may adopt rules necessary to administer this chapter.

(c) Fees shall be set in an amount to cover the costs of administering this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.052. PUBLICATION OF COMPLIANCE RESPONSIBILITIES. (a) The secretary of state shall publish on the secretary of state's Internet website information that prescribes the compliance responsibilities of an institution of higher education under this chapter.

(b) The secretary shall notify the athletic director or other appropriate official of each institution of higher education of any change to the compliance responsibilities of the institution under this chapter.

(c) The secretary shall, as necessary, update the compliance responsibilities materials.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. [1123](#)), Sec. 2, eff. September 1, 2011.

#### **SUBCHAPTER C. REGISTRATION**

Sec. 2051.101. REGISTRATION REQUIRED. (a) Except as provided by Subsection (b), an individual may not act as an athlete agent in this state or represent that the individual is an athlete agent in this state unless the individual holds a certificate of registration under this chapter as:

- (1) a professional athlete agent; or
- (2) a limited athlete agent.



(a-1) An individual may not register as a professional athlete agent under this chapter unless the individual is certified as an agent by a national professional sports association.

(a-2) An individual who is not certified as an agent by a national professional sports association may register only as a limited athlete agent. A limited athlete agent may only represent an athlete in a sport that does not have a national professional sports association.

(b) Before the issuance of a certificate of registration under this chapter, an individual may act as an athlete agent in this state for all purposes except signing an agent contract, if:

(1) an athlete or a person acting on behalf of the athlete initiates communication with the individual; and

(2) within seven days after the date of the initial act as an athlete agent, the individual submits an application for registration under this chapter.

(c) An agent contract negotiated by an unregistered athlete agent is void.

(d) An agent contract with an athlete in a sport for which there is a national professional sports association is void if the contract is negotiated by an athlete agent holding a limited certificate of registration.

(e) A person who is not an individual may not register as an athlete agent in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. [1123](#)), Sec. 3, eff. September 1, 2011.

Sec. 2051.102. APPLICATION REQUIREMENTS. (a) Except as provided by Subsection (e), an applicant for registration as an athlete agent must apply on a form prescribed by the secretary of state.

(b) An applicant must provide information required by the secretary of state, including:

(1) the applicant's:

(A) name;

(B) principal business address;

(C) business or occupation for the five years immediately preceding the date of application; and

(D) formal training, practical experience, and educational background relating to the applicant's professional activities as an athlete agent;

(2) the name, sport, and last known team for each person the applicant represented as an athlete agent during the five years immediately preceding the date of application;

(3) whether the applicant or a person described by Subdivision (5) has been subject to any of the following:

(A) a conviction of a crime that in this state is a Class A or Class B misdemeanor, a felony, or a crime of moral turpitude;

(B) an administrative or a judicial determination finding the applicant or other person made a false, misleading, deceptive, or fraudulent representation;

(C) a sanction or suspension related to occupational or professional conduct;

(D) a denial of an application for a certificate of registration or license as an athlete agent; or

(E) a denial, revocation, or suspension of a certificate of registration or license as an athlete agent;

(4) whether the applicant or a person described by Subdivision (5) has engaged in conduct resulting in the imposition on an athlete or educational institution of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event;

(5) except as provided by Subsection (d), the name and address of each person, except a bona fide employee on salary, who is financially interested as a partner, associate, or profit sharer in the applicant's business; and

(6) the name and address of each national professional sports association that has certified the applicant as an agent.

(c) An application shall include the names and addresses of three professional references.

(d) If an applicant is a member of the State Bar of Texas, the application information required under Subsection (b)(5) must include the name and address of each person who is involved in the activities of the athlete agent. This subsection does not require an applicant

to state the name and address of a member of a law firm or professional corporation who is not involved in the business of the athlete agent.

(e) An individual seeking certification as an athlete agent under this chapter who holds a certificate of registration or license as an athlete agent in another state may submit a copy of the previous application and certificate or license instead of submitting the application required by this section. The secretary of state shall accept the application and the certificate or license from the other state as an application for registration in this state if the application to the other state:

(1) was submitted to the other state not earlier than the 180th day before the date the application is submitted in this state and the applicant certifies that the information contained in the application is current;

(2) contains information substantially similar to or more comprehensive than the information required by this section; and

(3) was signed by the applicant under penalty of perjury.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. [1123](#)), Sec. 4, eff. September 1, 2011.

Sec. 2051.105. DENIAL OF APPLICATION. (a) The secretary of state shall deny an application for registration if the applicant has been convicted of:

(1) a felony; or

(2) a misdemeanor involving moral turpitude.

(b) The secretary of state may deny an application for registration if the secretary of state determines the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the secretary of state may consider whether the applicant has:

(1) made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

(2) engaged in conduct that would disqualify the applicant

from serving in a fiduciary capacity;

(3) engaged in conduct prohibited by Section 2051.351;

(4) had a registration or licensure as an athlete agent denied, suspended, or revoked;

(5) been denied renewal of registration or licensure as an athlete agent in any state;

(6) engaged in conduct that resulted in the imposition on an athlete or educational institution of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event; or

(7) engaged in conduct that adversely reflects on the applicant's credibility, honesty, or integrity.

(c) In making a determination under Subsection (b), the secretary of state shall consider:

(1) how recently the conduct occurred;

(2) the nature of the conduct and the context in which it occurred; and

(3) any other relevant conduct of the applicant.

(d) Judicial review of a denial of an application for registration under Subsection (a) or (b) is by trial de novo and is subject to Section 2001.173, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 6, eff. Sept. 1, 2003.

Sec. 2051.106. TEMPORARY OR PROVISIONAL REGISTRATION. The secretary of state may issue a temporary or provisional certificate of registration that is valid for not more than 90 days to an applicant for registration or renewal of registration if the applicant's application has been made and the registration process has not been completed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.107. REGISTRATION DURATION; EXPIRATION. (a) Except as provided by Subsection (b), a certificate of registration issued under this chapter is valid for a period of not more than one year from the date of issuance.

(b) The secretary of state, by rule, may adopt a system under

which certificates of registration expire on various dates during the year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.108. REGISTRATION RENEWAL. (a) Except as provided by Subsection (e), an applicant for renewal of registration must apply on a form prescribed by the secretary of state.

(b) A renewal application must include:

(1) the name, address, and telephone number of each athlete for whom the athlete agent is performing professional services for compensation on the date of the renewal application;

(2) the name, address, and telephone number of each athlete for whom the athlete agent has performed professional services for compensation during the three years immediately preceding the date of the renewal application but for whom the athlete agent is not performing professional services on the date of the renewal application;

(3) the name and address of each national professional sports association by which the athlete agent is currently certified; and

(4) any other information prescribed by the secretary of state.

(c) A renewal application under this section must be accompanied by an appropriate renewal fee.

(d) If a certificate of registration expires earlier than the anniversary of the date of issuance, the renewal fee that must accompany a renewal application under this section shall be prorated according to the number of months that the registration is valid.

(e) An individual who has submitted an application for renewal of registration or licensure as an athlete agent in another state may submit a copy of the application and certificate of registration or license from the other state instead of submitting the application required by this section. The secretary of state shall accept the application for renewal from the other state as an application for renewal under this section if the application to the other state:

(1) was submitted to the other state not earlier than the 180th day before the date the renewal application is submitted in this state and the applicant certifies that the information contained

in the application is current;

(2) contains information substantially similar to or more comprehensive than the information required by this section; and

(3) was signed by the applicant under penalty of perjury.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 7, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 5, eff. September 1, 2011.

Sec. 2051.109. CONTINUING NOTIFICATION REQUIREMENT. (a) A registered athlete agent shall notify the secretary of state in writing of the athlete agent's:

(1) conviction of a crime that in this state is an offense other than a Class C misdemeanor; or

(2) decertification as an agent by a national professional sports association that has become final by the conclusion of the appeal process provided by the association.

(b) The athlete agent shall notify the secretary of state as required under this section not later than 30 days after the date of conviction or the date that the decertification becomes final.

Added by Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 6, eff. September 1, 2011.

Sec. 2051.110. EFFECT OF DECERTIFICATION BY PROFESSIONAL ASSOCIATION. The secretary of state shall revoke the certificate of registration of an athlete agent decertified by a national professional sports association.

Added by Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 6, eff. September 1, 2011.

#### **SUBCHAPTER D. ATHLETE AGENT BOND**

Sec. 2051.151. BOND DEPOSIT. (a) An athlete agent shall, before contacting an athlete or entering into an agent contract with an athlete in this state, deposit with the secretary of state a

surety bond, in the amount of \$50,000, payable to the state and conditioned on:

- (1) the athlete agent complying with this chapter;
- (2) the payment of any administrative penalty assessed under Subchapter J; and
- (3) the payment of any damages awarded to an institution of higher education or an athlete as a result of the athlete agent offering or providing a thing of value to an athlete or a family member of the athlete.

(a-1) An athlete agent shall, before entering into a financial services contract with an athlete, deposit with the secretary of state a surety bond, in the amount of \$100,000, payable to the state and conditioned on:

- (1) the athlete agent complying with this chapter;
- (2) the payment of money owed to an individual or group of individuals when the athlete agent or the athlete agent's representative or agent receives the money; and
- (3) the payment of damages to an athlete caused by the intentional misrepresentation, fraud, deceit, or unlawful or negligent act or omission of the athlete agent or of the athlete agent's representative or employee while acting within the scope of the financial services contract.

(b) An athlete agent shall maintain a bond deposited under Subsection (a) or (a-1) for not less than two years after the later of:

- (1) the date that the athlete agent ceases to provide financial services to an athlete; or
- (2) the date that the athlete agent's certificate of registration expires or is revoked.

(c) This section does not limit the amount of damages recoverable in a suit filed against an athlete agent to the amount of the bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. [1123](#)), Sec. 7, eff. September 1, 2011.

Sec. 2051.152. CANCELLATION OF BOND; SUSPENSION OF

CERTIFICATE. (a) Not later than the 30th day after the date an athlete agent receives a notice of cancellation from the surety of a bond deposited under Section 2051.151, the athlete agent shall file a new bond with the secretary of state.

(b) The secretary shall suspend the certificate of registration of an athlete agent who fails to file a new bond as required by Subsection (a) until a new bond is filed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER E. FORM, CONTENT, AND FILING OF CERTAIN CONTRACTS**

Sec. 2051.201. CONTRACT FORM. (a) A registered athlete agent must use a form approved by the secretary of state for any agent contract or financial services contract.

(b) The secretary of state shall by rule require that, to the extent practicable, the form for an agent contract or financial services contract conforms to the contract form approved by the national professional sports association for the sport in which the athlete will be represented.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. [1123](#)), Sec. 8, eff. September 1, 2011.

Sec. 2051.202. CONTRACT SIGNING. An athlete may sign an athlete agent contract at any time as permitted by the national association for the promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.203. CONTRACT REQUIREMENTS RELATING TO FEES AND SERVICES. (a) An agent contract or a financial services contract must include:

- (1) a schedule of fees, including:
  - (A) the amount and method of computing the



consideration to be paid by the athlete for services to be provided by the athlete agent under the contract; and

(B) any other consideration the athlete agent received or will receive from any other source for entering into the contract or for providing the services;

(2) a description of the professional services that the athlete agent will perform for the athlete;

(3) the name of any person not listed in the application for registration or renewal of registration who will be compensated because the athlete signed the agent contract;

(4) a description of any expenses of the athlete agent the athlete agrees to reimburse;

(5) the duration of the contract; and

(6) the date the contract was signed.

(b) A registered athlete agent may charge a fee only as provided by the schedule of fees in the contract.

(c) A change in the schedule of fees in a contract takes effect on the seventh day after the date on which the athlete agent files with the secretary of state a copy of the contract as required by Section 2051.205(b).

(d) The athlete agent shall give a signed copy of the contract to the athlete at the time the contract is signed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 8, eff. Sept. 1, 2003.

Sec. 2051.204. CONTRACT REQUIREMENTS RELATING TO NOTICE. (a) An agent contract or a financial services contract must include the following notice:

(1) THIS ATHLETE AGENT IS REGISTERED WITH THE SECRETARY OF STATE OF THE STATE OF TEXAS. REGISTRATION WITH THE SECRETARY OF STATE DOES NOT IMPLY APPROVAL OR ENDORSEMENT BY THE SECRETARY OF STATE OF THE COMPETENCE OF THE ATHLETE AGENT OR OF THE SPECIFIC TERMS AND CONDITIONS OF THIS CONTRACT.

NOTICE TO CLIENT

(2) DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT OR IF IT CONTAINS BLANK SPACES.

(3) IF YOU DECIDE THAT YOU DO NOT WISH TO PURCHASE THE SERVICES OF THE ATHLETE AGENT, YOU MAY CANCEL THIS CONTRACT BY

NOTIFYING THE ATHLETE AGENT IN WRITING OF YOUR DESIRE TO CANCEL THE CONTRACT NOT LATER THAN THE 16TH DAY AFTER THE DATE ON WHICH YOU SIGN THIS CONTRACT. YOU MAY NOT WAIVE THE RIGHT TO CANCEL THIS CONTRACT. IF YOU CANCEL THIS CONTRACT WITHIN 16 DAYS, YOU ARE NOT REQUIRED TO PAY ANY CONSIDERATION UNDER THE CONTRACT OR RETURN ANY CONSIDERATION RECEIVED.

(4) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS AN ATHLETE IN YOUR SPORT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(5) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR.

(b) The notice required under Subsection (a) must be:

- (1) printed in not less than 10-point typeface; and
- (2) boldfaced, capitalized, underlined, or otherwise set apart from the surrounding provisions of the contract to make the notice conspicuous.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 9, eff. Sept. 1, 2003.

Sec. 2051.205. FILING REQUIREMENTS. (a) A registered athlete agent shall, not later than the 10th day after the date an athlete signs an agent contract or financial services contract, file a copy of the contract with:

- (1) the secretary of state; and
- (2) if the athlete is a student at an institution of higher education, the athletic director of the athlete's institution.

(b) If the schedule of fees in an agent or financial services contract is changed, the athlete agent shall file with the secretary a copy of the changed contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. [1123](#)), Sec. 9, eff. September 1, 2011.

Sec. 2051.206. MULTIYEAR CONTRACT FEE. (a) This section applies only to a multiyear professional sports services contract

negotiated by a registered athlete agent.

(b) A registered athlete agent may not collect during a 12-month period a fee that exceeds the amount an athlete will receive during that same 12-month period under the professional sports services contract negotiated by the athlete agent.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. IMPLEMENTATION STANDARDS OF INSTITUTIONS OF HIGHER EDUCATION**

Sec. 2051.251. ADOPTION OF IMPLEMENTATION STANDARDS. (a) An institution of higher education shall adopt standards relating to the implementation of this chapter, including specific guidelines governing the athlete agent interview program sponsored by the institution under Section 2051.301.

(b) Guidelines adopted under Subsection (a) relating to the athlete agent interview program must specify:

- (1) the scheduling of interview periods;
- (2) the duration of an interview period;
- (3) the location on the institution's campus for conducting interviews; and
- (4) any terms or conditions under which an athlete agent may contact an athlete during an interview period.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.252. APPROVAL AND FILING OF STANDARDS. (a) After adopting implementation standards under Section 2051.251, an institution of higher education shall:

- (1) submit the standards to the institution's athletic council or other analogous body for approval; and
- (2) file a copy of the approved standards with the secretary of state not later than the 30th day after the date the standards are approved under Subdivision (1).

(b) If an institution of higher education amends the implementation standards, the institution shall, not later than the 30th day after the date the amendment is effective, file a copy of the amended standards with the secretary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.253. DESIGNATION OF COMPLIANCE COORDINATOR. An institution of higher education shall:

- (1) designate an individual to serve as a compliance coordinator for that institution; and
- (2) report the name of the compliance coordinator to the secretary of state in a manner prescribed by the secretary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.254. WRITTEN REQUEST FOR IMPLEMENTATION STANDARDS. On receipt of a written request from a registered athlete agent, the secretary of state or a compliance coordinator designated under Section 2051.253 shall provide a copy of the implementation standards adopted by an institution of higher education under Section 2051.251.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.255. NOTIFICATION OF AVAILABILITY OF IMPLEMENTATION STANDARDS. (a) The secretary of state shall notify each registered athlete agent in writing of the availability, on request, under Section 2051.254 of a copy of the implementation standards of each institution of higher education.

(b) Notice under Subsection (a) must include a statement that:

- (1) the standards adopted by an institution of higher education specify the policies of that institution relating to the time, place, and duration of athlete agent interviews conducted on the institution's campus; and
- (2) each institution of higher education has a designated compliance coordinator who the athlete agent may contact for additional information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.256. WRITTEN REQUEST FOR COMPLIANCE COORDINATORS. On receipt of a written request from a registered athlete agent, the

secretary of state shall provide a copy of the names of the compliance coordinators designated under Section 2051.253.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. ATHLETE AGENT INTERVIEW PROGRAM**

Sec. 2051.301. ATHLETE AGENT INTERVIEW PROGRAM. (a) Each institution of higher education shall sponsor an athlete agent interview program on the institution's campus.

(b) A registered athlete agent may interview an athlete during an interview program to discuss:

(1) financial services and advice offered by the athlete agent; and

(2) the athlete agent's representation of the athlete relating to marketing the athlete's athletic ability and reputation.

(c) The compliance coordinator or secretary of state shall, not later than the 30th day before the date on which an interview program sponsored under this section begins, notify each registered athlete agent in writing of the interview program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.302. COMPLIANCE COORDINATOR'S DUTIES. Each compliance coordinator designated under Section 2051.253 shall:

(1) establish the schedule for the athlete agent interview program sponsored under Section 2051.301 by the coordinator's institution of higher education;

(2) not later than the 30th day before the date on which the athlete agent interview program begins, notify each registered athlete agent, in writing, of the interview program, unless the secretary of state provides notification under Section 2051.301(c); and

(3) ensure that the coordinator's institution of higher education and the athletes attending the institution comply with this chapter and the rules adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.303. TIME AND DURATION OF INTERVIEW PROGRAM. An athlete agent interview program sponsored under this subchapter:

(1) may not continue for more than 30 consecutive business days as determined by the athlete's institution of higher education; and

(2) must be conducted during the off-season period before the completion of the athlete's final year of eligibility.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.304. COMPLIANCE WITH INTERVIEW GUIDELINES. An athlete agent shall strictly comply with the guidelines adopted under Section 2051.251 relating to the time, place, and duration of an athlete agent interview program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER H. RESTRICTION OF AGENT'S PRACTICE**

Sec. 2051.351. PROHIBITIONS. (a) An athlete agent may not:

(1) publish or cause to be published:

(A) false, fraudulent, or misleading information; or

(B) a false, fraudulent, or misleading:

(i) representation;

(ii) notice; or

(iii) advertisement;

(2) provide false information;

(3) make a false promise or representation relating to employment;

(4) divide fees with or receive compensation from:

(A) a person exempt from registration under this chapter under Section 2051.005;

(B) a professional sports league or franchise, including a representative or employee of the league or franchise; or

(C) an institution of higher education, including a representative or employee of the institution's athletics department;

(5) enter into a written or oral agreement with an employee of an institution of higher education in which the athlete agent offers a thing of value to the employee for the referral of clients by the employee;

(6) before an athlete completes the athlete's last intercollegiate sports contest, offer a thing of value to the athlete or an individual related to the athlete within the second degree by affinity or consanguinity to induce the athlete to enter into an agreement with the athlete agent in which the athlete agent will represent the athlete;

(7) before an athlete completes the athlete's last intercollegiate sports contest, furnish a thing of value to the athlete or an individual related to the athlete within the second degree by affinity or consanguinity;

(8) except as provided by this chapter, before an athlete completes the athlete's last intercollegiate sports contest:

(A) directly contact the athlete; or

(B) enter into an oral or written agreement with the athlete for the athlete agent to represent the athlete;

(9) furnish anything of value to any person other than the athlete or another registered athlete agent to induce an athlete to enter into an agreement with the athlete agent;

(10) initiate any contact with an athlete, except as authorized by this chapter;

(11) fail to retain or permit inspection of the records required to be retained by Section 2051.352;

(12) predate or postdate an agent contract;

(13) fail to notify an athlete before the athlete signs an agent contract that the signing may make the athlete ineligible to participate in intercollegiate sports; or

(14) commit an act or cause a person to commit an act on the athlete agent's behalf that causes an athlete to violate a rule of the national association for the promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member.

(b) This section does not prohibit:

(1) an athlete agent from sending written materials to an athlete relating to the professional credentials or services of the athlete agent if the athlete agent simultaneously sends a copy of the materials to the athletic director of the athlete's institution of higher education or the athletic director's designee; or

(2) an athlete or an athlete's parent or legal guardian from contacting an athlete agent to schedule a meeting with the athlete agent to assess:

- (A) the agent's professional proficiency in:
  - (i) representing the athlete; or
  - (ii) marketing the athlete's athletic ability or reputation; or
- (B) the financial services offered by the athlete agent.

(c) If an athlete agent is contacted by an athlete or the athlete's parent or legal guardian to schedule a meeting to discuss the services offered by the athlete agent, the athlete agent shall, before meeting with the athlete or the athlete's parent or legal guardian, notify the athletic director of the athlete's institution of higher education or the athletic director's designee of the proposed meeting.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 10, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. [1123](#)), Sec. 10, eff. September 1, 2011.

Sec. 2051.352. RECORDKEEPING REQUIREMENT. (a) An athlete agent shall maintain a record of:

- (1) each athlete represented by the athlete agent, including:
    - (A) the name and address of the athlete;
    - (B) fees paid by the athlete; and
    - (C) services performed by the athlete agent for the athlete;
  - (2) travel and entertainment expenses incurred by the athlete agent, including expenses for:
    - (A) food and beverages;
    - (B) hospitality rooms;
    - (C) sporting events;
    - (D) theater and music events; and
    - (E) transportation, lodging, and admission relating to entertainment;
  - (3) any agent contract entered into by the athlete agent;
- and
- (4) any direct costs incurred by the athlete agent in



recruiting or soliciting an athlete to enter into an agent contract.

(b) A record of travel and entertainment expenses maintained under Subsection (a)(2) must state:

- (1) the nature of the expense;
- (2) the amount of the expense;
- (3) the purpose of the expense;
- (4) the date and place of the expense; and
- (5) the name of each person on whose behalf the expenditure

was made.

(c) An athlete agent shall provide a copy of a record maintained under this section to the secretary of state on request.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 11, eff. Sept. 1, 2003.

Sec. 2051.353. DISCLOSURE REQUIREMENT. An athlete agent shall disclose the athlete agent's name and address in any advertising used by the athlete agent.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.354. AGENT LIABILITY FOR VIOLATION OF CHAPTER. A registered or unregistered athlete agent who violates this chapter may be subject to:

- (1) an administrative penalty imposed under Subchapter J;
  - (2) forfeiture of the right to payment for a thing of value that the athlete agent gives to an athlete to induce the athlete to enter into a contract;
  - (3) a refund of consideration paid to the athlete agent;
- and
- (4) payment of reasonable attorney's fees and court costs incurred by an athlete who files suit against an athlete agent for violation of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER I. INVESTIGATION OF AGENTS BY SECRETARY OF STATE**

Sec. 2051.401. INVESTIGATIVE AUTHORITY: SUBPOENA AND SUMMONS.

(a) The secretary of state may issue a subpoena or summons to compel:

- (1) the attendance and testimony of a witness; or
- (2) the production of:
  - (A) a book;
  - (B) an account;
  - (C) a record;
  - (D) a magnetic or electronic recording;
  - (E) a paper;
  - (F) a contract;
  - (G) correspondence; or
  - (H) any other record that the secretary determines is

relevant or material to an investigation under this chapter.

(b) If the secretary issues a subpoena or summons under Subsection (a), the secretary, or an officer designated by the secretary, may:

- (1) administer an oath;
- (2) examine a witness; and
- (3) receive evidence.

(c) Information and evidence obtained by the secretary under this section is:

- (1) confidential and not open to public inspection, except by a court order; and
- (2) exempt from disclosure under Chapter 552, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.402. SERVICE OF PROCESS. (a) The secretary of state, the secretary's authorized agent, a sheriff, or a constable may serve a subpoena or summons issued by the secretary of state under Section 2051.401:

- (1) on an individual by:
  - (A) delivering an executed copy of the subpoena or summons to the individual; or
  - (B) mailing an executed copy of the subpoena or summons by registered or certified mail, return receipt requested, to the individual's:
    - (i) place of residence; or

(ii) principal place of business; and  
 (2) on an entity by delivering or mailing a duly executed copy of the subpoena or summons to an individual for which service would be appropriate in a civil suit under state law.

(b) Proof of service of process under this section consists of:  
 (1) a verified return showing the manner of service; or  
 (2) if the service is made by registered or certified mail, return receipt requested, the return receipt.

(c) By acting as an athlete agent in this state, a nonresident appoints the secretary of state as the nonresident's agent for service of process in a civil action in this state related to an act by the person as an athlete agent.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 12, eff. Sept. 1, 2003.

Sec. 2051.403. ENFORCEMENT OF SUBPOENA AND SUMMONS. (a) The secretary of state shall refer a person who fails or refuses to comply with a subpoena or summons issued by the secretary under Section 2051.401 to the attorney general for enforcement.

(b) On receipt of a referral under Subsection (a), the attorney general may apply to a district court of Travis County for an order requiring compliance.

(c) On receipt of an application for an order under Subsection (b), a district court:

(1) shall order compliance if the court determines that good cause exists for the issuance of the subpoena or summons; and  
 (2) may modify those requirements of the subpoena or summons that the court determines are unreasonable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.404. INTERROGATORIES. (a) Except as provided by Subsection (b), the secretary of state may serve interrogatories on an athlete, compliance coordinator, or any person subject to this chapter, or an officer, director, partner, or associate of the person, if the interrogatories are reasonable and necessary to conduct an investigation under this chapter.

(b) The secretary may not serve interrogatories on an athlete

who is not represented by an attorney.

(c) Interrogatories served under Subsection (a) must be answered:

- (1) completely;
- (2) in writing;
- (3) under oath;
- (4) not later than the 30th day after the date the interrogatories are mailed, or within a time period determined by the secretary; and
- (5) by the individual to whom the interrogatories are directed or, if the interrogatories are directed to an entity, by an authorized representative of the entity.

(d) If the answers to interrogatories served under Subsection (a) disclose a violation of this chapter, the secretary shall take disciplinary action as provided by Section 2051.405.

(e) The interrogatories and answers to the interrogatories are:

- (1) confidential and not open to public inspection, except by a court order; and

- (2) exempt from disclosure under Chapter 552, Government Code.

(f) The secretary may disclose confidential information to a governmental authority or a quasi-governmental authority.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.405. DISCIPLINARY PROCEDURES; INJUNCTIONS. (a) If the secretary of state determines that a person has violated this chapter, the secretary shall:

- (1) refer the violation to the attorney general for prosecution; and
- (2) take appropriate disciplinary action, including:
  - (A) denying an application for registration; or
  - (B) suspending or revoking a certificate of registration.

(b) If the secretary determines that a person is violating or is threatening to violate this chapter, the secretary or the attorney general may file suit in district court in Travis County to enjoin the violation or threatened violation.

(c) Judicial review of a denial, suspension, revocation, or

other disciplinary action taken under Subsection (a) is by trial de novo and is subject to Section 2001.173, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER J. ADMINISTRATIVE PENALTY**

Sec. 2051.451. ADMINISTRATIVE PENALTY. (a) If the secretary of state determines that a person regulated under this chapter has violated this chapter or a rule adopted under this chapter in a manner that constitutes a ground for disciplinary action under Section 2051.405, the secretary may assess an administrative penalty against the person as provided by this subchapter.

(b) The secretary shall determine the amount of a penalty assessed under Subsection (a), except that the amount may not exceed:

- (1) \$50,000 for a violation of Section 2051.351(a)(7) or (14); or
- (2) \$25,000 for any other violation.

(c) In determining the amount of a penalty under Subsection (b), the secretary shall consider the seriousness of the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. [1123](#)), Sec. 11, eff. September 1, 2011.

Sec. 2051.452. INVESTIGATION AND PRELIMINARY REPORT. (a) If, after examining a possible violation, including facts relating to the violation, the secretary of state determines that a person has committed a violation of this chapter, the secretary shall issue a preliminary report stating:

- (1) the facts on which the determination is based; and
- (2) that an administrative penalty will be imposed, including the amount of the penalty.

(b) The secretary shall, not later than the 10th day after the date a preliminary report is issued under Subsection (a), send to the person who is the subject of the report:

- (1) a copy of the report; and
- (2) notice that the person may request a hearing under Section 2051.453.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.453. PAYMENT OR REQUEST FOR HEARING. (a) A person who is the subject of a preliminary report issued under Section 2051.452 shall, not later than the 20th day after the date the report is sent:

(1) pay the administrative penalty to the secretary of state; or

(2) request in writing from the secretary a hearing relating to:

(A) the alleged violation; or

(B) the amount of the penalty.

(b) A person who fails to pay the penalty or request a hearing as required by Subsection (a) waives the right to request a hearing under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.454. HEARING. (a) If the secretary of state determines at a hearing conducted under Chapter 2001, Government Code, that a person has violated this chapter, the secretary shall:

(1) notify the person in writing of:

(A) the secretary's findings; and

(B) the amount of the administrative penalty; and

(2) enter an order requiring the person to pay the penalty.

(b) A person shall, not later than the 30th day after receiving notice under Subsection (a):

(1) pay the penalty to the secretary; or

(2) forward the penalty to the secretary for deposit in an escrow account and request judicial review of:

(A) the secretary's findings; or

(B) the amount of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.455. JUDICIAL REVIEW. If judicial review requested under Section 2051.454 reveals that a person has not violated this chapter or that the administrative penalty assessed against a person

should be reduced, the secretary of state shall, not later than the 30th day after the date the judicial determination becomes final, return the appropriate amount of the penalty to the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.456. RECOVERY OF ADMINISTRATIVE PENALTY. On request by the secretary of state, the attorney general may file suit against a person to recover a penalty assessed under Section 2051.451.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.457. FAILURE TO PAY ADMINISTRATIVE PENALTY. (a) If an athlete agent fails to pay the administrative penalty and does not request a hearing as provided by Section 2051.453, the secretary of state may revoke the agent's certificate of registration, refuse to renew the agent's certificate of registration, or refuse to issue a certificate of registration to the agent.

(b) If, after a hearing, an athlete agent fails to pay the administrative penalty as required by Section 2051.454, the secretary of state may revoke the agent's certificate of registration, refuse to renew the agent's certificate of registration, or refuse to issue a certificate of registration to the agent.

Added by Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. [1123](#)), Sec. 12, eff. September 1, 2011.

#### **SUBCHAPTER K. CRIMINAL PENALTY**

Sec. 2051.501. CRIMINAL OFFENSE. (a) An athlete agent commits an offense if the agent intentionally or knowingly violates this chapter or a rule under this chapter.

(b) Except as provided by Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section committed by an athlete agent who intentionally or knowingly violates Section 2051.351(a)(7) or (14) is a third degree felony.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 13, eff. September 1, 2011.

Sec. 2051.502. NOTICE OF CRIMINAL OFFENSE. The secretary of state shall send notice of an athlete agent's conviction of an offense under Section 2051.501 to each national professional sports association that has certified the agent.

Added by Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 14, eff. September 1, 2011.

#### **SUBCHAPTER L. CIVIL LIABILITY**

Sec. 2051.551. CIVIL SUIT. (a) An institution of higher education adversely affected by an athlete agent's violation of this chapter may file suit against the athlete agent for damages.

(a-1) An athlete adversely affected by an athlete agent's violation of Section 2051.351(a)(7) or (14) may file suit against the athlete agent for damages.

(b) A cause of action under Subsection (a) does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent.

(c) Any liability of the athlete agent under this section is several and not joint.

(d) This chapter does not restrict the rights, remedies, or defense of any person under any other law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 13, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 16, eff. September 1, 2011.

Sec. 2051.552. ADVERSELY AFFECTED. (a) An institution of higher education is adversely affected by an athlete agent's violation of this chapter if:

(1) the athlete agent's violation causes a national



association for the promotion and regulation of intercollegiate athletics to disqualify or suspend the institution from participating in intercollegiate sports contests; and

(2) the disqualification or suspension of the institution causes the institution to:

(A) lose revenue from media coverage of sports contests;

(B) lose the right to grant athletic scholarships in the sport in which the institution is disqualified or suspended;

(C) lose the right to recruit athletes; or

(D) otherwise suffer an adverse financial impact.

(b) An athlete is adversely affected by an athlete agent's violation of Section 2051.351(a)(7) or (14) if:

(1) the athlete agent's violation causes a national association for the promotion and regulation of intercollegiate athletics to disqualify or suspend the athlete from participating in intercollegiate sports contests; and

(2) the disqualification or suspension of the athlete causes the athlete to suffer an adverse financial impact.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. [1123](#)), Sec. 17, eff. September 1, 2011.

Sec. 2051.553. RECOVERY. A plaintiff that prevails in a civil suit filed under Section 2051.551 may recover:

(1) actual damages;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. [1123](#)), Sec. 18, eff. September 1, 2011.

**CHAPTER 2052. COMBATIVE SPORTS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2052.001. LEGISLATIVE DECLARATION. This chapter shall be liberally construed and applied to promote its underlying purposes.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2052.002. DEFINITIONS. In this chapter:

(1) "Amateur" means a person who has never received or competed for any purse or other thing of value, including reimbursement for expenses related to training or to participation in a combative sports event, that exceeded the maximum amount established by an amateur combative sports association.

(2) "Amateur combative sports association" means an organization that has nonprofit status under the laws of this state or under federal law and that produces, arranges, advertises, conducts, or stages combative sports events in which all the contestants are amateurs.

(3) "Boxing" means to compete with the fists.

(4) "Combative sports" means sports, including boxing, kickboxing, martial arts, and mixed martial arts, in which participants voluntarily engage in full contact to score points, to cause an opponent to submit, or to disable an opponent in a contest, match, or exhibition. The term does not include student training or exhibitions of students' skills conducted by martial arts schools, or associations of schools, where the students' participation is for health and recreational purposes rather than competition and where the intent is to use only partial contact.

(5) "Commission" means the Texas Commission of Licensing and Regulation.

(6) "Contest" means a combative sports engagement in which the participants strive earnestly to win.

(7) "Department" means the Texas Department of Licensing and Regulation.

(8) "Elimination tournament" means a combative sports contest in which contestants compete in a series of matches until not more than one contestant remains in any weight category. The term does not include an event described by Section 2052.110.

(9) "Executive director" means the executive director of the department or the executive director's designated representative.

(10) "Exhibition" means a combative sports skills

demonstration.

(11) "Event" means a contest, match, or exhibition.

(11-a) "Event coordinator" means a person who performs any function to arrange, conduct, or stage a combative sports event promoted by another person, other than a permanent full-time employee of the promoter of the event. The term does not include an employee of an event coordinator.

(12) "Judge" means a person who is responsible for scoring the performances of the participants in a match.

(13) "Kickboxing" means to compete by delivering blows with the fists, arms, feet, legs, or any combination thereof.

(14) "Martial arts" means any one of the individual disciplines described by rule adopted by the commission in which the contestants engage in unarmed combat using the applicable techniques to grapple with, kick, or strike an opponent to win a contest by causing an opponent to submit or by scoring points against or disabling an opponent.

(15) "Match" means any contest or exhibition.

(16) "Mixed martial arts" means unarmed combat involving the use of a combination of techniques from different disciplines of the martial arts including grappling, kicking, and striking and may include the use of full, unrestrained physical force.

(17) "Professional combative sports contestant" means a person who competes in a combative sports event in this state conducted for a purse or compensation.

(18) "Promoter" means any person who produces, arranges, advertises, conducts, or stages a combative sports event.

(19) "Referee" means a person who:

(A) is present in the ring during a match; and

(B) exercises general supervision of the match.

(20) "Ringside physician" means an individual who has an unrestricted and unlimited license to practice medicine in this state and who, by agreement, is assigned as the physician for a combative sports event.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.001, eff. Jan. 1, 2004; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.501(b), eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 1, eff. September

1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 467 (H.B. 1293), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 41 (S.B. 618), Sec. 1, eff. September 1, 2013.

Sec. 2052.003. APPLICABILITY OF OTHER LAW. Section 51.401 does not apply to this chapter.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 7.002, eff. Jan. 1, 2004.

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

Sec. 2052.051. ADMINISTRATION OF CHAPTER. The department shall administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2052.052. RULES. (a) The commission shall adopt reasonable and necessary rules to administer this chapter.

(b) The commission may adopt rules:

(1) governing boxing, kickboxing, martial arts, or mixed martial arts contests and exhibitions;

(2) establishing reasonable qualifications for an applicant seeking a license or registration from the department under this chapter;

(3) recognizing a sanction, medical suspension, or disqualification of a licensee or registrant by a combative sports authority in any state, provided that if licensure or registration is denied based on those actions, an applicant has an opportunity for a hearing as prescribed by rule;

(4) establishing selection criteria and procedures for the assignment of individuals who agree to act as ringside physicians and timekeepers for combative sports events;

(5) requiring a contestant to present with an application for licensure or license renewal documentation of recent blood test results that demonstrate whether the contestant is free from hepatitis B virus, hepatitis C virus, human immunodeficiency virus,

and any other communicable disease designated by commission rule and providing that a contestant's failure to provide the required blood test results disqualifies the contestant;

(6) providing that to participate in any event a contestant must be free of hepatitis B virus, hepatitis C virus, human immunodeficiency virus, and any other communicable disease designated by rule;

(7) requiring that a contestant present with an application for licensure or license renewal documentation of the results of a physical examination, including an ophthalmologic examination, and providing for disqualification of a contestant who is determined by an examining physician to be unfit;

(8) establishing additional responsibilities for promoters;  
and

(9) governing regulated amateur events.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.004, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 2, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 41 (S.B. 618), Sec. 2, eff. September 1, 2013.

Sec. 2052.053. INVESTIGATIVE AUTHORITY. (a) The executive director shall investigate allegations of activity that may violate this chapter.

(b) The executive director may enter, at a reasonable time, a place of business or an establishment in which activity alleged to violate this chapter may occur. The executive director is not required to give advance notice before entering.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.064, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.503, eff. Sept. 1, 2003.

Sec. 2052.054. CONTINUING EDUCATION. (a) The commission may recognize, prepare, or administer continuing education programs for persons licensed under this chapter.

(b) Participation in a continuing education program under Subsection (a) is voluntary.

(c) Section 51.405 does not apply to this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.005, eff. Jan. 1, 2004.

Sec. 2052.055. MEDICAL ADVISORY COMMITTEE. (a) The presiding officer of the commission, with the commission's approval, may appoint a medical advisory committee to advise the department concerning health issues for combative sports event contestants.

(b) If the commission elects to appoint an advisory committee, the commission by rule shall establish:

- (1) the number of committee members;
- (2) qualifications for appointment to the committee; and
- (3) the purpose and duties of the committee.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 7.006, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 3, eff. September 1, 2005.

#### **SUBCHAPTER C. LICENSING, REGISTRATION, AND PERMITS**

Sec. 2052.101. PROMOTER LICENSE. A person may not act as a promoter unless the person holds the appropriate license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 4, eff. September 1, 2005.

Sec. 2052.102. PROMOTER LICENSE APPLICATION REQUIREMENTS. (a) An applicant for a promoter's license under this chapter must apply on a form furnished by the executive director.

(b) An application must be accompanied by:

- (1) a license fee in an amount set by the commission; and

(2) a surety bond:

(A) subject to approval by the executive director; and

(B) conditioned on the applicant's payment of the tax imposed under Section 2052.151.

(c) The executive director shall establish the amount of the surety bond required under Subsection (b). The bond amount may not be less than \$300.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.065, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.505, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 5, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 6, eff. September 1, 2005.

Sec. 2052.107. OTHER COMBATIVE SPORTS LICENSES. Unless a person holds a license or registration issued under this chapter, the person may not act as a combative sports:

- (1) professional contestant;
- (2) manager of a professional contestant;
- (3) referee;
- (4) judge;
- (5) second;
- (6) matchmaker; or
- (7) event coordinator.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.008, eff. Jan. 1, 2004. Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 7, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 467 (H.B. 1293), Sec. 2, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 41 (S.B. 618), Sec. 3, eff. September 1, 2013.

Sec. 2052.108. APPLICATION REQUIREMENTS FOR OTHER LICENSES.

(a) An application for a license under Section 2052.107 must be made on a form furnished by the executive director.

(b) An application must be accompanied by the required license fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.066, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.506, eff. Sept. 1, 2003.

Sec. 2052.109. SURETY BOND. (a) A surety bond required under this subchapter must:

(1) be issued by a company authorized to conduct business in this state;

(2) comply with the applicable requirements of the Insurance Code;

(3) be payable to the state for use by the state or a political subdivision that establishes that the boxing or wrestling promoter is liable to it for damages, penalties, taxes, or other expenses resulting from promotional activities conducted in this state; and

(4) be open to more than one claim, except that the claims may not exceed the face value of the bond.

(b) A person required to file a surety bond under this subchapter shall file a new bond annually.

(c) A company that issues a bond shall notify the department in writing of the cancellation of the bond not later than the 30th day before the date on which the bond is canceled.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2052.110. LICENSE AND BONDING EXCEPTIONS. If the contestants are amateurs, the licensing and bonding requirements of this chapter do not apply to:

(1) an event conducted by a college, school, or university that is part of the institution's athletic program in which only students of educational institutions participate;

(2) an event which is conducted by a troop, battery, company, or unit of the Texas National Guard or a law enforcement agency and in which only members of military or law enforcement



organizations participate; or

(3) an event which is conducted by an organization of the Olympic Games, the Paralympic Games, or the Pan-American Games and in which participants train or compete for advancement to or within the games.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.009, eff. Jan. 1, 2004; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.507, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 8, eff. September 1, 2005.

Sec. 2052.111. DENIAL OF APPLICATION. The executive director may deny an application for a license or registration if:

(1) the applicant does not meet the qualifications for the license or registration; or

(2) after conducting an investigation and providing an opportunity for a hearing, the executive director determines that the applicant has violated this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.067, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.507, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 9, eff. September 1, 2005.

Sec. 2052.113. LICENSE AND PERMIT REQUIRED FOR CLOSED CIRCUIT TELECAST. A person who exhibits in this state a simultaneous telecast of a live, spontaneous, or current combative sports event on a closed circuit telecast in which a fee is charged for admission to the telecast must:

(1) hold a promoter's license under this chapter; and

(2) obtain a permit for the closed circuit telecast.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 10, eff. September 1, 2005.

Sec. 2052.114. LICENSE, REGISTRATION, AND PERMIT TERM AND RENEWAL. (a) A license, registration, or permit issued under this chapter is valid for one year after the date of issuance.

(b) The holder of a license, registration, or permit may renew the license, registration, or permit by paying a renewal fee and complying with other renewal requirements prescribed by department rule before the expiration date. The department shall issue a renewal certificate to the holder at the time of renewal.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 7.010, eff. Jan. 1, 2004.

Sec. 2052.115. PROMOTER RESPONSIBILITIES. For each promoted event, a promoter shall:

(1) assure that all contestants scheduled to participate are licensed before the event;

(2) provide that an ambulance, serviced by at least two emergency medical technicians, is present on the premises where the event is held;

(3) provide for a physical examination of each contestant that complies with rules adopted under this chapter; and

(4) comply with all commission rules.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 7.010, eff. Jan. 1, 2004.

Sec. 2052.116. AMATEUR COMBATIVE SPORTS ASSOCIATION REGISTRATION. A person may not act as an amateur combative sports association unless the person is registered under this chapter.

Added by Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 11, eff. September 1, 2005.

Sec. 2052.117. AMATEUR COMBATIVE SPORTS ASSOCIATION

REGISTRATION REQUIREMENTS. (a) An applicant for registration as an amateur combative sports association must apply on a form acceptable to the executive director.

(b) An application must be accompanied by:

- (1) a registration fee in the amount set by the commission;
- (2) proof of compliance with requirements established by

rule for:

- (A) insurance; and
- (B) surety bonds, if any;

(3) a copy of the rules of the association establishing standards of conduct for contestants and officials; and

(4) proof that the association is recognized or organized as a nonprofit organization under the laws of this state or has such status under federal law.

(c) Rules of the association must be approved by the department.

Added by Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 11, eff. September 1, 2005.

#### **SUBCHAPTER D. GROSS RECEIPTS TAX**

Sec. 2052.151. IMPOSITION AND RATE OF TAX. (a) A tax is imposed on a person who:

(1) conducts a combative sports event in which a fee is charged for admission to the event; or

(2) exhibits in this state a simultaneous telecast of a live, spontaneous, or current combative sports event on a closed circuit telecast, in which a fee is charged for admission to the telecast.

(b) The tax is three percent of the gross receipts obtained from the sale of tickets to the event, plus three percent of gross receipts received from sales of broadcast rights or \$30,000, whichever is less.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.011, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 12, eff. September 1, 2005.

Sec. 2052.152. TAX REPORT AND PAYMENT. (a) A person on whom a tax is imposed under Section 2052.151, not later than three business days after the end of the event or telecast for which the tax is due, shall submit to the department a verified report on a form acceptable to the department stating:

- (1) the number of tickets sold to the event;
- (2) the ticket prices charged;
- (3) the gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising, or other expenses or charges; and
- (4) the amount of gross receipts obtained from the event.

(b) The person shall attach to the report a cashier's check, check, or money order payable to this state in the amount of the tax imposed on the event covered by the report.

(c) The department may audit a report filed under Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.012, eff. Jan. 1, 2004. Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 13, eff. September 1, 2005.

Sec. 2052.153. CLOSED CIRCUIT TELECAST. A person exhibiting a simultaneous telecast of a live, spontaneous, or current combative sports event on a closed circuit telecast that occurs in Texas in which a fee is charged for admission to the exhibition:

- (1) must:
  - (A) be a promoter; and
  - (B) obtain a permit for each telecast exhibited; and
- (2) shall comply with the tax provisions of Sections 2052.151 and 2052.152.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 14, eff. September 1, 2005.

**SUBCHAPTER F. OTHER COMBATIVE SPORT REGULATIONS**

Sec. 2052.251. GLOVES. A combative sports event contestant shall wear gloves of the type and weight specified by commission rule, unless the commission by applicable rule requires or permits contestants to not wear gloves.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.015, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 15, eff. September 1, 2005.

Sec. 2052.252. REGULATED AMATEUR EVENTS. (a) This section applies to an amateur combative sports event, other than an event described by Section 2052.110, in which a fee is charged for admission to the event.

(b) The amateur combative sports association sponsoring or producing the event shall register with the department not later than 30 days before the date the event begins.

(c) The event may take place only if the executive director approves the event not later than seven days before the date the event begins.

(d) Each contestant in the event must have been a member of the amateur combative sports association for the 30-day period immediately preceding the date the event begins and must be a member on the date of the event.

(e) The amateur combative sports association shall determine the amateur standing of the event contestants and shall establish training programs consisting of at least 30 days of training for each contestant.

(f) The event is subject to the supervision of the executive director.

(g) Each contestant participating in the event must be examined by a licensed physician within a reasonable time before the event begins. A licensed physician must be present at ringside during the entire event.

(h) A professional combative sports contestant licensed under this chapter may not participate as a contestant in the event.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2003, 78th Leg., ch. 816, Sec. 7.016, eff. Jan. 1, 2004;  
Acts 2003, 78th Leg., ch. 1276, Sec. 14A.510, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 16, eff. September 1, 2005.

Sec. 2052.253. KICKBOXING. A professional kickboxing event must be fought on the basis of the contestants' best efforts.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2052.254. ELIMINATION TOURNAMENTS. An elimination tournament may not be conducted in this state.

Added by Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 17, eff. September 1, 2005.

#### **SUBCHAPTER G. DISCIPLINARY PROCEDURES; PENALTIES**

Sec. 2052.3015. PROMOTER PENALTY FOR LATE LICENSE. A promoter who does not comply with Section 2052.115(1) in a timely manner is subject to a penalty under this chapter for each contestant who obtains a license less than 72 hours before an event in which the contestant is scheduled to participate.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 7.017, eff. Jan. 1, 2004.

Sec. 2052.302. WITHHOLDING OF PURSE AND FORFEITURE OF PURSE.

(a) The executive director may order a promoter to withhold any purse or other funds payable to the holder of a license or registration under this chapter if it appears more likely than not that the holder has violated this chapter or a rule adopted under this chapter.

(b) The promoter shall surrender any purse or funds withheld as provided by Subsection (a) to the executive director on demand. Not later than the fifth working day after the event, the department shall notify in writing the promoter and any person from whom a sum

was withheld of the date of a hearing to determine whether all or part of the purse or funds withheld should be forfeited to the state. The hearing must be scheduled for a date not later than the 10th day after the date of the notice. Not later than the 10th day after the date of the hearing, the executive director shall enter an order with findings of fact and conclusions of law determining whether all or part of the purse or funds should be forfeited. Any funds not forfeited shall be distributed to the persons entitled to the funds.

(c) Except as otherwise provided by this subchapter, a proceeding under this section shall be conducted in the manner provided by Chapter 2001, Government Code.

(d) A person aggrieved by an order entered under this section may appeal the order by filing a petition in a district court in Travis County in the manner provided by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.018, eff. Jan. 1, 2004; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.511, eff. Sept. 1, 2003.

Sec. 2052.303. CIVIL PENALTY; INJUNCTION. (a) A court may assess a civil penalty against a person who violates this chapter or a rule adopted under this chapter. The amount of the penalty may not exceed \$1,000 for each violation.

(b) The attorney general or the department may file a civil suit to:

- (1) assess and recover a civil penalty under Subsection (a); or
- (2) enjoin a person who violates or threatens to violate this chapter or a rule adopted under this chapter from continuing the violation or threat.

(c) Venue for a suit filed under Subsection (b) is in a district court in Travis County.

(d) A civil penalty assessed under this section shall be paid to this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2052.304. PETITION FOR REVIEW. (a) A person may seek

review of a decision or an order of the executive director or the commission under this chapter by filing a petition for review in a district court in Travis County.

(b) Chapter 2001, Government Code, governs any proceeding under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.019, 7.020(5), eff. Jan. 1, 2004.

Sec. 2052.308. APPEAL. (a) The petitioner or executive director may appeal a final judgment of a court conducting a review under this subchapter in the same manner as a civil action.

(b) The executive director is not required to file an appeal bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.069, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.515, eff. Sept. 1, 2003.

### **SUBTITLE C. ARTS AND MUSIC**

#### **CHAPTER 2101. CONSIGNMENT OF ART WORKS**

Sec. 2101.001. SHORT TITLE. This chapter may be cited as the Artists' Consignment Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2101.002. DEFINITIONS. In this chapter:

(1) "Art" means a commonly recognized art form, including a painting, sound recording of a musical performance, sculpture, drawing, work of graphic art, pottery, weaving, batik, macrame, or quilt.

(2) "Art dealer" means a person in the business of selling works of art.

(3) "Artist" means the creator of a work of art or, if the creator is dead, the creator's estate.

(4) "Creditor" has the meaning assigned by Section 1.201, Business & Commerce Code.



(5) "Person" means an individual, partnership, corporation, or association.

(6) "Recording distributor" means a person who acquires a sound recording and sells the sound recording to another person for use or resale.

(7) "Sound recording" means a tangible medium on which music or other sounds are recorded or otherwise stored, including a phonograph record, disc, tape, cassette, or other medium now existing or developed later on which music or other sounds are or can be recorded or otherwise stored or a copy or reproduction that duplicates in whole or in part the original. The term does not include a medium on which the primary recorded information is information other than music or other sound, such as a motion picture or computer program, and that contains recorded sound as an integrated part of the primary recorded information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 233 (S.B. 846), Sec. 1, eff. May 27, 2005.

Sec. 2101.003. CONSIGNED ART EXEMPT FROM CERTAIN LIENS OR CLAIMS. (a) Notwithstanding any provision of the Business & Commerce Code, a work of art delivered to an art dealer for exhibition or sale and the proceeds from the dealer's sale of the work of art are not subject to a claim, lien, or security interest of a creditor of the dealer.

(b) This section applies to the proceeds of a sale of a work of art regardless of whether the art dealer or another person purchased the work.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2101.004. CONSIGNED SOUND RECORDINGS EXEMPT FROM CERTAIN LIENS OR CLAIMS. (a) Notwithstanding any provision of the Business & Commerce Code, a sound recording delivered by the artist who produced the music or other sound on the recording to a recording distributor for sale and the proceeds from the recording distributor's sale of the sound recording are not subject to a claim,

lien, or security interest of a creditor of the recording distributor.

(b) Except as provided by Subsection (c), this section applies to the proceeds of a sale of a sound recording regardless of whether the recording distributor or another person purchased the recording.

(c) This section does not apply to the proceeds of a sale of a sound recording if the artist delivered the recording to the recording distributor pursuant to a sale for which the artist has been paid in full.

Added by Acts 2005, 79th Leg., Ch. 233 (S.B. 846), Sec. 2, eff. May 27, 2005.

#### **CHAPTER 2102. COLLECTION OF ROYALTIES ON NONDRAMATIC MUSICAL WORKS**

Sec. 2102.001. DEFINITIONS. In this chapter:

(1) "Copyright owner" means the owner of a copyright of a nondramatic musical work recognized and enforceable under federal copyright laws (17 U.S.C. Section 101 et seq.).

(2) "Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works for copyright owners, including the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc. (SESAC).

(3) "Proprietor" means the owner or operator of a retail establishment in this state where the public may assemble and where nondramatic musical works may be performed, broadcast, or otherwise transmitted, including a restaurant, inn, bar, tavern, or other similar place of business.

(4) "Royalty" means a fee payable to a performing rights society for public performance rights.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2102.002. APPLICATION OF CHAPTER. This chapter does not apply to:

- (1) a contract:
  - (A) between a performing rights society and a broadcaster licensed by the Federal Communications Commission; or
  - (B) with a cable operator, programmer, or other

transmission service;

(2) conduct engaged in for the enforcement of Section 641.054 and, to the extent applicable, Section 641.056, Business & Commerce Code; or

(3) the owner of a copyright of a motion picture or an audiovisual work.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.30, eff. April 1, 2009.

Sec. 2102.003. REQUIRED DISCLOSURES. A performing rights society may not contract or offer to contract for the payment of royalties by a proprietor unless, at the time of the offer or any subsequent time, but not later than 72 hours before the execution of the contract, the performing rights society provides the proprietor, in writing, the following:

(1) rates and terms of royalties to be collected under the contract;

(2) at the proprietor's request, the opportunity to review the most current available list of the members or affiliates represented by the society;

(3) notice that the society will make available, on the proprietor's written request and at the proprietor's sole expense, the most current available list of the copyrighted musical works in the performing rights society's repertory; and

(4) notice that the society will identify the method for securing the list.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2102.004. REQUIRED CONTRACT TERMS. A contract between a performing rights society and a proprietor for the payment of royalties executed in this state must:

(1) be in writing;

(2) be signed by the parties; and

(3) include the following information:

(A) the proprietor's name and business address;

(B) the name and location of each place of business to which the contract applies;

(C) the name and address of the performing rights society;

(D) the duration of the contract; and

(E) the rates and terms of royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of those rates for the duration of the contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2102.005. IMPROPER COLLECTIONS PRACTICES. A performing rights society or the society's agent or employee may not collect or attempt to collect from a proprietor licensed by that society a royalty payment except as provided by a contract executed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2102.006. ENFORCEMENT. A person aggrieved by a violation of this chapter may:

(1) bring an action to recover actual damages and reasonable attorney's fees; and

(2) seek an injunction or other remedy available at law or in equity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **CHAPTER 2103. LICENSING AND PERFORMING FEES FOR CERTAIN RECORDINGS**

Sec. 2103.001. DEFINITION. In this chapter, "playing a recording" includes performing, broadcasting, or televising a recording.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2103.002. RELIANCE ON LABELING INFORMATION. A person playing a recording requiring the payment of a licensing or

performing fee may rely on the information on the label of the recording for paying or accounting for the fees unless notice that complies with Section 2103.005 is given to the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2103.003. ASSIGNMENT OF RIGHTS. An assignment or transfer of the rights to a licensing or performing fee for a recording is not binding on a person playing the recording unless a notice that complies with Section 2103.005 is given to the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2103.004. DISCHARGE OF OBLIGATION. A person's payment of a licensing or performing fee under the applicable agreement operates as a discharge of any other licensing or performing fee for the playing of a recording if the payment is made:

- (1) in reliance on the label information on the recording;
- or
- (2) under the terms of the last notice received that complies with Section 2103.005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2103.005. NOTICE OF ASSIGNMENT OR TRANSFER. A notice of an assignment or transfer under this chapter must state, in writing:

- (1) the identity of the recording to which the notice applies;
- (2) the name and address of the assignee or transferee;
- and
- (3) the effective date of the assignment or transfer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**CHAPTER 2104. REGULATION OF OUTDOOR MUSIC FESTIVALS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2104.001. DEFINITIONS. In this chapter:

(1) "Outdoor music festival" means any form of musical entertainment provided by live performances that occurs on two or more consecutive days or on any two days during a three-day period if:

- (A) more than 5,000 persons attend any performance;
- (B) any performer or audience member is not within a permanent structure; and
- (C) the performance occurs outside the boundaries of a municipality.

(2) "Promoter" means a person who attempts to organize or promote an outdoor music festival, or to solicit funds for the organization or promotion of an outdoor music festival.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. PROMOTER REGISTRATION**

Sec. 2104.051. PROMOTER REGISTRATION. (a) A promoter shall register with the county clerk of the county in which the outdoor music festival is to be held.

(b) The registration must include:

- (1) the name and address of:
  - (A) the promoter; and
  - (B) each of the promoter's associates or employees assisting in the promotion of the festival; and
- (2) a statement indicating whether the promoter, or an associate or employee of the promoter, has been convicted of a crime involving the misappropriation of funds, theft, burglary, or robbery.

(c) The promoter must submit a \$5 registration fee with the registration.

(d) The registration must be verified by the promoter and be based on the promoter's best information and belief.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. OUTDOOR MUSIC FESTIVAL PERMIT**

Sec. 2104.101. FESTIVAL PERMIT APPLICATION. (a) A promoter shall, before the 60th day before the date the promoter holds an outdoor music festival, file a permit application with the county clerk of the county in which the festival is to be held.

(b) The application must include:

(1) the name and address of:

(A) the promoter; and

(B) each of the promoter's associates or employees assisting in the promotion of the festival;

(2) a financial statement of the promoter and a statement specifying the sources and amounts of capital being supplied for the festival;

(3) a description of the festival location;

(4) the name and address of the owner of the festival location;

(5) a statement describing the terms and conditions of the agreement allowing the promoter to use the festival location;

(6) the dates and times of the festival;

(7) the maximum number of persons the promoter will allow to attend the festival;

(8) a statement describing the promoter's plan to control the number of persons attending the festival;

(9) a description of the agreement between the promoter and each performer who is scheduled to appear at the festival; and

(10) a complete statement describing the promoter's festival preparations to comply with the minimum standards of sanitation and health prescribed by Chapter 341, Health and Safety Code.

(c) The promoter shall submit a \$5 filing fee with the permit application.

(d) The permit application must be verified by the promoter and be based on the promoter's best information and belief.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2104.102. HEALTH REPORT. (a) On the filing of a permit application under Section 2104.101, the county clerk shall forward a copy of the application to the county health officer.

(b) The county health officer shall make a written report to the commissioners court. A report made under this subsection must:

(1) state whether the county health officer believes that the preparations described in the application would, if carried out, be sufficient to:

(A) protect the community and the persons attending the outdoor music festival from health dangers; and

(B) avoid a violation of Chapter 341, Health and Safety Code; and

(2) be filed with the county clerk before the second day before the date of the hearing on the permit application.

(c) The county health officer shall be present at the hearing on the permit application and may be called to testify by a person having an interest in the permit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2104.103. HEARING. (a) The commissioners court shall set a date and time for a hearing on the permit application.

(b) The hearing must be held:

(1) after the 15th day after the date the permit application is filed; and

(2) before the 30th day before the date set for the first performance of the outdoor music festival.

(c) A promoter is entitled to at least 10 days notice before the hearing date.

(d) Any person may appear at the hearing and testify for or against the grant of the permit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2104.104. DECISION ON PERMIT APPLICATION. The commissioners court shall grant a permit application filed under Section 2104.101 unless, by a majority vote, the court finds, from a preponderance of the evidence presented at the hearing, that:

(1) the permit application contains false or misleading information;

(2) required information is omitted from the application;

(3) the promoter does not have sufficient financial backing or stability to:

(A) carry out the preparations described in the application; or

(B) ensure the faithful performance of the promoter's agreements;



(4) the preparations described in the application are insufficient to:

- (A) protect the community or the persons attending the outdoor music festival from health dangers; or
- (B) avoid a violation of Chapter 341, Health and Safety Code;

(5) the times of the festival and the festival location create a substantial danger of congestion and disruption of other lawful activities in the immediate vicinity of the festival;

(6) the preparations described in the application are insufficient to limit the number of persons attending the festival to the maximum number stated in the application; or

(7) the promoter does not have adequate agreements with performers to ensure with reasonable certainty that persons advertised to perform at the festival will appear.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2104.105. EFFECT OF PERMIT. A permit issued under this chapter authorizes the promoter to hold an outdoor music festival at a specified location at specified times.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2104.106. PERMIT REVOCATION. (a) At any time before the fifth day before the date of the first performance of the outdoor music festival, the commissioners court may, after reasonable notice to the promoter and a hearing, revoke the permit on a finding, by a majority of the court, that:

(1) the preparations for the event will not be completed in time for the first performance; and

(2) the failure to carry out the preparations will result in a serious threat to the health of the community or persons attending the festival.

(b) A permit may not be revoked during the period beginning with the fifth day before the date of the first performance of the festival and ending with the final day of the festival.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2104.107. APPEAL. (a) A person affected by an action of the commissioners court in granting, denying, or revoking a permit issued under this chapter may appeal the action by filing a petition in a district court in the county in which the commissioners court presides.

(b) The district court shall review the action of the commissioners court under the substantial evidence rule.

(c) An appeal under this section does not suspend an action of the commissioners court unless the district court orders a suspension.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. PENALTIES**

Sec. 2104.151. PROHIBITED ACTS; CRIMINAL OFFENSE. (a) A person may not act as a promoter of an outdoor music festival unless the person registers with the county clerk of the county in which the festival is to be held.

(b) A person may not direct, control, or participate in the direction or control of an outdoor music festival unless the festival is authorized by a permit issued under this chapter.

(c) A person commits an offense if the person violates this section.

(d) An offense under this section is a misdemeanor punishable by:

- (1) confinement in a county jail for a term not to exceed 30 days;
- (2) a fine not to exceed \$1,000; or
- (3) both the fine and confinement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

### **SUBTITLE D. OTHER AMUSEMENTS AND ENTERTAINMENT**

#### **CHAPTER 2151. REGULATION OF AMUSEMENT RIDES**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2151.001. SHORT TITLE. This chapter may be cited as the Amusement Ride Safety Inspection and Insurance Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2151.002. DEFINITIONS. In this chapter:

(1) "Amusement ride" means a mechanical device that carries passengers along, around, or over a fixed or restricted course or within a defined area for the purpose of giving the passengers amusement, pleasure, or excitement. The term does not include:

(A) a coin-operated ride that:

(i) is manually, mechanically, or electrically operated;

(ii) is customarily placed in a public location; and

(iii) does not normally require the supervision or services of an operator;

(B) nonmechanized playground equipment, including a swing, seesaw, stationary spring-mounted animal feature, rider-propelled merry-go-round, climber, playground slide, trampoline, and physical fitness device; or

(C) a challenge course or any part of a challenge course if the person who operates the challenge course has an insurance policy currently in effect written by an insurance company authorized to do business in this state or by a surplus lines insurer, as defined by Chapter 981, Insurance Code, or has an independently procured policy subject to Chapter 101, Insurance Code, insuring the operator against liability for injury to persons arising out of the use of the challenge course, in an amount not less than:

(i) for facilities with a fixed location:

(a) \$100,000 bodily injury and \$50,000 property damage per occurrence, with a \$300,000 annual aggregate; or

(b) a \$150,000 per occurrence combined single limit, with a \$300,000 annual aggregate; and

(ii) for facilities other than those with a fixed location:

(a) \$1,000,000 bodily injury and \$500,000 property damage per occurrence; or

(b) \$1,500,000 per occurrence combined single limit.

(2) "Class A amusement ride" means an amusement ride with a fixed location designed primarily for use by children younger than 13

years of age.

(3) "Class B amusement ride" means an amusement ride that is not a Class A amusement ride.

(4) "Commissioner" means the commissioner of insurance.

(5) "Department" means the Texas Department of Insurance.

(6) "Mobile amusement ride" means an amusement ride that is designed or adapted to be moved from one location to another and is not fixed at a single location.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.701(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 363 (S.B. [1282](#)), Sec. 2, eff. September 1, 2005.

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

Sec. 2151.051. GENERAL POWERS AND DUTIES. The commissioner shall administer and enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.702(a), eff. Sept. 1, 2001.

Sec. 2151.052. FEES. (a) The commissioner shall establish reasonable and necessary fees, in an amount not to exceed \$40 per year, for each amusement ride covered by this chapter.

(b) An amusement ride that consists of two or more self-propelled, four-wheeled vehicles designed to be operated independently and to carry fewer than three persons, including go-carts, is a single amusement ride.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.702(b), eff. Sept. 1, 2001.

Sec. 2151.053. INFORMATION REQUEST. (a) The department may request information from a sponsor, lessor, landowner, or other

person responsible for an amusement ride being offered for use by the public concerning whether insurance required by this chapter is in effect on that amusement ride.

(b) The person shall respond to the information request not later than the 15th day after the date the request is made.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

### **SUBCHAPTER C. OPERATION OF AMUSEMENT RIDES**

Sec. 2151.101. REQUIREMENTS FOR OPERATION. (a) A person may not operate an amusement ride unless the person:

(1) has had the amusement ride inspected at least once a year by an insurer or a person with whom the insurer has contracted;

(2) obtains a written certificate from the insurer or person with whom the insurer has contracted stating that the amusement ride:

(A) has been inspected;

(B) meets the standards for insurance coverage; and

(C) is covered by the insurance required by Subdivision

(3);

(3) except as provided by Sections 2151.1011 and 2151.1012, has a combined single limit or split limit insurance policy currently in effect written by an insurance company authorized to do business in this state or by a surplus lines insurer, as defined by Chapter 981, Insurance Code, or has an independently procured policy subject to Chapter 101, Insurance Code, insuring the owner or operator against liability for injury to persons arising out of the use of the amusement ride in an amount of not less than:

(A) for Class A amusement rides:

(i) \$100,000 bodily injury and \$50,000 property damage per occurrence with a \$300,000 annual aggregate; or

(ii) a \$150,000 per occurrence combined single limit with a \$300,000 annual aggregate; and

(B) for Class B amusement rides:

(i) \$1,000,000 bodily injury and \$500,000 property damage per occurrence; or

(ii) \$1,500,000 per occurrence combined single limit;

(4) files with the commissioner, as required by this

chapter, the inspection certificate and the insurance policy or a photocopy of the certificate or policy authorized by the commissioner; and

(5) files with each sponsor, lessor, landowner, or other person responsible for the amusement ride being offered for use by the public a photocopy of the inspection certificate and the insurance policy required by this subsection.

(b) The inspection certificate and the insurance policy must be filed with the department before July 1 of each year, except that if an amusement ride is inspected more than once a year, the inspection certificate must be filed not later than the 15th day after the date of each inspection.

(c) A local government may satisfy the insurance requirement prescribed by Subsection (a) by obtaining liability coverage through an interlocal agreement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.703(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.548, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 363 (S.B. [1282](#)), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1146 (H.B. [2879](#)), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 655 (H.B. [1070](#)), Sec. 1, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 580 (H.B. [3570](#)), Sec. 1, eff. September 1, 2011.

Sec. 2151.1011. LIABILITY INSURANCE FOR CERTAIN AMUSEMENT RIDES. (a) This section only applies to a Class B amusement ride that:

(1) consists of a motorized vehicle that tows one or more separate passenger cars in a manner similar to a train, but without regard to whether the vehicle and cars operate on a fixed track or course;

(2) does not travel under its own power in excess of five miles per hour;

- (3) has safety belts for all passengers;
- (4) does not run on an elevated track;
- (5) has passenger seating areas enclosed by guardrails or doors; and
- (6) does not have passenger cars that rotate independently from the motorized vehicle.

(b) A person may not operate an amusement ride described by Subsection (a) unless the person has an insurance policy currently in effect written by an insurance company authorized to conduct business in this state or by a surplus lines insurer, as defined by Chapter 981, Insurance Code, or has an independently procured policy subject to Chapter 101, Insurance Code, insuring the owner or operator against liability for injury to persons arising out of the use of the amusement ride in an amount of not less than \$1 million in aggregate for all liability claims occurring in a policy year.

(c) A local government may satisfy the insurance requirement prescribed by Subsection (b) by obtaining liability coverage through an interlocal agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 655 (H.B. 1070), Sec. 2, eff. June 15, 2007.

Sec. 2151.1012. LIABILITY INSURANCE FOR CERTAIN OTHER AMUSEMENT RIDES. (a) This section applies only to a Class B amusement ride that:

- (1) is mechanically inflated using a continuous airflow device; and
- (2) provides a surface for bouncing and jumping or creates an enclosed space for the purpose of amusement.

(b) A person may not operate an amusement ride described by Subsection (a) unless the person has a combined single limit insurance policy currently in effect written by an insurance company authorized to conduct business in this state or by a surplus lines insurer, as defined by Chapter 981, Insurance Code, or has an independently procured policy subject to Chapter 101, Insurance Code, insuring the owner or operator against liability arising out of the use of the amusement ride in an amount of not less than \$1 million per occurrence.

Added by Acts 2011, 82nd Leg., R.S., Ch. 580 (H.B. 3570), Sec. 2, eff.

September 1, 2011.

Sec. 2151.102. INSPECTION REQUIREMENTS. (a) The inspection required by Section 2151.101(a) must test for stress-related and wear-related damage of the critical parts of a ride that the manufacturer of the amusement ride determines:

(1) are reasonably subject to failure as the result of stress and wear; and

(2) could cause injury to a member of the public as a result of a failure.

(b) If at any time the inspection reveals that an amusement ride does not meet the insurer's underwriting standards, the insurer shall notify the owner or operator.

(c) If repair or replacement of equipment is required, it is the responsibility of the owner or operator to make the repair or install the replacement equipment before the amusement ride is offered for public use.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.703(b), eff. Sept. 1, 2001.

Sec. 2151.1021. INSPECTION REQUIREMENTS FOR MOBILE AMUSEMENT RIDES. (a) The commissioner shall adopt rules requiring operators of mobile amusement rides to perform inspections of mobile amusement rides, including rules requiring daily inspections of safety restraints.

(b) Rules adopted under this section may apply to specific rides of specific manufacturers.

(c) The commissioner shall prescribe forms for inspections required under this section and shall require records of the inspections to be made available for inspection by any municipality, county, or state law enforcement officials at any location at which an amusement ride is operated.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.703(c), eff. Sept. 1, 2001.



Sec. 2151.1022. REQUIRED RECORDS OF GOVERNMENTAL ACTIONS. (a) A person who operates an amusement ride in this state shall maintain accurate records of any governmental action taken in any state relating to that particular amusement ride, including an inspection resulting in the repair or replacement of equipment used in the operation of the amusement ride.

(b) The operator shall file with the commissioner quarterly a report, on a form designed by the commissioner, describing each governmental action taken in the quarter covered by the report for which the operator is required by Subsection (a) to maintain records. A report is not required in any quarter in which no reportable governmental action was taken in any state in which the person operated the amusement ride.

(c) A person who operates an amusement ride shall maintain for not less than two years at any location where the ride is operated, for inspection by a municipal, county, or state law enforcement official, a photocopy of any quarterly report required under this section or Section 2151.103 to be filed with the commissioner.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.703(c), eff. Sept. 1, 2001.

Sec. 2151.103. INJURY REPORTS. (a) In this section, "medical treatment" includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. The term does not include first-aid treatment, the onetime treatment and subsequent observation of minor scratches, cuts, burns, splinters, and other minor injuries that do not ordinarily require medical care, even if that treatment is provided by a physician or registered professional personnel.

(b) A person operating an amusement ride shall maintain accurate records of each injury caused by the ride that results in death or requires medical treatment.

(c) The operator shall file an injury report with the commissioner on a quarterly basis. The report shall be made on a form prescribed by the commissioner and shall include a description of each injury caused by a ride that results in death or requires medical treatment.

(d) If no reportable injuries occur in a quarter, the operator

is not required to file an injury report.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.703(d), eff. Sept. 1, 2001.

Sec. 2151.104. ACCESS TO RIDES. An owner or operator of an amusement ride may deny entry to the ride to any person if, in the owner's or operator's opinion, the entry may jeopardize the safety of the person or of other amusement ride patrons.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2151.105. SIGNAGE REQUIREMENTS. (a) The commissioner shall adopt rules requiring that a sign be posted to inform the public how to report an amusement ride that appears to be unsafe or to report an amusement ride operator who appears to be violating the law.

(b) The rules must require the sign to be posted at the principal entrance to the site at which an amusement ride is located or at any location on that site at which tickets for an amusement ride are available.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.703(c), eff. Sept. 1, 2001.

Sec. 2151.106. MINIMUM STANDARDS. (a) An amusement ride covered by this chapter that is sold, maintained, or operated in this state must comply with standards established by the American Society of Testing and Materials (ASTM) as of May 1, 1999. Those standards are minimum standards.

(b) To the extent that the standards of the American Society of Testing and Materials conflict with the requirements of this chapter, the more stringent requirement or standard applies.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.703(c), eff. Sept. 1, 2001.

Sec. 2151.107. EXCEPTION FOR CERTAIN CHALLENGE COURSES MEETING INSURANCE REQUIREMENT. (a) In this section, "challenge course" means a challenge, ropes, team building, or obstacle course, which may include logs, tires, platforms, beams, bridges, poles, ropes, ladders, nets, climbing walls, rock climbing walls, climbing towers, traverses, rock climbing devices, cables, swings, or zip lines, that is constructed and used for educational, team and confidence building, or physical fitness purposes.

(b) A challenge course or any part of a challenge course is not considered an amusement ride subject to regulation under this chapter if the person who operates the challenge course has a combined single limit or split limit insurance policy currently in effect written by an insurance company authorized to do business in this state or by a surplus lines insurer, as defined by Chapter 981, Insurance Code, or has an independently procured policy subject to Chapter 101, Insurance Code, insuring the operator against liability for injury to persons arising out of the use of the challenge course in an amount of at least:

(1) for a challenge course with a fixed location:

(A) \$100,000 bodily injury and \$50,000 property damage per occurrence with a \$300,000 annual aggregate; or

(B) a \$150,000 per occurrence combined single limit with a \$300,000 annual aggregate; and

(2) for a challenge course other than one with a fixed location:

(A) \$1,000,000 bodily injury and \$500,000 property damage per occurrence; or

(B) \$1,500,000 per occurrence combined single limit.

Added by Acts 2005, 79th Leg., Ch. 598 (H.B. 1892), Sec. 1, eff. June 17, 2005.

Added by Acts 2005, 79th Leg., Ch. 1146 (H.B. 2879), Sec. 1, eff. September 1, 2005.

#### **SUBCHAPTER D. ENFORCEMENT PROVISIONS**

Sec. 2151.151. INJUNCTION. The district attorney of a county in which an amusement ride is operated or, on request of the commissioner of insurance, the attorney general or an agent of the attorney general, may seek an injunction against a person operating

an amusement ride in violation of this chapter or in violation of a rule adopted by the commissioner under Section 2151.1021 or 2151.105.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.704(a), eff. Sept. 1, 2001.

Sec. 2151.152. OTHER ENFORCEMENT ACTIONS. (a) A municipal, county, or state law enforcement official may determine compliance with a provision of Subchapter C, other than Section 2151.104, in conjunction with the commissioner and may institute an action in a court of competent jurisdiction to enforce this chapter.

(b) A municipal, county, or state law enforcement official may enter and inspect without notice any amusement ride at any time to ensure public safety.

(c) The operator of an amusement ride shall immediately provide the inspection certificate and the insurance policy required by Section 2151.101 to a municipal, county, or state law enforcement official requesting the information. A photocopy of the inspection certificate or insurance policy may be provided instead of the certificate or policy.

(d) Performance or nonperformance by a municipal, county, or state law enforcement official of any action authorized by this chapter is a discretionary act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.705(a), eff. Sept. 1, 2001.

Sec. 2151.1525. PROHIBITION OF AMUSEMENT RIDE OPERATION. (a) Except as provided by Subsection (e), a municipal, county, or state law enforcement official may immediately prohibit operation of an amusement ride if:

(1) the operator of the amusement ride is unable to provide the documents or a photocopy of the documents required by Section 2151.152(c);

(2) the law enforcement official reasonably believes the amusement ride is not in compliance with Section 2151.101; or

(3) the operation of the amusement ride, conduct of a

person operating the amusement ride, conduct of a person assembling the amusement ride if it is a mobile amusement ride, or any other circumstance causes the law enforcement official to reasonably believe that the amusement ride is unsafe or the safety of a passenger on the amusement ride is threatened.

(b) If the operation of an amusement ride is prohibited under Subsection (a)(1) or (2), a person may not operate the amusement ride unless:

(1) the operator presents to the appropriate municipal, county, or state law enforcement official proof of compliance with Section 2151.101; or

(2) the commissioner or the commissioner's designee determines that on the date the amusement ride's operation was prohibited the operator had on file with the board the documents required by Section 2151.101 and issues a written statement permitting the amusement ride to resume operation.

(c) If on the date an amusement ride's operation is prohibited under Subsection (a)(3) the amusement ride is not in compliance with Section 2151.101, a person may not operate the amusement ride until after the person subsequently complies with Section 2151.101.

(d) If on the date an amusement ride's operation is prohibited under Subsection (a)(3) the amusement ride is in compliance with Section 2151.101, a person may not operate the amusement ride until:

(1) on-site corrections are made;

(2) an order from a district judge, county judge, judge of a county court at law, justice of the peace, or municipal judge permits the amusement ride to resume operation; or

(3) an insurance company insuring the amusement ride on the date the amusement ride's operation was prohibited:

(A) reinspects the amusement ride in the same manner required by Section 2151.101; and

(B) delivers to the commissioner or the commissioner's designee and the appropriate law enforcement official a reinspection certificate:

(i) stating that the required reinspection has occurred;

(ii) stating that the amusement ride meets coverage standards and is covered by insurance in compliance with Section 2151.101; and

(iii) explaining the necessary repairs, if any,

that have been made to the amusement ride after its operation was prohibited.

(e) Subsection (a) does not apply to an amusement ride with a fixed location and operated at an amusement park that was attended by more than 200,000 customers in the year preceding the inspection under Section 2151.152(b).

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.705(a), eff. Sept. 1, 2001.

Sec. 2151.1526. PROHIBITION OF MOBILE AMUSEMENT RIDE OPERATION.

(a) Except as provided by Subsection (b) or (c), a mobile amusement ride on which a death occurs may not be operated.

(b) If a mobile amusement ride was in compliance with Section 2151.101 when its operation was initially prohibited under Subsection (a), a person may resume operating the mobile amusement ride only after an insurance company insuring the amusement ride on the date its operation was prohibited:

(1) reinspects the amusement ride in the same manner required under Section 2151.101; and

(2) delivers to the commissioner or the commissioner's designee a reinspection certificate:

(A) stating that the required reinspection has occurred;

(B) stating that the amusement ride meets coverage standards and is covered by insurance in compliance with Section 2151.101; and

(C) explaining the necessary repairs, if any, that have been made to the amusement ride after its operation was prohibited.

(c) If a mobile amusement ride was not in compliance with Section 2151.101 when its operation was initially prohibited under Subsection (a), a person may resume operating the mobile amusement ride only after the person subsequently complies with Section 2151.101.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.705(a), eff. Sept. 1, 2001.

Sec. 2151.1527. RELIEF FROM PROHIBITION ORDER. The owner or

operator of the amusement ride may file suit for relief from a prohibition under Section 2151.1525 or 2151.1526 in a district court in the county in which the amusement ride was located when the prohibition against operation occurred.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.705(a), eff. Sept. 1, 2001.

Sec. 2151.153. CRIMINAL PENALTIES. (a) A person commits an offense if the person fails to comply with any requirement of:

(1) Section 2151.101, 2151.102, 2151.103, 2151.1525(b), (c), or (d), or 2151.1526(a); or

(2) a rule adopted by the commissioner under Section 2151.1021 or 2151.105.

(b) A person commits an offense if the person:

(1) is a sponsor, lessor, landowner, or other person responsible for an amusement ride being offered for use by the public; and

(2) does not provide the information required under Section 2151.053 or provides false information under Section 2151.053.

(c) An offense under this section is a Class B misdemeanor.

(d) Each day a violation of this chapter is committed constitutes a separate offense.

(e) The prosecuting attorney in a case in which a person is convicted of an offense under this section shall report the offense to the department not later than the 90th day after the date of the conviction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.706(a), eff. Sept. 1, 2001.

## **CHAPTER 2152. REGULATION OF CIRCUSES, CARNIVALS, AND ZOOS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2152.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Health.

(2) "Circus" or "carnival" means a commercial variety show featuring animal acts for public entertainment.

(3) "Commissioner" means the commissioner of health.

(4) "Department" means the Texas Department of Health.

(5) "Person" means an individual, association, partnership, corporation, trust, estate, joint-stock company, foundation, or political subdivision.

(6) "Zoo" means any mobile or stationary premises where living animals that normally live in a wild state are kept primarily for display to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2152.002. EXEMPTION FROM REGULATION. This chapter does not apply to:

(1) a circus, carnival, or zoo licensed under the federal Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and that furnishes proof to the commissioner that it is inspected by the federal agency administering that act at least once each calendar year;

(2) a zoo:

(A) operated by a political subdivision of this state or a child-care institution; or

(B) accredited by the American Association of Zoological Parks and Aquariums;

(3) a premises where nonindigenous ruminants are bred and raised; or

(4) an organization sponsoring, and all persons participating in, an exhibition of a domestic livestock show or rodeo.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. BOARD POWERS AND DUTIES**

Sec. 2152.051. RULEMAKING AUTHORITY. The board shall adopt rules necessary to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2152.052. OPERATING STANDARDS. (a) The board shall adopt standards for the operation of circuses, carnivals, and zoos that promote humane conditions for animals and protect the public health



and safety.

(b) The standards must include provisions relating to housing and sanitation, animal health and disease control, and control, care, and transportation of animals.

(c) In adopting and enforcing standards under this section, the board may consult experts and persons concerned with the welfare of animals in circuses, carnivals, and zoos.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2152.053. BOARD INSPECTIONS. (a) The board shall inspect circuses, carnivals, and zoos to determine if they comply with the standards adopted under Section 2152.052.

(b) The board or its agents may enter at reasonable times to conduct an inspection under this section.

(c) The board shall prescribe the qualifications for its agents employed to conduct an inspection under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2152.054. FEES. (a) The board shall prescribe the amount of each type of fee required by this chapter.

(b) A fee received by the board under this chapter is not refundable.

(c) During the period beginning on August 31 and ending on September 10 of each year, the board shall file with the governor an annual financial report relating to the administration of this chapter.

(d) If the funds in the circus, carnival, and zoo licensing fund at the beginning of the state fiscal year plus the fees anticipated for that year exceed the probable costs of administering this chapter during that year, the board shall reduce the fees required by this chapter by the amount necessary to eliminate the projected surplus.

(e) All expenses for the administration of this chapter shall be paid from fees collected by the board under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2152.055. CONTRACTS. (a) The board may enter into contracts or agreements necessary to administer this chapter.

(b) Under a contract or agreement, the board may pay for materials, equipment, or services from any available funds.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. LICENSE REQUIREMENTS**

Sec. 2152.101. LICENSE REQUIRED. A person may not operate a circus, carnival, or zoo unless the person holds a license issued under this chapter for the circus, carnival, or zoo.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2152.102. APPLICATION. To be licensed under this chapter, a person must:

- (1) submit to the board a written application on a form prescribed by the board;
- (2) furnish information requested by the board; and
- (3) pay an application fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2152.103. LICENSE ISSUANCE. (a) The board shall issue a license under this chapter to an applicant who:

- (1) complies with Section 2152.102;
- (2) meets the standards adopted under Section 2152.052;

and

- (3) pays a license fee.

(b) A license issued under this chapter is valid for:

- (1) two years from the date of issuance; or
- (2) a lesser period determined appropriate by the board for circuses that are not resident in this state and that are not exempt under Section 2152.002(1).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2152.104. LICENSE RENEWAL. (a) A license holder may renew the license by submitting to the board before the expiration date of the license a renewal fee and a renewal application on a form prescribed by the board.

(b) The board shall issue a renewed license to a license holder who complies with Subsection (a) and meets the standards adopted under Section 2152.052.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. LICENSE DENIAL, SUSPENSION, OR REVOCATION**

Sec. 2152.151. DENIAL OF LICENSE. (a) If the commissioner determines after the inspection required under Section 2152.053 that an applicant for a license has failed to comply with the standards adopted under Section 2152.052, the commissioner shall refuse to issue the license and shall give the applicant written notice of the decision and the reasons for the decision.

(b) Not later than the 31st day after the date the notice is received, the applicant may submit to the commissioner a written request for a hearing on the license denial. The commissioner shall conduct the hearing not later than the 31st day after the date the request is received.

(c) If after the hearing the commissioner determines that the applicant has failed to comply with the standards, the commissioner shall refuse to issue the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2152.152. REVOCATION OR SUSPENSION OF LICENSE. (a) If the commissioner determines after the inspection required under Section 2152.053 that a license holder has failed to comply with the standards adopted under Section 2152.052, the commissioner shall give written notice to the license holder of a revocation hearing to be held not later than the 31st day after the date the notice is given.

(b) If after the hearing the commissioner determines that the license holder has failed to comply with the standards, the commissioner shall revoke the license.

(c) In addition to the proceedings described in Subsections (a) and (b), if the commissioner determines after inspection that a

license holder has committed gross violations of the standards, the commissioner may, after giving written notice to the license holder, suspend the license for not more than 31 days pending the revocation hearing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2152.153. JUDICIAL REVIEW. A person whose application for a license is denied or whose license is revoked is entitled to judicial review in accordance with Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2152.154. INFORMAL DISPOSITION. Sections 2152.151, 2152.152, and 2152.201 do not preclude an informal disposition of the matter by an agreement between a license holder and the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER E. ENFORCEMENT**

Sec. 2152.201. SEIZURE AND SALE OF ANIMALS. (a) If a license is suspended or revoked, the commissioner may seek a writ from a justice of the peace serving the justice precinct in which the circus, carnival, or zoo is located ordering the sheriff or other peace officer to seize any of the animals being kept on the premises of the circus, carnival, or zoo operated by the person whose license was suspended or revoked.

(b) The justice of the peace shall issue the writ if the justice finds probable cause to believe that any of the animals are in danger of being harmed by a gross violation of the licensing standards.

(c) The board's employees may accompany the peace officer executing the writ. The department may rent, lease, or acquire facilities for keeping impounded animals.

(d) If the license is revoked and the commissioner's decision becomes final, the commissioner shall order a public sale by auction of the seized animals.

(e) Proceeds from the sale shall be applied first to the

expenses incurred in conducting the sale. The commissioner shall return any excess proceeds to the person whose license is revoked.

(f) The person whose license was revoked or the person's agent may not participate in the auction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2152.202. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates Section 2152.101.

(b) An offense under this section is a Class C misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

## **CHAPTER 2153. COIN-OPERATED MACHINES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2153.001. PURPOSE. The purpose of this chapter is to provide comprehensive and uniform statewide regulation of music and skill or pleasure coin-operated machines.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.002. DEFINITIONS. In this chapter:

(1) "Coin-operated machine" means any kind of machine or device operated by or with a coin or other United States currency, metal slug, token, electronic card, or check, including a music or skill or pleasure coin-operated machine.

(2) "Commissioner" means the Consumer Credit Commissioner.

(3) "Financial interest" includes a legal or equitable interest, including the ownership of shares or bonds of a corporation.

(4) "Music coin-operated machine" means any kind of coin-operated machine, including a phonograph, piano, or graphophone, that:

(A) dispenses music or is used to dispense music;

(B) is operated by inserting a coin, metal slug, token, or check; and

(C) is not an amusement machine designed exclusively for a child.

(5) "Operator" means a person who exhibits or displays, or permits to be exhibited or displayed, a coin-operated machine in this state in a place of business that is not owned by the person.

(6) "Owner" means a person who owns a coin-operated machine in this state.

(7) "Person" includes an individual, association, trustee, receiver, partnership, corporation, or organization or a manager, agent, servant, or employee of an individual, association, trustee, receiver, partnership, corporation, or organization.

(8) "Service coin-operated machine" means any kind of machine or device, including a pay toilet or telephone, that dispenses only a service. The term does not include a machine or device that dispenses merchandise, music, skill, or pleasure.

(9) "Skill or pleasure coin-operated machine" means any kind of coin-operated machine that dispenses, or is used or is capable of being used to dispense or afford, amusement, skill, or pleasure or is operated for any purpose, other than for dispensing only merchandise, music, or service. The term:

(A) includes a marble machine, marble table machine, marble shooting machine, miniature racetrack machine, miniature football machine, miniature golf machine, miniature bowling machine, billiard or pool game, or machine or device that dispenses merchandise or commodities or plays music in connection with or in addition to dispensing skill or pleasure; and

(B) does not include an amusement machine designed exclusively for a child.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1263, Sec. 79, eff. Sept. 1, 2001.

Sec. 2153.003. CONSTRUCTION OF CHAPTER CONSISTENT WITH OTHER LAW. This chapter does not authorize or permit the keeping, exhibition, operation, display, or maintenance of a machine, device, or table prohibited by the constitution of this state or the Penal Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.004. EXEMPT MACHINES. This chapter does not apply

to:

- (1) a stamp vending machine;
- (2) a service coin-operated machine; or
- (3) if subject to an occupation or gross receipts tax, a:
  - (A) gas meter;
  - (B) food vending machine;
  - (C) confection vending machine;
  - (D) beverage vending machine;
  - (E) merchandise vending machine; or
  - (F) cigarette vending machine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.005. EXEMPT CORPORATIONS AND ASSOCIATIONS. (a) A corporation or association owning, leasing, or renting a music or skill or pleasure coin-operated machine is exempt from Subchapter D if:

(1) the corporation or association is organized and operated exclusively for religious, charitable, educational, or benevolent purposes;

(2) the corporation's or association's net earnings do not inure to the benefit of a private shareholder or individual; and

(3) the corporation or association owns, leases, or rents the coin-operated machine:

(A) for the corporation's or association's exclusive use; and

(B) to further a purpose of the corporation or association.

(b) A tax may not be assessed against a corporation or an association exempt under this section if assessment of the tax is prohibited by other law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.006. PRIVATE OWNERSHIP EXEMPT. An individual who owns a music or skill or pleasure coin-operated machine for personal use and amusement in the individual's private residence is not required to obtain a license or pay a tax under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.007. EXEMPT COMMON CARRIERS. A person subject to regulation by the Railroad Commission of Texas is not required to obtain a license under this chapter if the person transports or stores in the course of the person's business a music or skill or pleasure coin-operated machine not owned by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.008. EXEMPT OWNERS OR EXHIBITORS. A person who owns or exhibits a coin-operated machine is exempt from the licensing and recordkeeping requirements of this chapter if the person:

- (1) operates or exhibits the coin-operated machine only on premises occupied by the person and in connection with the person's business;
- (2) does not own a coin-operated machine subject to the tax imposed under this chapter and located on the business premises of another person; and
- (3) does not have a direct or indirect financial interest in the music or skill or pleasure coin-operated machine industry, except for ownership of the coin-operated machine operated or exhibited on premises occupied by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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

Sec. 2153.051. GENERAL DUTIES OF COMPTROLLER. (a) The comptroller shall administer this chapter.

- (b) To administer this chapter, the comptroller may:
  - (1) issue a license or registration certificate;
  - (2) prescribe procedures for registering music and skill or pleasure coin-operated machines;
  - (3) prescribe methods for:
    - (A) securely attaching a tax permit to a coin-operated machine; and
    - (B) posting a license or registration certificate;
  - (4) prescribe the form and content of a:



- (A) license application;
  - (B) registration certificate;
  - (C) tax permit;
  - (D) report specifying a coin-operated machine's location; and
  - (E) report of the consideration of each party to a contract relating to the placement of a coin-operated machine in an establishment owned by a person other than the license holder; and
- (5) disclose confidential information to an appropriate official.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.052. RULEMAKING AUTHORITY. The comptroller may adopt rules necessary to administer this chapter, including rules:

- (1) for enforcement of this chapter and collection of taxes and fees;
- (2) providing due process to persons affected by this chapter; and
- (3) governing procedure and evidence in the conduct of hearings under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.053. DISCIPLINARY AUTHORITY. (a) The comptroller may:

- (1) conduct an investigation, hold a hearing, or take other necessary action to:
  - (A) ensure compliance with this chapter; or
  - (B) identify a violation of this chapter;
- (2) conduct an investigation of a violation of this chapter, or a rule adopted under this chapter, committed by a person who owns, operates, exhibits, or displays a coin-operated machine in this state;
- (3) deny an application for a license or registration certificate in accordance with Subchapter G; or
- (4) impose sanctions, including suspending or revoking a person's license, registration certificate, or tax permit in accordance with Subchapter G.

(b) If the comptroller finds that a person has violated a penal provision of this chapter, the comptroller may file a complaint with the appropriate prosecuting attorney in the county in which the violation occurred.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.054. RECORDS OF COMPLAINTS. (a) The comptroller shall maintain an information file about each complaint filed with the comptroller.

(b) If a written complaint is filed with the comptroller, the comptroller, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.055. PUBLIC INTEREST INFORMATION. (a) The comptroller shall prepare information of consumer interest describing the regulatory functions of the comptroller relating to coin-operated machines and the procedures by which complaints are filed with and resolved by the comptroller.

(b) The comptroller shall make the information available to the public and to appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.056. DELEGATION AUTHORIZED. The comptroller may delegate to an authorized representative any authority provided to the comptroller under this chapter, including the authority to:

- (1) conduct an investigation; and
- (2) hold a hearing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.057. INTERAGENCY COOPERATION. (a) The comptroller

shall use all agencies of the law available to the comptroller to enforce this chapter.

(b) A state agency shall:

(1) cooperate with the comptroller in connection with an investigation under this chapter; and

(2) provide the comptroller access to records and reports that are relevant to an investigation under this chapter and that are made confidential by other law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.058. DEPOSIT OF REVENUE. Except as provided by Section 2153.257, the comptroller shall deposit one-fourth of the revenue received under this chapter in the foundation school fund and three-fourths of the revenue received under this chapter in the general revenue fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. CONFIDENTIALITY OF CERTAIN INFORMATION**

Sec. 2153.101. INFORMATION FROM LICENSE APPLICATION. (a) Except as provided by Subsection (b), information contained in a license application is confidential.

(b) After a license is issued under this chapter, the ownership statement contained in the license application is a public record.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.102. INFORMATION MADE AVAILABLE TO COMPTROLLER. Except for information specifically designated as a public record, information derived from a book, record, report, or application required to be made available under this chapter to the comptroller or the attorney general:

(1) is confidential; and

(2) may be used only to enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**SUBCHAPTER D. LICENSE OR REGISTRATION**

Sec. 2153.151. LICENSE OR REGISTRATION REQUIRED. Except as otherwise provided by this chapter, a person may not engage in the business of manufacturing, owning, buying, selling, renting, leasing, trading, lending, furnishing to another, maintaining, transporting within this state, storing, or importing a music or skill or pleasure coin-operated machine unless the person holds a license or registration certificate issued under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.152. TYPES OF LICENSES. (a) A license applicant may apply for a general business license, an import license, or a repair license.

(b) A general business license holder may engage in the business of manufacturing, owning, buying, selling, renting, leasing, trading, maintaining, transporting or exhibiting in this state, or storing a music or skill or pleasure coin-operated machine.

(c) An import license holder may engage in the business of importing, transporting, owning, buying, repairing, selling, or delivering a music or skill or pleasure coin-operated machine for sale or delivery in this state.

(d) A repair license holder may engage in the business of maintaining, transporting, or storing a music or skill or pleasure coin-operated machine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.153. LICENSE APPLICATION REQUIREMENTS. (a) A license applicant must file with the comptroller a license application that:

(1) contains a complete statement about the ownership of the business that is the subject of the application, including:

(A) the nature of the business entity; and

(B) except as provided by Subsection (b), the name and residence address of each person who has a financial interest in the business, including the nature, type, and extent of the interest;

(2) designates:

(A) an individual, as described by Subsection (c),

responsible for maintaining a record of and reporting to the comptroller information as required by Section 2153.202; and

(B) an office located in this state where the applicant proposes to maintain the records required by this chapter, a rule adopted under this chapter, or other law;

(3) is accompanied by:

(A) a written statement executed by the individual designated under Subdivision (2) that the individual accepts the responsibility described by that subdivision; and

(B) a cashier's check, money order, personal check, or other method of payment authorized by the comptroller, in an amount equal to the annual license fee under Section 2153.154;

(4) includes any other relevant information required by the comptroller; and

(5) states that the information contained in the application is true and correct.

(b) A corporate applicant is not required to include in the ownership statement under Subsection (a)(1) the name and residence address of a shareholder who holds less than 10 percent of the shares in the applicant's corporation.

(c) The individual designated under Subsection (a)(2) must be:

(1) the owner of the business;

(2) a partner of the business;

(3) an officer of the business;

(4) a trustee of the business;

(5) a receiver of the business; or

(6) an officer or principal member of the business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 209, Sec. 12, eff. Oct. 1, 2003.

Sec. 2153.154. LICENSE FEE. (a) The annual fee for a general business license is:

(1) \$200 for an applicant with not more than 50 coin-operated machines;

(2) \$400 for an applicant with at least 51 but not more than 200 coin-operated machines; and

(3) \$500 for an applicant with more than 200 coin-operated machines.

(b) The annual fee for an import license is \$500.

(c) The annual fee for a repair license is \$50.

(d) The comptroller may not refund any part of a license fee after a license is issued.

(e) The comptroller may refund a license fee if the comptroller does not issue a license. The comptroller may deduct \$25 to cover administrative costs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.155. TERMS OF LICENSE. A license issued under this subchapter:

(1) is effective for only one business entity;

(2) does not vest any property or right in the license holder, except for the right to conduct the licensed business;

(3) may not be transferred or assigned; and

(4) is not subject to execution.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.156. REGISTRATION CERTIFICATE REQUIRED. (a) A person who is exempt under Section 2153.008 from the licensing and recordkeeping requirements of this chapter may not exhibit a coin-operated machine unless the machine is registered annually with the comptroller in accordance with this subchapter.

(b) A person required to register a machine under this section shall obtain a registration certificate each year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.157. REGISTRATION CERTIFICATE APPLICATION REQUIREMENTS. To obtain a registration certificate under this subchapter, a person must:

(1) file with the comptroller a registration application on a form prescribed by the comptroller; and

(2) pay a \$150 registration fee to the comptroller for the business entity in which the owner exhibits the coin-operated machine that is the subject of the application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.158. CONTENTS OF REGISTRATION CERTIFICATE. A registration certificate must:

- (1) state the name and address of the location of the coin-operated machine that is the subject of the certificate; and
- (2) certify that a tax permit is attached to the machine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.159. DISPLAY OF LICENSE OR CERTIFICATE. (a) A license holder shall prominently display the holder's license at the holder's place of business at all times.

(b) A registration certificate holder shall display a registration certificate at each location where the holder owns or exhibits a coin-operated machine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.160. RELOCATION OF MACHINE. A registration certificate holder shall notify the comptroller of a change in the location of a coin-operated machine registered under this subchapter by filing an amendment to the registration certificate with the comptroller not later than the 10th day after the date of the change.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.161. EXPIRATION OF LICENSE OR REGISTRATION. (a) A license issued under this chapter expires on the earlier of:

- (1) December 31 of the year the license is issued; or
- (2) the death or dissolution of the license holder.

(b) A registration certificate issued under this chapter expires on the first anniversary of the date of issuance.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.162. LICENSE AND REGISTRATION RENEWAL. (a) A license or registration certificate holder may renew an unexpired license or registration by paying to the comptroller, before the expiration date of the license or registration, the required annual license or registration fee. An application for renewal must be made to the comptroller before December 1. A renewal application filed on or after December 1 but before the license or registration expires must be accompanied by a late fee of \$50.

(b) A license or registration certificate holder may renew an expired license or registration under this subsection. If the license or registration has been expired for not more than 90 days, the person may renew the license or registration by paying to the comptroller a fee that is 1-1/2 times the amount of the annual license or registration fee. If the license or registration has been expired for more than 90 days but less than two years, the person may renew the license or registration by paying to the comptroller a fee that is two times the amount of the annual license or registration fee.

(c) A person whose license or registration has been expired for two years or more may not renew the license or registration. The person may obtain a new license or registration by complying with the requirements and procedures for obtaining an original license or registration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.163. EXTENSION OF CERTAIN LICENSES. (a) Except for good cause shown, the comptroller in writing shall permit a person who is the successor in interest to a business the license of which has expired to operate the business under the license as if the license has not expired if:

(1) the person requests an extension of the expired license;

(2) the license expired as a result of:

(A) the license holder's death or dissolution; or

(B) a condition involving receivership or bankruptcy;

and

(3) the county judge in the county in which the business is located or a probate judge with jurisdiction over the matter



certifies that the person is the successor to the licensed business.

(b) An extension of an expired license under this section:

(1) expires in the same manner a license expires; and

(2) is subject to suspension or cancellation in the same manner as any other license issued under this subchapter.

(c) A person whose extension of an expired license expires may not renew the license. The person may obtain a new license by complying with the requirements for obtaining an original license under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER E. PROVISIONS RELATING TO TRANSACTION OF BUSINESS**

Sec. 2153.201. REQUIRED OWNER RECORDS. (a) An owner shall maintain a complete and itemized record of each coin-operated machine the owner purchases, receives, possesses, handles, exhibits, or displays in this state in accordance with accepted auditing and accounting practices.

(b) A record required under Subsection (a) must:

(1) be available at all times for inspection by the attorney general, the comptroller, or an authorized representative of the attorney general or comptroller as provided by Subsection (c);

(2) include information relating to:

(A) the kind of each machine;

(B) the date each machine is:

(i) acquired or received in this state; and

(ii) placed in operation;

(C) the location of each machine, including the:

(i) county;

(ii) municipality, if any; and

(iii) street or rural route number;

(D) the name and complete address of each operator of each machine;

(E) if the owner is an individual, the full name and address of the owner; and

(F) if the owner is not an individual, the name and address of each principal officer or member of the owner; and

(3) be maintained at a permanent address in this state designated on the application for a license under Section 2153.153.

(c) A record required under Subsection (a) must be available for inspection under Subsection (b) for at least four years and as required by Section 111.0041, Tax Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 4.01, eff. October 1, 2011.

Sec. 2153.202. REQUIRED LICENSE HOLDER RECORDS AND REPORTING.

(a) A license holder shall maintain a record of and report to the comptroller information relating to each music or skill or pleasure coin-operated machine owned, possessed, or controlled by the license holder, including:

- (1) the make, type, and serial number of each machine;
- (2) the date each machine is placed in operation;
- (3) the dates of the first and most recent registration of each machine;
- (4) the specific location of each machine; and
- (5) any change in machine ownership.

(b) A license holder shall:

(1) report to the comptroller the information required under this section:

- (A) at intervals specified by the comptroller; and
- (B) at any other time requested by the comptroller;

and

(2) immediately notify the comptroller in writing of a change in ownership of a licensed business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.203. RECORD OF CREDIT TRANSACTION. (a) A license holder who extends or lends credit shall maintain in this state a record of the credit transaction in accordance with accepted accounting and auditing practices. The record must be sufficient to enable any competent person to determine if the license holder is in compliance with the requirements of this subchapter.

(b) The record must be preserved until the later of the fourth anniversary of the date the credit transaction occurred or the second

anniversary of the date the final entry relating to the transaction is made.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.204. REQUIRED CONTRACT PROVISION. A written contract between an owner who holds a license issued under this chapter and an operator in this state must state the name, mailing address, and telephone number of the comptroller.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.205. REIMBURSEMENT FOR TAXES AND FEES. (a) The first money earned from the exhibition of a coin-operated amusement machine may be paid to the owner to reimburse the owner for payment of:

- (1) the tax imposed for that year by Section 2153.401; and
- (2) a tax authorized by Section 2153.451 and imposed for that year by a county or municipality.

(b) A portion of the money earned each year from the exhibition of a coin-operated machine shall be paid to the owner in an amount necessary to reimburse the owner for the next year's payment of:

- (1) the tax imposed by Section 2153.401; and
- (2) any other tax or fee imposed on the exhibition of the machine.

(c) An owner may not:

- (1) agree or contract, or offer to agree to contract, to waive the reimbursement provided by Subsection (b); or
- (2) agree or contract with a bailee or lessee of a coin-operated machine to compensate the bailee or lessee in an amount that exceeds 50 percent of the gross receipts earned from the exhibition of the machine after the reimbursement provided by Subsection (b).

(d) The comptroller shall revoke the license of a license holder who violates this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. CREDIT TRANSACTIONS**

Sec. 2153.252. AUTHORIZED CREDIT EXTENSIONS. A license holder may extend or lend credit to, or extend or lend credit on behalf of, a lessee or bailee of a music or skill or pleasure coin-operated machine only for a business or commercial purpose in accordance with this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.254. WRITTEN AGREEMENT REQUIRED. A license holder may extend or lend credit only if the credit transaction is evidenced by a written agreement that:

- (1) is signed by the parties to the agreement; and
- (2) specifies the:
  - (A) credit amount;
  - (B) consideration for the credit transaction; and
  - (C) terms governing repayment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.255. CONSIDERATION. (a) In this section, "consideration" includes costs charged, contracted for, or received by a license holder or other person in connection with investigating, arranging, negotiating, procuring, guaranteeing, making, servicing, collecting, or enforcing a credit transaction or forbearance of money, credit, goods, things in action, or other service rendered, including aggregate interest, fees, bonuses, commissions, brokerage, discounts, and expenses. The term does not include court costs or attorney's fees as determined by a court.

(b) The consideration for a credit transaction authorized under Section 2153.252 may not be less than one-half percent or exceed interest or its equivalent at the rate of one and one-half percent per month, as determined by the United States Rule.

(c) Except as provided by Subsection (d), if the consideration directly or indirectly charged or received by a license holder for a credit transaction authorized under Section 2153.252 exceeds the amount of consideration permitted by Subsection (b):

- (1) the consideration paid, whether payment of principal or interest or its equivalent, shall be refunded to the person; and
- (2) the unpaid balance of the consideration is void.

(d) Subsection (c) does not apply if consideration is charged or collected in excess of the amount permitted by Subsection (b) and:

- (1) the overcharge or over-collection is the result of:
  - (A) an accident; and
  - (B) a bona fide error; and
- (2) the error is corrected on the date of discovery.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.258. CRIMINAL OFFENSE; VIOLATION OF SUBCHAPTER. (a) A person commits an offense if the person violates this subchapter.

(b) Repealed by Acts 2005, 79th Leg., Ch. 1018, Sec. 7.05, eff. September 1, 2005.

(c) An offense under this section is a Class C misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 7.05, eff. September 1, 2005.

#### **SUBCHAPTER G. LICENSE AND REGISTRATION DENIAL AND DISCIPLINARY PROCEEDINGS**

Sec. 2153.301. DEFINITION. In this subchapter, "applicant," "license holder," or "registration certificate holder" includes:

- (1) an individual;
- (2) each partner of a partnership;
- (3) each trustee of a trust;
- (4) each receiver of a receivership;
- (5) each officer, director, or member of an entity, including an association or corporation;
- (6) each shareholder owning 25 percent or more of the shares of the corporation; and
- (7) a business entity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.302. MANDATORY DENIAL OF GENERAL BUSINESS LICENSE. The comptroller may not issue a general business license if the

comptroller finds that the applicant has been:

- (1) finally convicted of a felony during the five years preceding the date of application; or
- (2) placed on community supervision or released on parole for a felony conviction during the two years preceding the date of application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.303. MANDATORY DENIAL OF LICENSE FOR FAILURE TO COMPLY WITH CERTAIN PROVISIONS. The comptroller may not issue or renew a license if the applicant fails to:

- (1) designate and maintain an office located in the state as required by Section 2153.153; or
- (2) allow the comptroller to inspect records that the applicant is required to maintain under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.304. MANDATORY DISCIPLINARY ACTION BASED ON NONPAYMENT. The comptroller may not issue or renew and shall revoke or suspend a license or registration certificate if the applicant or license or registration certificate holder fails to pay outstanding fees, costs, penalties, or taxes to the state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.305. DISCRETIONARY DISCIPLINARY ACTION. (a) The comptroller may refuse to issue or renew or may suspend or revoke a license or registration certificate if:

- (1) the applicant or license or registration certificate holder violates this chapter or a rule adopted under this chapter;
- (2) the applicant or license or registration certificate holder fails to answer a question or makes a false statement in, or in connection with, an application;
- (3) the applicant or license or registration certificate holder extends or lends credit without notifying the commissioner of the person's intent to extend or lend credit as required by Section

2153.253;

(4) the applicant or license or registration certificate holder uses coercion to accomplish a purpose or engage in conduct regulated by the comptroller; or

(5) the applicant or license or registration certificate holder enters into a contract or agreement with the owner of the location of a coin-operated machine and the contract or agreement contains any kind of restriction relating to the location owner's right to purchase, agree to purchase, or use a product, commodity, or service that is not regulated under this chapter.

(b) The comptroller shall suspend or revoke a license or registration certificate if failure to suspend or revoke the license or registration would be contrary to the intent and purpose of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.306. DETERMINATION HEARING. (a) An applicant for a license or registration certificate or a license or registration certificate holder is entitled to not less than 20 days' written notice and, if requested, a hearing in the following instances:

(1) after an application for an original or renewal license or registration certificate has been refused;

(2) before the comptroller may revoke a license or registration certificate; and

(3) before the comptroller may impose any other sanction under this chapter other than the sealing of a machine.

(b) Written notice required by Subsection (a) may:

(1) be personally served by the comptroller or the comptroller's authorized representative;

(2) be sent by United States certified mail addressed to the last known address of the applicant or license or registration certificate holder; or

(3) if, after due diligence, notice cannot be given as provided by Subdivision (1) or (2), be given by any reasonable method of notice prescribed by the comptroller calculated to inform a person of average intelligence and prudence in the conduct of the person's affairs, including publishing notice in a newspaper of general circulation in the area in which the applicant or license or

registration holder conducts the person's business activities.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.307. JUDICIAL REVIEW. A person affected by a decision of the comptroller under this chapter may appeal the decision to a district court in Travis County.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER H. PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 2153.351. CONSENT TO ENTRY. Acceptance of a license or registration certificate constitutes consent that the comptroller or a peace officer may freely enter the licensed business premises of the license or registration certificate holder during normal business hours to ensure compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.352. SEALING OF MACHINES. (a) The comptroller or an authorized representative of the comptroller may seal a coin-operated machine in a manner that prevents the full operation of the machine if:

(1) the license or registration certificate of the person exhibiting or displaying the machine is suspended or revoked;

(2) the owner fails to pay a tax on the machine; or

(3) the machine is not registered with the comptroller under this chapter.

(b) The comptroller shall charge a \$50 fee to release a coin-operated machine sealed under this section. The fee shall be paid to the comptroller.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.353. INJUNCTION. (a) The attorney general may commence an action, at the comptroller's request, against a person who does not hold a license or registration certificate to enjoin the



person from engaging in the business of manufacturing, owning, selling, renting, leasing, trading, lending, furnishing to another, maintaining, transporting, storing, or importing a music or skill or pleasure coin-operated machine.

(b) Venue for a suit filed under Subsection (a) is in a district court in Travis County.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.354. CIVIL PENALTY. (a) The comptroller may assess a penalty of not less than \$50 or more than \$2,000 against:

(1) an owner who permits a coin-operated machine under the owner's control to be operated, exhibited, or displayed in this state without a tax permit as required by Section 2153.406; or

(2) a person who:

(A) exhibits or displays a coin-operated machine in this state without a tax permit as required by Section 2153.406;

(B) exhibits or displays a coin-operated machine that is not registered;

(C) does not maintain the records required under this chapter;

(D) refuses or fails to make records available for inspection on request by the comptroller or an authorized representative of the comptroller;

(E) uses an artful device or deceptive practice to conceal a violation of this chapter;

(F) misleads the comptroller or an authorized representative of the comptroller in connection with the enforcement of this chapter; or

(G) violates this chapter or a rule adopted under this chapter.

(b) The comptroller may assess a penalty under this section for each day a violation occurs.

(c) A penalty assessed under this section may be recovered by:

(1) the comptroller in the same manner as is provided by Subtitle B, Title 2, Tax Code, for the recovery of delinquent taxes; or

(2) the attorney general in a suit filed in Travis County.

(d) A penalty assessed under this section is in addition to any

other remedy authorized under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.355. CRIMINAL OFFENSE; GENERAL VIOLATIONS. (a) A person commits an offense if the person:

(1) exhibits or displays a coin-operated machine in this state for which outstanding tax is due;

(2) falsifies, fails to maintain, or refuses or fails to make available to the comptroller or an authorized representative of the comptroller, on request, records of coin-operated machines that the person is required to maintain;

(3) uses an artful device or deceptive practice in this state to conceal a violation of this chapter;

(4) misleads the comptroller or an authorized representative of the comptroller in connection with the enforcement of this chapter;

(5) breaks a seal attached by the comptroller or an authorized representative of the comptroller under Section 2153.352 without the comptroller's approval;

(6) exhibits or displays a coin-operated machine that has a broken seal without the comptroller's approval;

(7) removes a coin-operated machine from the location where the comptroller affixed a seal to the machine; or

(8) violates this chapter or a rule adopted under this chapter.

(b) An offense under this section is a Class C misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.356. CRIMINAL OFFENSE; OPERATING WITHOUT A LICENSE OR REGISTRATION CERTIFICATE. (a) A person commits an offense if the person knowingly violates Section 2153.151.

(b) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.357. CRIMINAL OFFENSE; OBTAINING A LICENSE BY FRAUD.

(a) A person commits an offense if the person knowingly obtains or attempts to obtain a license by fraud, misrepresentation, or subterfuge.

(b) An offense under this section is a felony of the second degree.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.358. CRIMINAL OFFENSE; FAILURE TO REPORT OR PROVIDE INFORMATION. (a) A person commits an offense if the person intentionally:

(1) fails or refuses to report information to the comptroller as required by Section 2153.202; or

(2) withholds or conceals information required to be reported under Section 2153.202 from a person designated as responsible for reporting to the comptroller the information required under that section.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.359. CRIMINAL OFFENSE; PROHIBITED TRANSACTIONS. (a) A person commits an offense if the person:

(1) personally or by an agent, contracts orally or in writing to convey by lease, sublease, or other form an interest in real property if:

(A) the person has a financial interest in a business required to be licensed under this chapter; and

(B) the contract contains a provision that limits the other party's right to obtain a music or skill or pleasure coin-operated machine from any source; or

(2) obtains or attempts to obtain a contract of lease or bailment of a music or skill or pleasure coin-operated machine by coercion, threats, or intimidation, or through the commission of, or threat to commit, an act prohibited by a state penal law or Title 4, Finance Code.

(b) An offense under this section is a felony of the third degree.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.360. CRIMINAL OFFENSE; REMOVAL OF TAX PERMIT. (a) A person may not remove or cause the removal of a tax permit from a music or skill or pleasure coin-operated machine.

(b) A person commits an offense if the person violates Subsection (a).

(c) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.361. CRIMINAL OFFENSE; SEALED MACHINES. (a) A person commits an offense if the person:

(1) breaks a seal attached in the name of a county or municipality;

(2) exhibits or displays a coin-operated machine that has a broken seal; or

(3) removes from its location a coin-operated machine that has a broken seal.

(b) An offense under this section is a Class C misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.362. CRIMINAL OFFENSE; DISCLOSURE OF CONFIDENTIAL INFORMATION. (a) An employee of the comptroller or attorney general commits an offense if the employee discloses to an unauthorized person confidential information obtained under this chapter.

(b) An offense under this section is a Class C misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER I. STATE OCCUPATION TAX**

Sec. 2153.401. IMPOSITION OF TAX. (a) An occupation tax is imposed on each coin-operated machine that an owner exhibits or displays, or permits to be exhibited or displayed in this state.

(b) The tax rate is \$60 per year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.402. EXEMPTION. The tax imposed under this subchapter does not apply to an owner of a coin-operated machine or a machine that is exempt from the tax under another provision of this chapter or if the owner:

- (1) holds an import license; and
- (2) possesses the coin-operated machine for resale only.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.403. PRORATED TAX. The tax on a coin-operated machine first exhibited or displayed in this state after March 31 is one-fourth of the tax imposed under Section 2153.401 for each quarter or partial quarter of the calendar year remaining after the date the owner first exhibits or displays the coin-operated machine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.404. COLLECTION. (a) The comptroller shall collect the tax.

(b) In collecting the tax, the comptroller may:

- (1) collect the tax on a quarterly basis;
- (2) establish procedures for quarterly collection of the tax; and

(3) establish dates on which the tax payment is due.

(c) An owner required to pay a tax under this section shall pay the tax to the comptroller by cashier's check or money order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.405. REFUND OR CREDIT PROHIBITED. The comptroller may not refund or assign credit for the tax imposed under this subchapter to an owner who ceases to exhibit or display a coin-operated machine before the end of the calendar year for which the tax is imposed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.406. TAX PERMIT. (a) The comptroller shall issue a tax permit to an owner who pays the tax.

(b) The comptroller may issue a duplicate tax permit to an owner if the owner's tax permit is lost, stolen, or destroyed. The fee for a duplicate permit is \$5.

(c) Except as provided by Subsection (d), a tax permit shall be securely attached to the coin-operated machine for which the permit is issued in a manner that requires continued application of steam and water to remove the permit.

(d) A person may not attach a tax permit to a coin-operated machine that is exhibited or displayed if the machine is not registered with the comptroller under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.407. APPLICABILITY OF TAX CODE. Subtitle B, Title 2, Tax Code, applies to the administration, collection, and enforcement of taxes, penalties, and interest under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER J. COUNTY AND MUNICIPAL REGULATION**

Sec. 2153.451. IMPOSITION OF OCCUPATION TAX AUTHORIZED. (a) A county or municipality may impose an occupation tax on a coin-operated machine in this state.

(b) The rate of the tax may not exceed one-fourth of the rate of the tax imposed under Section 2153.401.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.452. ZONING. (a) For purposes of zoning, a political subdivision of this state shall treat the exhibition of a music or skill or pleasure coin-operated machine in the same manner as the political subdivision treats the principal use of the property where the machine is exhibited.

(b) Subsection (a) does not prohibit a municipality from restricting the exhibition of a coin-operated amusement machine within 300 feet of a church, school, or hospital.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.453. SEALING AUTHORIZED; RELEASE FEE. A county or municipality that imposes an occupation tax on a coin-operated machine may:

- (1) seal a coin-operated machine if the tax imposed is not paid; and
- (2) charge a fee of not more than \$5 for the release of a sealed coin-operated machine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**CHAPTER 2154. REGULATION OF FIREWORKS AND FIREWORKS DISPLAYS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2154.001. DEFINITIONS. In this chapter:

- (1) "Commissioner" means the commissioner of insurance of Texas.
- (2) "Department" means the United States Department of Transportation.
- (3) "Distributor" means a person who:
  - (A) imports fireworks into this state; or
  - (B) sells fireworks to:
    - (i) a jobber, retailer, or other distributor for resale; or
    - (ii) a holder of a single public display permit, a multiple public display permit, or another fireworks permit.
- (4) "Fire prevention officer" means a chief of a fire department, a fire marshal, a county fire marshal, a sheriff, a constable, another local enforcement officer primarily responsible for fire prevention, or, if there is no local fire authority, the state fire marshal.
- (5) "Fireworks" means a composition or device:
  - (A) designed for entertainment to produce a visible or audible effect by combustion, explosion, deflagration, or detonation; and

(B) defined by 49 C.F.R. Section 173.56(j) (1996).

(6) "Fireworks 1.3G" means a large fireworks device:

(A) primarily designed to produce visible or audible effects by combustion, deflagration, or detonation; and

(B) classified as a 1.3G explosive by the department in 49 C.F.R. Part 173 (1996).

(7) "Fireworks 1.4G" means a small fireworks device:

(A) primarily designed to produce visible or audible effects by combustion, deflagration, or detonation;

(B) that complies with the construction, labeling, and chemical composition requirements of the United States Consumer Product Safety Commission in 16 C.F.R. Part 1507 (1996), or the most recently adopted version of that rule; and

(C) that is classified by the department in 49 C.F.R. Part 173 (1996).

(8) "Illegal fireworks" means a fireworks device manufactured, distributed, or sold in violation of this chapter.

(9) "Indoor or proximate display" means a pyrotechnic display involving the ignition of Fireworks 1.3G or Fireworks 1.4G for public amusement where an audience is closer to the pyrotechnic devices than permitted by NFPA 1123 Code of Fireworks Display. The term does not include the use of Fireworks 1.4G by a retail consumer for private or personal amusement.

(10) "Insurance agent" means:

(A) a person, firm, or corporation licensed under Subchapter B, C, D, or E, Chapter 4051, or Chapter 981, Insurance Code;

(B) a salaried, state, or special agent; and

(C) a person authorized to represent an insurance fund or pool created by a city, county, or other political subdivision of the state under Chapter 791, Government Code.

(11) "Jobber" means a person who purchases fireworks only for resale to retailers.

(12) "Manufacturer" means a person, firm, corporation, or association who makes fireworks.

(13) "Person" means an individual or entity, including an owner, manager, officer, employee, or occupant.

(14) "Public display" means the igniting of Fireworks 1.3G for public or private amusement.

(15) "Pyrotechnic operator" means an individual who, by



experience, training, and examination, has demonstrated the necessary skill and ability for safely assembling, discharging, and supervising public displays of Fireworks 1.3G or Fireworks 1.4G.

(16) "Pyrotechnic special effects operator" means an individual who, by experience, training, and examination, has demonstrated the necessary skill and ability for safely assembling, discharging, and supervising proximate displays of Fireworks 1.3G or Fireworks 1.4G.

(17) "Retailer" means a person who purchases fireworks for resale only to the general public.

(18) "Sale" means selling or offering for sale merchandise, equipment, or service, at wholesale or retail, to the public or to any person, for an agreed sum of money or other consideration.

(19) "State fire marshal" means the chief law enforcement officer of the state charged with the responsibility of fire prevention.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.549, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.154, eff. September 1, 2005.

Sec. 2154.002. EXEMPTIONS. This chapter does not apply to:

(1) a toy pistol, toy cane, toy gun, or other device that uses paper or plastic caps in sheets, strips, rolls, or individual caps that contain not more than an average of 25 hundredths of a grain of explosive composition per cap and that is packed and shipped under 49 C.F.R. Part 173 (1996);

(2) a model rocket or model rocket motor designed, sold, and used to propel recoverable aero models;

(3) a propelling or expelling charge consisting of a mixture of sulfur, charcoal, and potassium nitrate;

(4) novelties or trick noisemakers;

(5) the sale, at wholesale, of any type of fireworks by a resident manufacturer, distributor, importer, or jobber if the fireworks are intended for shipment directly out of state under department regulations;

(6) the sale or use of, in emergency situations,

pyrotechnic signaling devices or distress signals for marine, aviation, or highway use;

(7) the use of a fusee or a railway torpedo by a railroad;

(8) the sale of blank cartridges for:

(A) use in a radio, television, film, or theater production;

(B) a signal or ceremonial purpose in an athletic event; or

(C) an industrial purpose; or

(9) the use of a pyrotechnic device by a military organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.003. PERMISSIBLE FIREWORKS. (a) Except as provided by Subsection (b), Fireworks 1.4G are permissible fireworks.

(b) The following are not permissible fireworks:

(1) sky rockets or "bottle rockets" with:

(A) a total propellant charge of less than four grams;

(B) a casing size of less than five-eighths of an inch for the outside diameter and less than 3-1/2 inches in length; and

(C) an overall length, including stick, of less than 15 inches; and

(2) other fireworks determined not acceptable by the United States Consumer Product Safety Commission.

(c) The term "bottle rocket" may not be used in association with the advertisement or sale of fireworks.

(d) In addition to the items described by Subsection (b), pop rockets with a propellant casing length of less than five inches, an exterior diameter of less than three-fourths of an inch, and an overall total rocket length of less than 26 inches are not permissible fireworks.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1179 (H.B. 539), Sec. 1, eff. January 2, 2008.

Sec. 2154.004. EFFECT OF CHAPTER ON LOCAL REGULATION. (a) A

municipal or county ordinance, order, or rule in effect on January 2, 1986, is not invalidated by this chapter.

(b) This chapter does not limit or restrict the authority of a county, where specifically authorized by law, or municipality to enact an ordinance or order prohibiting or further regulating fireworks.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. COMMISSIONER'S POWERS AND DUTIES**

Sec. 2154.051. COMMISSIONER'S POWERS AND DUTIES. (a) The commissioner shall:

- (1) determine reasonable criteria and qualifications for licenses and permits;
- (2) set license and permit fees;
- (3) determine the qualifications and examination requirements for pyrotechnics operators; and
- (4) establish a procedure for reporting and processing complaints.

(b) The commissioner may, after notice and opportunity for hearing, increase or decrease the limits of insurance coverage.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.052. RULES. (a) The commissioner:

(1) shall administer this chapter through the state fire marshal; and

(2) may issue rules to administer this chapter.

(b) The commissioner shall adopt and the state fire marshal shall administer rules the commissioner considers necessary for the protection, safety, and preservation of life and property, including rules regulating:

(1) the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state;

(2) the conduct of public fireworks displays; and

(3) the safe storage of Fireworks 1.3G and Fireworks 1.4G.

(c) The commissioner shall adopt rules for applications for licenses and permits.

(d) In adopting a rule, the commissioner may use standards recognized by federal law or regulation and standards published by a nationally recognized standards-making organization.

(e) A rule may not be adopted under this chapter that is more restrictive than a rule in effect on September 1, 1998, without specific statutory authority.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 2.007, eff. September 1, 2011.

Sec. 2154.053. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commissioner may not adopt rules restricting advertising or competitive bidding by a license or permit holder under this chapter except to prohibit false, misleading, or deceptive practices.

(b) The commissioner may not include in the rules to prohibit false, misleading, or deceptive practices a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts the holder's personal appearance or the use of a holder's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the holder; or
- (4) restricts the holder's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.055. FIREWORKS SAFETY AND EDUCATION PROGRAM. (a) The commissioner shall establish a fireworks safety and education program.

(b) The program:

- (1) shall provide information relating to the proper and safe use of fireworks and the dangers of the improper use of fireworks; and
- (2) may include any method of communicating the need for safe use of fireworks and the dangers of improper use.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1147, Sec.

2.008(16), eff. September 1, 2011.

(d) To fund the program, in addition to any other license or permit fees:

(1) the holder of a retail permit issued under Section 2154.202 shall pay, on issuance or renewal of the permit, a fee in the amount of \$10; and

(2) the holder of a manufacturer's, distributor's, or jobber's license issued under Section 2154.151, 2154.152, or 2154.153 shall pay, on issuance or renewal of the license, a fee in the amount of \$250.

(e) Money collected under Subsection (d) may be used only by the commissioner for the purposes of this section.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.708(a), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 2.008(16), eff. September 1, 2011.

#### **SUBCHAPTER C. LICENSE REQUIREMENTS**

Sec. 2154.101. GENERAL REQUIREMENTS. (a) A person must obtain an appropriate license to:

(1) engage in the business of manufacturing, distributing, jobbing, or importing fireworks to be sold or used in this state; or

(2) supervise or conduct public fireworks displays.

(b) A person who is younger than 21 years of age may not be issued a pyrotechnic operator's license. The minimum age of a person issued another license under Subchapter D is 18 years of age.

(c) A person may not:

(1) transfer a license; or

(2) obtain or attempt to obtain a license by fraudulent representation.

(d) A person may not alter or deface a license. An altered or defaced license is void.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.102. WAIVER OF EXAMINATION REQUIREMENT. The commissioner may waive an examination requirement for an applicant

with a valid license from another state if, in the commissioner's opinion, the license requirements of the other state are substantially equivalent to those of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.1025. STATE FIRE MARSHAL'S AUTHORITY REGARDING EXAMINATIONS; RULES. (a) The state fire marshal shall establish the scope and type of an examination required under this chapter.

(b) The state fire marshal may administer the examination or may enter into an agreement with a testing service.

(c) The state fire marshal shall adopt rules as necessary to implement examination requirements under this chapter.

Added by Acts 2003, 78th Leg., ch. 1014, Sec. 7, eff. June 20, 2003.

Sec. 2154.1026. USE OF TESTING SERVICE FOR EXAMINATION. (a) If a testing service is used, the state fire marshal may contract with the testing service regarding requirements for the examination required by this chapter, including examination development, scheduling, site arrangements, grading, reporting, analysis, or other administrative duties.

(b) The state fire marshal may require the testing service to:

(1) correspond directly with an applicant regarding the administration of the examination;

(2) collect a reasonable fee from an applicant for administering the examination; or

(3) administer the examination at a specific location or time.

Added by Acts 2003, 78th Leg., ch. 1014, Sec. 7, eff. June 20, 2003.

Sec. 2154.103. EXAMINATION RESULTS. (a) The state fire marshal shall notify each examinee of the results of the examination not later than the 30th day after the date an examination is administered.

(b) If the examination is conducted, graded, or reviewed by a testing service, the state fire marshal shall notify the examinee of

the result of the examination not later than the 14th day after the date the state fire marshal receives the result from the testing service.

(c) If the notice of the examination result will be delayed for longer than 90 days after the examination date, the state fire marshal shall notify the examinee of the reason for the delay before the 90th day.

(d) If requested in writing by a person who fails the licensing examination, the state fire marshal shall send the person an analysis of the person's performance on the examination.

(e) The state fire marshal may require a testing service to notify a person of the results of the person's examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1014, Sec. 8, eff. June 20, 2003.

Sec. 2154.104. DUPLICATE LICENSE; LICENSE CHANGES. A person must be charged a fee in an amount not to exceed \$20 for a duplicate license issued by the commissioner and for any requested change to a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.105. LICENSE EXPIRATION DATE. (a) The commissioner by rule may provide for different expiration dates for the various types of licenses.

(b) If the expiration date of a license is less than one year from the date of its issuance or anniversary date, the license fee shall be prorated on the basis of the number of months during which the license is valid. The total annual fee is payable each time the license is renewed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.106. LICENSE RENEWAL. (a) A license holder may renew an unexpired license by paying the required renewal fee to the state fire marshal any time before the license expires.

(b) Not later than the 30th day before the expiration date of a

license, the state fire marshal shall send written notice of the impending license expiration to the license holder at the license holder's last known address.

(c) A person whose license has been expired for 90 days or less may renew the license by paying to the state fire marshal the required annual fee and an additional amount equal to one-half of the original license fee.

(d) A person whose license has been expired for more than 90 days but less than two years may renew the license by paying to the state fire marshal all unpaid annual fees and an additional amount equal to the original license fee.

(e) A person may not renew a license that has been expired for two years or more. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(f) This section does not prevent the state fire marshal from denying or refusing to renew a license for any reason provided by law or the rules of the commissioner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. TYPES OF LICENSES**

Sec. 2154.151. MANUFACTURER'S LICENSE. (a) A person manufacturing, storing, possessing, and selling fireworks constructed by that person must have a manufacturer's license.

(b) The commissioner shall set and collect an annual manufacturer's license fee in an amount not to exceed \$1,000.

(c) A licensed manufacturer may sell:

(1) Fireworks 1.4G only to a licensed distributor or jobber; and

(2) Fireworks 1.3G only to a licensed distributor or pyrotechnic operator, or to a fireworks public display permit holder for use in public fireworks displays in this state.

(d) A licensed manufacturer may manufacture, store, possess, and sell an item other than a permissible firework if the item is only for sale and delivery to authorized persons in a state in which the item is permissible.

(e) A licensed manufacturer may be required to submit samples of all fireworks to the state fire marshal for approval.



Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.152. DISTRIBUTOR'S LICENSE. (a) A person must be a licensed distributor if the person:

(1) imports into this state or stores, possesses, and sells Fireworks 1.3G to a licensed pyrotechnic operator or distributor or to a single public display, multiple public display, or agricultural, industrial, and wildlife control fireworks permit holder; or

(2) imports or stores, possesses, and sells Fireworks 1.4G to a licensed jobber, retailer, or distributor in this state.

(b) The commissioner shall set and collect an annual distributor's license fee in an amount not to exceed \$1,500.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.153. JOBBER'S LICENSE. (a) A person must be a licensed jobber if the person stores, possesses, and sells Fireworks 1.4G only to retailers in this state.

(b) The commissioner shall set and collect an annual jobber's license fee in an amount not to exceed \$1,000.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.154. PYROTECHNIC OPERATOR'S LICENSE. (a) A person must be a licensed pyrotechnic operator if the person assembles, conducts, and supervises public fireworks displays using Fireworks 1.3G.

(b) The commissioner shall set and collect an annual pyrotechnic operator's license fee in an amount not to exceed \$100.

(c) To qualify for a pyrotechnic operator's license, a person must take and pass an examination, if required, conducted by the commissioner through the state fire marshal's office.

(d) Unless the examination is administered by a testing service, a person shall be charged a nonrefundable initial examination fee in an amount not to exceed \$50. Unless the reexamination is administered by a testing service, a person shall be charged a nonrefundable fee in an amount not to exceed \$20 for each reexamination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1014, Sec. 9, eff. June 20, 2003.

Sec. 2154.155. PYROTECHNIC SPECIAL EFFECTS OPERATOR'S LICENSE.

(a) A person must be a licensed pyrotechnic special effects operator if the person assembles, conducts, and supervises proximate displays using Fireworks 1.3G or Fireworks 1.4G as defined in NFPA 1126 Standard of the Use of Pyrotechnics Before a Proximate Audience.

(b) The commissioner shall set and collect an annual pyrotechnic special effects operator's license fee in an amount not to exceed \$100.

(c) To qualify for a pyrotechnic special effects operator's license, a person must take and pass an examination, if required, conducted by the commissioner through the state fire marshal's office.

(d) Unless the examination is administered by a testing service, a person shall be charged a nonrefundable initial examination fee in an amount not to exceed \$50. Unless the reexamination is administered by a testing service, a person shall be charged a nonrefundable fee in an amount not to exceed \$20 for each reexamination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1014, Sec. 10, eff. June 20, 2003.

Sec. 2154.156. FLAME EFFECTS OPERATOR'S LICENSE. (a) A person must be a licensed flame effects operator if the person assembles, conducts, or supervises flame effects under Section 2154.253.

(b) The commissioner shall set and collect an annual flame effects operator's license fee in an amount not to exceed \$100.

(c) To qualify for a flame effects operator's license, a person must take and pass an examination and comply with any other requirements set by the commissioner through the state fire marshal's office.

(d) A person shall be charged a nonrefundable initial examination fee in an amount not to exceed \$30. A person shall be charged a nonrefundable fee in an amount not to exceed \$20 for each reexamination.

Added by Acts 2003, 78th Leg., ch. 872, Sec. 2, eff. Sept. 1, 2003.

#### **SUBCHAPTER E. PERMIT REQUIREMENTS**

Sec. 2154.201. GENERAL REQUIREMENTS. (a) A person who is younger than 21 years of age may not be issued a public fireworks display permit. A person who is younger than 18 years of age may not be issued another permit under this subchapter.

(b) A person may not:

(1) transfer a permit issued under this subchapter; or

(2) obtain or attempt to obtain a permit under this subchapter by fraudulent representation.

(c) A person may not alter or deface a permit. An altered or defaced permit is void.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.202. RETAIL FIREWORKS PERMIT. (a) A person selling fireworks directly to the public must annually obtain a nonrenewable retail fireworks permit for each retail location.

(b) The commissioner shall set and collect a retail fireworks permit fee in an amount not to exceed \$20.

(c) A retail fireworks permit may be purchased from a licensed manufacturer, distributor, or jobber or from the state fire marshal's office.

(d) A licensed manufacturer, distributor, or jobber may obtain retail fireworks permits from the commissioner at any time. The commissioner shall provide permits in books containing 20 permits each. Each permit must be clearly printed with the year, date, and permit number. The manufacturer, distributor, or jobber shall keep a record of all permits issued and shall submit the record to the commissioner through the state fire marshal in the manner required by the commissioner.

(e) A retail fireworks permit expires on January 31 each year and is not renewable.

(f) An outdated permit may be exchanged for a current permit only in the year following the permit's expiration.

(g) A retail fireworks permit holder may sell fireworks only to the public, and only during periods:

- (1) beginning June 24 and ending at midnight on July 4;
- (2) beginning December 20 and ending at midnight on January 1 of the following year; and
- (3) beginning May 1 and ending at midnight on May 5 if the fireworks are sold at a location that is not more than 100 miles from the Texas-Mexico border and that is in a county in which the commissioners court of the county has approved the sale of fireworks during the period.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1179 (H.B. 539), Sec. 3, eff. June 15, 2007.

Sec. 2154.203. AGRICULTURAL, INDUSTRIAL, AND WILDLIFE CONTROL PERMIT. (a) The commissioner shall set and collect a permit fee in an amount not to exceed \$50 for a permit to use Fireworks 1.3G for agricultural, industrial, or wildlife control purposes.

(b) The applicant must specify the exact purpose for which the fireworks are to be used before a permit may be issued.

(c) A permit expires one year from the date of issuance and is not renewable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.204. PUBLIC DISPLAY PERMIT. (a) The commissioner shall set and collect a permit fee in an amount not to exceed \$50 for a Fireworks 1.3G single public display permit. The permit shall be obtained from the commissioner through the state fire marshal.

(b) A single public fireworks display permit is valid for only one public fireworks display to be held during the hours and on the date or alternate date, if provided, stated on the permit and is not renewable.

(c) A person conducting multiple fireworks displays at a single location may be issued a multiple public display permit. The commissioner shall set and collect an annual multiple public display permit fee in an amount not to exceed \$400.

(d) The holder of a multiple public display permit is not required to obtain a single public display permit. A multiple public

display permit is valid for one year from the date of issuance and is not renewable.

(e) This chapter does not limit the authority of the state fire marshal to inspect the location of the display or to require appropriate fire protection measures.

(f) The commissioner shall adopt by reference the provisions of:

(1) NFPA 1123, Code for Fireworks Display, 1995 Edition, as rules governing public displays; and

(2) NFPA 1126, Standards for the Use of Pyrotechnics Before a Proximate Audience, 1996 Edition, as rules governing indoor displays.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.205. INSURANCE REQUIREMENT FOR PUBLIC DISPLAY PERMIT.

(a) In addition to any other requirements, an applicant for a public display permit must submit to the state fire marshal evidence of a general liability insurance policy in an amount of not less than \$500,000 unless the commissioner increases or decreases the amount under Section 2154.051. A multiple public display permit or single public display permit may not be issued without evidence of general liability insurance as required by this section.

(b) The policy shall be conditioned to pay the amount of money the insured becomes obligated to pay as damages because of bodily injury and property damage caused by an occurrence involving the insured or the insured's servant, officer, agent, or employee in the conduct of a public fireworks display.

(c) Evidence of the liability insurance policy required by this section must be in the form of a certificate of insurance issued by an insurer authorized to do business in this state and countersigned by an insurance agent licensed in this state.

(d) A certificate of insurance for surplus lines coverage obtained under Chapter 981, Insurance Code, through a licensed Texas surplus lines agent resident in this state may be filed with the commissioner as evidence of coverage required by this section.

(e) An insurer may not cancel a certificate of insurance issued under this section unless the insurer gives the state fire marshal notice of intent to cancel as required by the commissioner.

(f) This section may be satisfied by a city, county, or other political subdivision presenting proof of its participation in a self-insurance fund or other fund created under Chapter 791, Government Code, covering the liability requirements under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.550, eff. Sept. 1, 2003.

Sec. 2154.206. INSPECTION OF PUBLIC FIREWORKS DISPLAY. (a) In this section, "appropriate fire prevention officer" means a person with fire prevention authority in a particular jurisdiction.

(b) A person planning to make a public fireworks display shall submit, under rules adopted by the commissioner, a written application to the state fire marshal for a permit.

(c) An appropriate fire prevention officer, as designated or approved by the state fire marshal, shall make a site investigation to determine whether a proposed fireworks display is of a nature or in a location that may be hazardous to property or dangerous to any person. The officer may, in the exercise of reasonable discretion, approve or disapprove the display site and may impose reasonable conditions on the display.

(d) After inspecting the proposed display site, the fire prevention officer shall notify the state fire marshal of the results of the inspection, and the state fire marshal shall determine if a permit is to be issued.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.207. INSURANCE REQUIREMENT. (a) In addition to any other requirements, an applicant for a permit under Section 2154.253 must submit to the authority having jurisdiction evidence of a general liability insurance policy in an amount of not less than \$1 million unless the commissioner decreases the amount under Section 2154.051. The permit may not be issued without evidence of insurance as required by this section.

(b) The general liability insurance policy required by this section shall be conditioned to pay the amount of money the insured becomes obligated to pay as damages because of bodily injury and

property damage caused by an occurrence involving the insured or the insured's servant, officer, agent, or employee in the conduct of a display of pyrotechnics and flame effects.

(c) Evidence of the general liability insurance policy required by this section must be in the form of a certificate of insurance issued by an insurer authorized to do business in this state and countersigned by an insurance agent licensed in this state.

(d) A certificate of insurance for surplus lines coverage obtained under Chapter 981, Insurance Code, through a licensed Texas surplus lines agent resident in this state may be filed with the commissioner as evidence of coverage required by this section.

(e) An insurer may not cancel a certificate of insurance issued under this section unless the insurer gives the authority having jurisdiction notice of intent to cancel.

(f) This section may be satisfied by a city, county, or other political subdivision presenting proof of its participation in a self-insurance fund or a fund created under Chapter 791, Government Code, covering the liability requirements under this chapter.

Added by Acts 2003, 78th Leg., ch. 872, Sec. 3, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.155, eff. September 1, 2005.

#### **SUBCHAPTER F. PROHIBITED ACTS**

Sec. 2154.251. PROHIBITED USE OF FIREWORKS. (a) A person may not:

(1) explode or ignite fireworks within 600 feet of any church, a hospital other than a veterinary hospital, an asylum, a licensed child care center, or a public or private primary or secondary school or institution of higher education unless the person receives authorization in writing from that organization;

(2) sell at retail, explode, or ignite fireworks within 100 feet of a place where flammable liquids or flammable compressed gasses are stored and dispensed;

(3) explode or ignite fireworks within 100 feet of a place where fireworks are stored or sold;

(4) ignite or discharge fireworks in or from a motor vehicle;

(5) place ignited fireworks in, or throw ignited fireworks at, a motor vehicle;

(6) conduct a public fireworks display that includes Fireworks 1.3G unless the person is a licensed pyrotechnic operator;

(7) conduct a proximate display of fireworks that includes Fireworks 1.3G or Fireworks 1.4G as defined in NFPA 1126 Standards for the Use of Pyrotechnics Before a Proximate Audience unless the person is a licensed pyrotechnic special effects operator and has the approval of the local fire prevention officer; or

(8) sell, store, manufacture, distribute, or display fireworks except as provided by this chapter or rules adopted by the commissioner under this chapter.

(b) A person may not manufacture, distribute, sell, or use fireworks in a public fireworks display or for agricultural, industrial, or wildlife control purposes without an appropriate license or permit. Fireworks manufactured, distributed, sold, or used without an appropriate license or permit are illegal fireworks.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.252. CERTAIN SALES OF FIREWORKS PROHIBITED. (a) Unless the fireworks conform to the standards of the United States Consumer Product Safety Commission and the department, a person in this state may not:

- (1) sell the fireworks at retail;
- (2) offer the fireworks for retail sale;
- (3) possess the fireworks for retail sale in this state;

or

- (4) transport, use, or explode the fireworks in this state.

(b) A person may offer for sale to the general public Fireworks 1.4G only at authorized retail locations. All mail order sales of Fireworks 1.4G are prohibited.

(c) Fireworks may not be sold or offered for sale to children under 16 years of age or to an intoxicated or incompetent person. A person selling fireworks at retail shall make a reasonable effort to determine that potential purchasers of fireworks are of the minimum age required by this subsection.

(d) A licensed manufacturer, distributor, jobber, or importer may not sell fireworks to a person who does not hold a license or



permit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1179 (H.B. 539), Sec. 4, eff. June 15, 2007.

Sec. 2154.253. USE OF FLAME EFFECTS OR PYROTECHNICS. (a)

Definitions. In this section:

(1) "Authority having jurisdiction" means the fire marshal of a political subdivision. If the political subdivision has no fire marshal, the chief executive of the local fire protection district or emergency services district shall be the authority having jurisdiction. The state fire marshal or the state fire marshal's designee shall be the authority having jurisdiction if the political subdivision has no fire marshal, local fire protection district, or emergency services district.

(2) "Flame effects" means a stationary or hand-held device of solid, liquid, or gas, designed specifically to produce an open flame when ignited to display a thermal, physical, visual, or audible phenomenon as defined in NFPA Standard 160. Such devices include paraffin wax candles, LPG candles, torches, and LPG burners.

(3) "NFPA Standard 1126" means the edition of the National Fire Protection Association, Standard 1126, "Standard for the Use of Pyrotechnics before a Proximate Audience," as adopted and amended by the commissioner.

(4) "NFPA Standard 160" means the edition of the National Fire Protection Association, Standard 160, "Standard for Flame Effects Before an Audience," as adopted and amended by the commissioner.

(5) "Pyrotechnics" means an explosive composition or device designed for entertainment to produce a visible or audible effect by combustion, explosion, deflagration, or detonation as defined by NFPA Standard 1126.

(b) The use of flame effects or pyrotechnics for entertainment, exhibition, demonstration, or simulation before an assembly of 50 people or more, except for public safety demonstrations, must comply with NFPA Standard 160 and NFPA Standard 1126 and the following standards and requirements:

(1) if flame effects or pyrotechnics are used inside a building, the building must contain a complete operational fire-sprinkler system or provide personnel to implement a standby fire watch acceptable to the authority having jurisdiction;

(2) before flame effects or pyrotechnics are used inside a building, an announcement to the assembly must be made giving verbal instruction regarding the location and use of available exits and information about the building fire protection and fire alarm systems; a determination by the authority having jurisdiction that an exit door is locked or obstructed constitutes a violation of this section;

(3) the plan required by NFPA Standard 1126 or NFPA Standard 160 detailing the criteria for use and display of pyrotechnics and flame effects must be provided to the local authority having jurisdiction;

(4) at least one Texas pyrotechnic special effects operator's licensee must be present on-site at all times where pyrotechnics are used, discharged, or ignited;

(5) at least one Texas flame effects operator's licensee must be present on-site at all times where flame effects are used, discharged, or ignited;

(6) the on-site licensee shall be responsible for complying with this section;

(7) the licensee or the licensee's employer must obtain a permit from the local authority having jurisdiction before the use, discharge, or ignition of a flame effect or pyrotechnics; and

(8) the applicant for the permit must provide with the application the evidence of insurance required by Section 2154.207.

(c) The requirements provided by Subsection (b) do not apply to traditional, nontheatrical public displays such as:

(1) use of lighted candles in restaurants or during religious services;

(2) fireplaces in areas open to the public;

(3) restaurant cooking visible to the public;

(4) the outdoor use of consumer fireworks by the general public; or

(5) an outdoor public display permitted under Section 2154.204.

(d) The authority having jurisdiction may adopt regulations governing the issuance of permits for the use of flame effects or

pyrotechnics and may charge a fee to recover its costs.

(e) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor. Each day a violation occurs or continues constitutes a separate offense. Venue under this section is in the county in which the offense is committed or in Travis County.

(f) A municipal or county ordinance, order, or rule in effect on September 1, 2003, is not invalidated by this chapter.

(g) This section does not limit or restrict the authority of a county, where specifically authorized by law, or municipality to enact an ordinance or order prohibiting or further regulating flame effects or pyrotechnics.

Added by Acts 2003, 78th Leg., ch. 872, Sec. 1, eff. Sept. 1, 2003.

Sec. 2154.254. EMPLOYMENT OF MINORS. (a) Except as provided by Subsection (c), a person may not employ or allow a person younger than 16 years of age to manufacture, distribute, sell, or purchase fireworks in the course of the person's business.

(b) Except as provided by Subsection (c), a person may not employ a person 16 years of age or older but younger than 18 years of age to sell fireworks at a retail sales location unless the person selling fireworks at that location is accompanied by another person who is at least 18 years of age.

(c) An owner of a retail sales location may employ a person who is otherwise prohibited from engaging in that activity by Subsection (a) or (b) to sell fireworks at the owner's retail sales location if the person employed is:

- (1) a member of the owner's immediate family;
- (2) 12 years of age or older; and
- (3) accompanied by another person who is at least 18 years of age while the person is engaged in selling fireworks at that location.

Added by Acts 2007, 80th Leg., R.S., Ch. 1179 (H.B. 539), Sec. 5, eff. June 15, 2007.

#### **SUBCHAPTER G. DISCIPLINARY ACTIONS; PENALTIES**

Sec. 2154.301. DISCIPLINARY POWERS OF COMMISSIONER. (a) The

commissioner may, through the state fire marshal, suspend, revoke, or refuse to issue or renew a license or permit if the commissioner finds that any provision of this chapter, or any rule adopted under this chapter, has been violated.

(b) A person who has a license or permit revoked may not reapply for the license or permit earlier than one year from the date of revocation. A person reapplying under this subsection must request a public hearing on the reissuance of the license or permit and has the burden of proving that a license or permit should be granted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.302. DISCIPLINARY HEARING. (a) If the state fire marshal proposes to suspend, revoke, or refuse to renew a person's license or permit, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Disciplinary proceedings are governed by Chapter 2001, Government Code.

(c) Rules of practice adopted by the commissioner applicable to the disciplinary proceedings may not conflict with the rules adopted by the State Office of Administrative Hearings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.303. PENALTIES. (a) A person commits an offense if the person violates Section 2154.101(b), (c)(2), or (d), 2154.151(e), or 2154.201(a), (b)(2), or (c) or Subchapter F.

(b) Except as provided by Subsection (c), an offense under this section is a Class B misdemeanor.

(c) A violation of Section 2154.251(a)(1), (2), (3), (4), (5), or (8) that results in property damage in an amount of less than \$200 and does not result in bodily injury or death, or a violation of Section 2154.254(a) or (b), is a Class C misdemeanor.

(d) Each day a violation occurs or continues constitutes a separate offense.

(e) Venue under this section is in the county in which the offense is committed or in Travis County.

(f) If the commissioner determines that a violation of this

chapter creates a threat to the public safety, the commissioner may bring suit in the district court of the county in which the person who committed the offense resides or has an office to enjoin the person from engaging in the prohibited activity. The commissioner is not required to give bond as a condition to the issuance of injunctive relief.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.709(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1179 (H.B. 539), Sec. 6, eff. June 15, 2007.

Sec. 2154.304. SEIZURE OF ILLEGAL FIREWORKS. (a) The state fire marshal, a fire chief, a fire marshal, their deputies, or a peace officer may seize illegal fireworks. Fireworks seized in the enforcement of this chapter shall be kept in the custody of the seizing agent or the sheriff of the county in which the fireworks were seized.

(b) The owner of the seized fireworks may file an action contesting the seizure in a district court in the county in which the fireworks were seized.

(c) Not later than the 30th day after the hearing on the seizure, the court may authorize the return of part or all of the confiscated fireworks. The court shall order any fireworks not returned to be destroyed. If an action contesting the seizure is not filed by the 30th day after the seizure, the seizing agent or the sheriff shall destroy the fireworks.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**CHAPTER 2155. HOTELS AND BOARDINGHOUSES**  
**SUBCHAPTER A. NOTIFICATION OF LODGING RATES**

Sec. 2155.001. ROOM RATE INFORMATION. (a) A hotel owner or keeper shall post a card or sign in a conspicuous place in each hotel room stating:

- (1) the daily room rate; and
- (2) the date the card or sign was posted.

(b) An increase in the daily room rate is not effective until the 30th day after the date a card or sign with the increased rate is posted.

(c) The owner or keeper of a hotel having 20 or more rooms shall give a guest assigned a room a ticket showing the daily room rate being charged for the room. The room rate on the ticket must conform with the rate posted under Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2155.002. CRIMINAL PENALTIES. (a) A hotel owner or keeper commits an offense if the person does not post a room rate as required by Section 2155.001(a).

(b) A hotel owner, keeper, or employee commits an offense if the person does not give a guest a ticket as required by Section 2155.001(c).

(c) A hotel owner, keeper, or employee commits an offense if the person knowingly charges a guest a room rate for a room that is more than the posted rate for that room. Each day an excessive rate is charged is a separate offense.

(d) An offense under Subsection (a) or (c) is a misdemeanor punishable by:

- (1) a fine of not less than \$25 or more than \$100;
- (2) confinement in jail for a term not to exceed 30 days;

or

- (3) both a fine and confinement.

(e) An offense under Subsection (b) is a misdemeanor punishable by a fine of not more than \$100.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER B. LIABILITY FOR PERSONAL PROPERTY ON PREMISES**

Sec. 2155.051. DEFINITION. In this subchapter, "hotel" means a business, including an inn or rooming house, that furnishes food, lodging, or both food and lodging to a person applying and paying for the service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2155.052. LIABILITY FOR VALUABLES. (a) This section applies only to a hotel, apartment hotel, or boardinghouse keeper who:

(1) continuously maintains a metal safe or vault in the keeper's hotel, apartment hotel, or boardinghouse that is in good order and fit for the custody of money, jewelry, silver or gold articles, precious stones, personal ornaments, or documents; and

(2) keeps suitable locks or bolts on the guests' sleeping room doors and proper fastenings on the transom and window of guest rooms.

(b) A hotel, apartment hotel, or boardinghouse keeper is not liable for a loss or injury suffered by a guest from the loss of valuables in an amount of more than \$50 if:

(1) the valuables could reasonably have been kept in the safe or vault of the hotel, apartment hotel, or boardinghouse;

(2) the loss or injury does not occur through the negligence or wrongdoing of the keeper or an employee of the hotel, apartment hotel, or boardinghouse; and

(3) a printed copy of this section is posted on the door of the guest's sleeping room.

(c) Subsection (b) does not apply if:

(1) the guest offered to deliver the valuables to the hotel, apartment hotel, or boardinghouse keeper for custody in the safe or vault; and

(2) the hotel, apartment hotel, boarding hotel, or boardinghouse keeper did not:

(A) deposit the valuables in the safe or vault; and

(B) issue a receipt for the valuables.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2155.053. GRATUITOUS BAILEE. (a) A hotel, apartment hotel, or boardinghouse keeper may hold a person's property, including baggage, at the keeper's option and at the property owner's risk if the property owner:

(1) forwards the property to the hotel, apartment hotel, or boardinghouse before becoming a guest;

(2) leaves the property in the hotel, apartment hotel, or boardinghouse lobby before checking the property or becoming a guest;

or

(3) allows the property to remain in the hotel, apartment hotel, or boardinghouse after the innkeeper and guest relationship has ceased and without checking the property.

(b) If a person checks property at a hotel, apartment hotel, or boardinghouse and leaves the property at the hotel, apartment hotel, or boardinghouse free of charge for one week without being a guest, the hotel, apartment hotel, or boardinghouse keeper may, absent a special agreement, continue to hold the property after the first week at the property owner's risk.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. FIREARMS POLICY NOTICE**

Sec. 2155.101. DEFINITION. In this subchapter, "hotel" has the meaning assigned by Section 156.001, Tax Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 237 (H.B. 333), Sec. 1, eff. September 1, 2013.

Sec. 2155.102. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a hotel that has a policy prohibiting or restricting the possession, storage, or transportation of firearms by hotel guests.

Added by Acts 2013, 83rd Leg., R.S., Ch. 237 (H.B. 333), Sec. 1, eff. September 1, 2013.

Sec. 2155.103. NOTICE REGARDING FIREARMS POLICY. (a) A hotel shall include on the hotel's Internet reservation website the hotel's policy regarding the possession, storage, and transportation of firearms.

(b) If a hotel provides a written confirmation or a written statement of terms and conditions to a consumer after accepting the consumer's hotel reservation by telephone, the hotel shall include information specifying how the consumer may review applicable guest policies. The guest policies must indicate the hotel's policy regarding the possession, storage, and transportation of firearms by



guests.

(c) A hotel owner or keeper commits an offense if the person does not comply with this section. An offense under this subsection is a misdemeanor punishable by a fine of not more than \$100.

Added by Acts 2013, 83rd Leg., R.S., Ch. 237 (H.B. 333), Sec. 1, eff. September 1, 2013.

#### CHAPTER 2156. THEATERS

Sec. 2156.001. DEFINITION. In this chapter, "theater" means a building constructed, equipped, and used for public performances or the production and exhibition of plays, dramas, or operas for which an admission fee is charged. The term includes an opera house or playhouse.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2156.002. OTHER REGULATION PERMITTED. A theater may be regulated by ordinance or other law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2156.003. RIGHTS OF THEATER OWNERS. A theater owner or lessee may:

- (1) assign seats to theater patrons; and
- (2) refuse admission to objectionable persons.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2156.004. RECORDKEEPING; OFFENSE. (a) A person in charge of a theater, including a theater owner, lessee, or manager, shall:

- (1) keep, in convenient form, a list of all bookings of shows for the theater and the specific dates of the bookings; and
- (2) show the list, on request, to a person desiring in good faith to lease or rent the theater for a public performance or the production and exhibition of a play, drama, or opera.

(b) A person commits an offense if the person violates Subsection (a).

(c) An offense under Subsection (b) is a misdemeanor punishable by a fine of not more than \$20 or less than \$10.

(d) Each failure or refusal to comply with Subsection (a) is a separate offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2156.005. DISCRIMINATION AGAINST REPUTABLE PRODUCTIONS; OFFENSE. (a) A person who is in charge of and manages a theater, including a theater owner or lessee, or a representative of an owner or lessee, may not discriminate against reputable theaters, operas, shows, or other productions.

(b) A person who is in charge of and manages a theater, including a theater owner or lessee, or a representative of an owner or lessee, commits an offense if the person fails and refuses to rent or lease the theater for one or more performances of any reputable theater, opera, or show on terms that may not be considered unreasonable, extortionate, or prohibitive to the agent, manager, proprietor, or representative of the theater, opera, or show.

(c) An offense under Subsection (b) is a misdemeanor and the person:

(1) shall be fined not more than \$500 or less than \$100; and

(2) may be committed to not more than 10 days in jail.

(d) Each violation of Subsection (b) is a separate offense.

(e) Fifty percent of a fine collected under Subsection (c) shall be paid to the complainant. The remainder of the fine shall be paid to the jury fund of the county where the suit was brought.

(f) It is a defense to prosecution under Subsection (b) that, at the time of the application to lease or rent the theater, the person in charge of the theater shows that:

(1) the theater had, in good faith, already been leased or rented; and

(2) other bookings had been made for the date or dates applied for in good faith and not with the intention of evading this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2156.006. FORFEITURE OF LEASE. A theater's lessee or a lessee's assigns forfeit the lease and any rights and privileges under the lease if the person:

- (1) does not comply with the law governing theaters; or
- (2) is convicted of an offense under Section 2156.005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### **CHAPTER 2157. REGULATION OF MOTION PICTURE THEATERS**

Sec. 2157.001. INTERPRETATION OF CONTRACTS. An agreement relating to the distribution of a film shown in any theater in this state or the licensing of a motion picture or film shown in any theater in this state is to be construed under state law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2157.002. VENUE FOR CERTAIN SUITS. (a) Venue of a suit arising out of an agreement described by Section 2157.001 is in the county in which:

- (1) the film was licensed to be shown; or
- (2) the principal office of the exhibitor under the agreement is located.

(b) A provision of the agreement attempting to establish venue in a place other than as provided by Subsection (a) is void.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2157.003. REPORTS ON THEATER ATTENDANCE. (a) A private or confidential investigator employed to determine the attendance at or the number of paid admissions for a motion picture theater performance shall furnish to the owner or general manager of the theater:

- (1) a report of the investigator's findings on the day after the date of the determination; and
- (2) a written copy of the investigator's findings or report not later than the third day after the date of the determination.

(b) If an investigator does not comply with Subsection (a), evidence obtained by the investigator and the investigator's testimony is not admissible as evidence in any court or other proceeding.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**TITLE 14. REGULATION OF MOTOR VEHICLES AND TRANSPORTATION**

**SUBTITLE A. REGULATIONS RELATED TO MOTOR VEHICLES**

**CHAPTER 2301. SALE OR LEASE OF MOTOR VEHICLES**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2301.001. CONSTRUCTION; PURPOSE. The distribution and sale of motor vehicles in this state vitally affects the general economy of the state and the public interest and welfare of its citizens. This chapter shall be liberally construed to accomplish its purposes, including the exercise of the state's police power to ensure a sound system of distributing and selling motor vehicles through:

- (1) licensing and regulating manufacturers, distributors, converters, and dealers of motor vehicles; and
- (2) enforcing this chapter as to other persons to provide for compliance with manufacturer's warranties and to prevent fraud, unfair practices, discrimination, impositions, or other abuse of the people of this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.002. DEFINITIONS. In this chapter:

- (1) "Ambulance" means a vehicle that is used exclusively to transport or to provide emergency medical care to an injured or ill person and that includes:
  - (A) a driver's compartment;
  - (B) a compartment to accommodate an emergency medical care technician or paramedic and two injured or ill persons in a position that permits one of the injured or ill persons to be given intensive life-support during transit;
  - (C) equipment and supplies for emergency care of an injured or ill person at the location of the person or at the scene of an injury-producing incident as well as in transit;

- (D) two-way radio communication capability; and
- (E) equipment for light rescue or extrication

procedures.

(1-a) "Ambulance manufacturer" means a person other than the manufacturer of a motor vehicle chassis who, before the retail sale of the motor vehicle, performs modifications on the chassis that result in the finished product being classified as an ambulance.

(2) "Board" has the meaning assigned by Section 2301.005.

(3) "Broker" means a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale of a new motor vehicle, other than a person who is:

(A) a franchised dealer or a bona fide employee of a franchised dealer acting for the franchised dealer;

(B) a representative or a bona fide employee of a representative acting for the representative;

(C) a distributor or a bona fide employee of a distributor acting for the distributor; or

(D) the owner of the vehicle at any point in the transaction.

(4) "Chassis manufacturer" means a person who manufactures and produces the frame on which the body of a motor vehicle is mounted.

(5) "Conversion" means a motor vehicle, other than a motor home, ambulance, or fire-fighting vehicle, that:

(A) has been substantially modified by a person other than the manufacturer or distributor of the chassis of the motor vehicle; and

(B) has not been the subject of a retail sale.

(6) "Converter" means a person who before the retail sale of a motor vehicle:

(A) assembles, installs, or affixes a body, cab, or special equipment to a chassis; or

(B) substantially adds, subtracts from, or modifies a previously assembled or manufactured motor vehicle other than a motor home, ambulance, or fire-fighting vehicle.

(7) "Dealer" means a person who holds a general distinguishing number issued by the board under Chapter 503, Transportation Code.

(8) "Dealership" means the physical premises and business

facilities on which a franchised dealer operates the dealer's business, including the sale and repair of motor vehicles. The term includes premises or facilities at which a person engages only in the repair of a motor vehicle if the repair is performed under a franchise and a motor vehicle manufacturer's warranty.

(9) "Department" means the Texas Department of Motor Vehicles.

(10) "Director" means the director of the division.

(11) "Distributor" means a person, other than a manufacturer, who:

(A) distributes or sells new motor vehicles to a franchised dealer; or

(B) enters into franchise agreements with franchised dealers, on behalf of the manufacturer.

(12) "Division" means the department division that regulates the distribution and sale of motor vehicles.

(13) "Executive director" means the executive director of the department.

(14) "Fire-fighting vehicle" means a motor vehicle the only purposes of which are to transport firefighters to the scene of a fire and to provide equipment to fight the fire, and that is built on a truck chassis with a gross carrying capacity of at least 10,000 pounds, to which the following have been permanently affixed or mounted:

(A) a water tank with a combined capacity of at least 500 gallons; and

(B) a centrifugal water pump with a capacity of at least 750 gallons per minute at 150 pounds per square inch net pump pressure.

(14-a) "Fire-fighting vehicle manufacturer" means a person other than the manufacturer of a motor vehicle chassis who, before the retail sale of the motor vehicle, performs modifications on the chassis that result in the finished product being classified as a fire-fighting vehicle.

(15) "Franchise" means one or more contracts between a franchised dealer as franchisee and a manufacturer or a distributor as franchisor, including a written communication from a franchisor to a franchisee in which a duty is imposed on the franchisee, under which:

(A) the franchisee is granted the right to sell and

service new motor vehicles manufactured or distributed by the franchisor or only to service motor vehicles under the contract and a manufacturer's warranty;

(B) the franchisee is a component of the franchisor's distribution system as an independent business;

(C) the franchisee is substantially associated with the franchisor's trademark, tradename, and commercial symbol;

(D) the franchisee's business substantially relies on the franchisor for a continued supply of motor vehicles, parts, and accessories; or

(E) any right, duty, or obligation granted or imposed by this chapter is affected.

(16) "Franchised dealer" means a person who:

(A) holds a franchised motor vehicle dealer's license issued by the board under this chapter and Chapter 503, Transportation Code; and

(B) is engaged in the business of buying, selling, or exchanging new motor vehicles and servicing or repairing motor vehicles under a manufacturer's warranty at an established and permanent place of business under a franchise in effect with a manufacturer or distributor.

(17) "General distinguishing number" means a dealer license issued by the board under Chapter 503, Transportation Code.

(17-a) "Hearings examiner" means a person employed by the department to preside over hearings under this chapter.

(17-b) "Independent mobility motor vehicle dealer" means a nonfranchised dealer who:

(A) holds a general distinguishing number issued by the board under Chapter 503, Transportation Code;

(B) holds a converter's license issued under this chapter;

(C) is engaged in the business of buying, selling, or exchanging mobility motor vehicles and servicing or repairing the devices installed on mobility motor vehicles at an established and permanent place of business in this state; and

(D) is certified by the manufacturer of each mobility device that the dealer installs, if the manufacturer offers that certification.

(18) "License holder" means a person who holds a license or general distinguishing number issued by the board under this chapter

or Chapter 503, Transportation Code.

(19) "Manufacturer" means a person who manufactures or assembles new motor vehicles.

(20) "Manufacturer's statement of origin" means a certificate on a form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser.

(20-a) "Mobility motor vehicle" means a motor vehicle that is designed and equipped to transport a person with a disability and that:

(A) has a chassis that contains:

(i) a permanently lowered floor or lowered frame;

or

(ii) a permanently raised roof and raised door;

(B) contains at least one of the following:

(i) an electronic or mechanical wheelchair, scooter, or platform lift that enables a person to enter or exit the vehicle while occupying a wheelchair or scooter;

(ii) an electronic or mechanical wheelchair ramp;

or

(iii) a system to secure a wheelchair or scooter to allow for a person to be safely transported while occupying the wheelchair or scooter; and

(C) is installed as an integral part or permanent attachment to the motor vehicle's chassis.

(21) "Motor home" means a motor vehicle that is designed to provide temporary living quarters and that:

(A) is built on a motor vehicle chassis as an integral part of or a permanent attachment to the chassis; and

(B) contains at least four of the following independent life support systems that are permanently installed and designed to be removed only for repair or replacement and that meet the standards of the American National Standards Institute, Standards for Recreational Vehicles:

(i) a cooking facility with an on-board fuel source;

(ii) a gas or electric refrigerator;

(iii) a toilet with exterior evacuation;

(iv) a heating or air conditioning system with an on-board power or fuel source separate from the vehicle engine;



(v) a potable water supply system that includes at least a sink, a faucet, and a water tank with an exterior service supply connection; or

(vi) a 110-125 volt electric power supply.

(22) "Motor home manufacturer" means a person other than the manufacturer of a motor vehicle chassis who, before the retail sale of the motor vehicle, performs modifications on the chassis that result in the finished product being classified as a motor home.

(23) "Motor vehicle" means:

(A) a fully self-propelled vehicle having two or more wheels that has as its primary purpose the transport of a person or persons, or property, on a public highway;

(B) a fully self-propelled vehicle having two or more wheels that:

(i) has as its primary purpose the transport of a person or persons or property;

(ii) is not manufactured for use on public streets, roads, or highways; and

(iii) meets the requirements for a certificate of title;

(C) an engine, transmission, or rear axle, regardless of whether attached to a vehicle chassis, manufactured for installation in a vehicle that has:

(i) the transport of a person or persons, or property, on a public highway as its primary purpose; and

(ii) a gross vehicle weight rating of more than 16,000 pounds; or

(D) a towable recreational vehicle.

(23-a) "New mobility motor vehicle" means a mobility motor vehicle that has not been the subject of a retail sale, regardless of the mobility motor vehicle's mileage.

(24) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.

(25) "Nonfranchised dealer" means a person who holds an independent motor vehicle dealer's general distinguishing number, an independent mobility motor vehicle dealer's general distinguishing number, or a wholesale motor vehicle dealer's general distinguishing number issued by the board under Chapter 503, Transportation Code.

(26) "Party" means a person or agency named or admitted as

a party and whose legal rights, duties, or privileges are to be determined by the board after an opportunity for adjudicative hearing.

(27) "Person" means a natural person, partnership, corporation, association, trust, estate, or any other legal entity.

(27-a) "Property use agreement" means a contract, other than a franchise, between a franchised dealer and a manufacturer, distributor, or representative that grants the manufacturer, distributor, or representative the right to regulate the franchised dealer's use of the dealership and other facilities covered by the franchise.

(28) "Relocate" means to transfer an existing dealership operation to facilities at a different location, including a transfer that results in a consolidation or dualing of an existing dealer's operation.

(29) "Representative" means a person who:

(A) is or acts as an agent or employee for a manufacturer, distributor, or converter; and

(B) performs any duty in this state relating to promoting the distribution or sale of new motor vehicles or contacts dealers in this state on behalf of a manufacturer, distributor, or converter.

(30) "Retail sale" means any sale of a motor vehicle other than:

(A) a sale in which the purchaser acquires a vehicle for resale; or

(B) a sale of a vehicle that is operated in accordance with Section 503.061, Transportation Code.

(31) "Rule":

(A) means a statement by the board of general applicability that:

(i) implements, interprets, or prescribes law or policy; or

(ii) describes the procedure or practice requirements of the board;

(B) includes the amendment or repeal of a prior rule; and

(C) does not include a statement regarding only the internal management or organization of the board and not affecting the rights of a person not connected with the board.

(32) "Towable recreational vehicle" means a nonmotorized vehicle that:

(A) was originally designed and manufactured primarily to provide temporary human habitation in conjunction with recreational, camping, or seasonal use;

(B) meets the requirements to be issued a certificate of title and registration by the department as a travel trailer through a county tax assessor-collector;

(C) is permanently built on a single chassis;

(D) contains at least one life support system; and

(E) is designed to be towable by a motor vehicle.

(33) Repealed by Acts 2009, 81st Leg., R.S., Ch. 933, Sec. 2U.02, eff. September 1, 2009.

(34) "Vehicle lease" means a transfer of the right to possess and use a motor vehicle for a term of more than 180 days in return for consideration.

(35) "Vehicle lease facilitator" means a person, other than a franchised dealer, a vehicle lessor, or a bona fide employee of a franchised dealer or vehicle lessor, who:

(A) holds the person out to any other person as a "motor vehicle leasing company" or "motor vehicle leasing agent," or uses a similar title, to solicit or procure another person to enter into an agreement to become the lessee of a motor vehicle that is not, and will not be, titled in the name of or registered to the facilitator;

(B) otherwise solicits another person to enter into an agreement to become a lessee of a motor vehicle that is not, and will not be, titled in the name of or registered to the facilitator; or

(C) is otherwise engaged in the business of securing lessees or prospective lessees of a motor vehicle that is not, and will not be, titled in the name of or registered to the facilitator.

(36) "Vehicle lessor" means a person who, under a lease, transfers to another person the right to possession and use of a motor vehicle titled in the name of the lessor.

(37) "Warranty work" means parts, labor, and any other expenses incurred by a franchised dealer in complying with the terms of a manufacturer's or distributor's warranty.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.601(a), 14A.602,

eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 7.01, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 710 (H.B. 2216), Sec. 1, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 2U.01, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 2U.02, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.02, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.10, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 5, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 1, eff. January 1, 2014.

Sec. 2301.003. EFFECT ON AGREEMENTS. (a) The terms and conditions of a franchise are subject to this chapter.

(b) An agreement to waive the terms of this chapter is void and unenforceable. A term or condition of a franchise inconsistent with this chapter is unenforceable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.004. CHAPTER EXCLUSIVE. Unless otherwise specifically provided by law not in conflict with this chapter, all aspects of the distribution and sale of motor vehicles are governed exclusively by this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.005. TITLE CHANGES. (a) A reference in law, including a rule, to the Texas Motor Vehicle Commission or to the board means the board of the Texas Department of Motor Vehicles.

(b) A reference in law, including a rule, to the executive director of the Texas Motor Vehicle Commission means the executive director of the Texas Department of Motor Vehicles.

(c) A reference in law, including a rule, to the Texas Motor Vehicle Commission Code means this chapter.

(d) A reference in law other than this chapter to a dealer licensed by the Texas Motor Vehicle Commission or a dealer licensed by the Motor Vehicle Board of the Texas Department of Transportation means a franchised dealer.

(e) A reference in this chapter to a rule or to a board rule means a rule adopted by the commission, except that all board rules that were in effect on June 1, 2005, remain in effect until amended or repealed by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 7.02, eff. June 14, 2005.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.03, eff. September 1, 2009.

Sec. 2301.006. BROKERS PROHIBITED. A person may not act as, offer to act as, or claim to be a broker.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.007. TOWING VEHICLE BY LICENSE HOLDER.

Notwithstanding any other law, a person licensed under this chapter does not commit an offense by employing a person to tow a disabled vehicle to or from the premises for which the person is licensed regardless of whether the person employed to tow the vehicle:

(1) holds a certificate issued by a state agency authorizing the person to engage in the business of towing vehicles for hire; or

(2) commits an offense by towing the vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

#### **SUBCHAPTER C. DIVISION PERSONNEL**

Sec. 2301.103. PERSONNEL. A division employee is subject to dismissal if the employee has an interest in or is related within the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a person who has an interest in a business that manufactures, distributes, converts, sells, or leases motor vehicles.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 7.04, eff. June 14, 2005.

Sec. 2301.104. HEARINGS EXAMINERS. (a) The department may employ a chief hearings examiner and one or more additional hearings examiners.

(b) A hearings examiner must be licensed to practice law in this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 2, eff. January 1, 2014.

#### **SUBCHAPTER D. BOARD POWERS AND DUTIES**

Sec. 2301.151. GENERAL JURISDICTION OF BOARD. (a) The board has the exclusive original jurisdiction to regulate those aspects of the distribution, sale, or lease of motor vehicles that are governed by this chapter, including the original jurisdiction to determine its own jurisdiction.

(b) The board may take any action that is specifically designated or implied under this chapter or that is necessary or convenient to the exercise of the power and jurisdiction granted under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.605(a), eff. Sept. 1, 2003.

Sec. 2301.152. GENERAL DUTIES OF BOARD. (a) In accordance with this chapter, the board shall:

- (1) administer this chapter;
- (2) establish the qualifications of license holders;
- (3) ensure that the distribution, sale, and lease of motor vehicles is conducted as required by this chapter and board rules;
- (4) provide for compliance with warranties; and
- (5) prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles.

(b) In addition to the duties delegated to the board under this chapter, the board shall enforce and administer Chapter 503, Transportation Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.153. GENERAL POWERS OF BOARD. (a) Notwithstanding any other provision of law, the board has all powers necessary, incidental, or convenient to perform a power or duty expressly granted under this chapter, including the power to:

- (1) initiate and conduct proceedings, investigations, or hearings;
- (2) administer oaths;
- (3) receive evidence and pleadings;
- (4) issue subpoenas to compel the attendance of any person;
- (5) order the production of any tangible property, including papers, records, or other documents;
- (6) make findings of fact on all factual issues arising out of a proceeding initiated under this chapter;
- (7) specify and govern appearance, practice, and procedures before the board;
- (8) adopt rules and issue conclusions of law and decisions, including declaratory decisions or orders;
- (9) enter into contracts;
- (10) execute instruments;
- (11) retain counsel;
- (12) use the services of the attorney general and institute

and direct the conduct of legal proceedings in any forum;

- (13) obtain other professional services as necessary and convenient;
  - (14) impose a sanction for contempt;
  - (15) assess and collect fees and costs, including attorney's fees;
  - (16) issue, suspend, or revoke licenses;
  - (17) prohibit and regulate acts and practices in connection with the distribution and sale of motor vehicles or warranty performance obligations;
  - (18) issue cease and desist orders in the nature of temporary or permanent injunctions;
  - (19) impose a civil penalty;
  - (20) enter an order requiring a person to:
    - (A) repurchase property under Section 2301.465 and pay costs and expenses of a party in connection with an order entered under that section;
    - (B) perform an act other than the payment of money; or
    - (C) refrain from performing an act; and
  - (21) enforce a board order.
- (b) The board may inspect the books and records of a license holder in connection with the performance of its duties under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.606(a), eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 2, eff. September 1, 2011.

Sec. 2301.154. DELEGATION OF POWERS. (a) The director may delegate any of the director's powers to one or more of the division's employees.

- (b) The board by rule may delegate any power relating to a contested case hearing brought under this chapter or Chapter 503, Transportation Code, other than the power to issue a final order, to:
- (1) one or more of the board's members;
  - (2) the executive director;



- (3) the director; or
- (4) one or more of the department's employees.

(c) The board by rule may delegate the authority to issue a final order in a contested case hearing brought under this chapter or Chapter 503, Transportation Code, to:

- (1) one or more of the board's members;
- (2) the executive director; or
- (3) the director of a division within the department

designated by the board or the executive director to carry out the requirements of this chapter.

(d) The board by rule may delegate any power relating to a complaint investigation to any person employed by the department.

(e) An action taken by a person to whom a power or other authority is delegated under Subsection (b) or (c), including the issuance of an order, is considered an action of the board and may not be appealed to the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. [2702](#)), Sec. 7.05, eff. June 14, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. [2017](#)), Sec. 3, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. [2741](#)), Sec. 7, eff. September 1, 2013.

Sec. 2301.155. RULES. The authority to adopt rules under this chapter is vested in the board. In accordance with this chapter and the rules, decisions, and orders of the board, the board shall adopt rules as necessary or convenient to administer this chapter and to govern practice and procedure before the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.156. DEPOSIT OF REVENUE. Notwithstanding any other law to the contrary, all money collected by the board under this chapter shall be deposited in the state treasury to the credit of the Texas Department of Motor Vehicles fund.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1287 (H.B. 2202), Sec. 4, eff. September 1, 2013.

Sec. 2301.160. TOLLING OF TIME LIMIT DURING MEDIATION. A time limit relating to a board proceeding that is imposed by this chapter on the board or on a dealer is tolled during the pendency of mediation required by this chapter or by a franchise agreement.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.607(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 2301.201. PUBLIC INTEREST INFORMATION. (a) The director or the director's designee shall prepare information describing the functions of the board and the procedures by which complaints or protests are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.202. COMPLAINTS; RECORDS. (a) The board shall provide to a person who files a complaint, and to each person that is the subject of the complaint, information about the board's policies and procedures relating to complaint investigation and resolution.

(b) The board shall keep an information file about each complaint filed with the board that the board has authority to resolve. The board shall keep the following information for each complaint filed by the board for the purpose of enforcing this chapter:

- (1) the date the complaint is filed;
- (2) the name of the person filing the complaint;
- (3) the subject matter of the complaint;
- (4) each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and

(6) if the board does not take action on the complaint, an explanation of the reasons that action was not taken.

(c) If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an ongoing board investigation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.608(a), eff. Sept. 1, 2003.

Sec. 2301.203. COMPLAINT INVESTIGATION AND DISPOSITION. (a) If the board has reason to believe, through receipt of a complaint or otherwise, that a violation of this chapter or a rule, order, or decision of the board has occurred or is likely to occur, the board shall conduct an investigation unless it determines that the complaint is frivolous or for the purpose of harassment.

(b) If the investigation establishes that a violation of this chapter or a rule, order, or decision of the board has occurred or is likely to occur, the board shall initiate proceedings as it determines appropriate to enforce this chapter or its rules, orders, and decisions.

(c) The board may not file a complaint alleging a violation of this chapter or a board rule relating to advertising until the board has notified the license holder involved of the alleged violation and given the license holder an opportunity to cure the violation without further proceedings or liability.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.204. COMPLAINT CONCERNING VEHICLE DEFECT. (a) The owner of a motor vehicle or the owner's designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer's, converter's, or distributor's warranty agreement applicable to the vehicle.

(b) The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty.

(c) The owner may also invoke the board's jurisdiction by sending a copy of the complaint to the board.

(d) A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.205. NOTICE OF COMPLAINT PROCEDURE. (a) A franchised dealer shall provide notice of the complaint procedures provided by Section 2301.204 and Subchapter M to each person to whom the dealer sells a new motor vehicle.

(b) The board may require its approval of the contents of the notice required by Subsection (a) or may prescribe the contents of the notice.

(c) The failure to provide notice as required by this section is a violation of this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

#### **SUBCHAPTER F. LICENSE REQUIREMENTS**

Sec. 2301.251. LICENSE REQUIRED: GENERALLY. (a) Unless a person holds a license issued under this chapter authorizing the activity, the person may not:

(1) engage in business as, serve in the capacity of, or act as a dealer, manufacturer, distributor, converter, representative, vehicle lessor, or vehicle lease facilitator in this state; or

(2) perform or offer to perform repair services on a motor vehicle under a franchise and a motor vehicle manufacturer's warranty, regardless of whether the person sells or offers to sell motor vehicles at the same location.

(b) A franchised dealer must have both a franchised motor vehicle dealer's general distinguishing number issued under Chapter 503, Transportation Code, and a license issued under this chapter.

(c) A manufacturer or distributor that directly or indirectly reimburses another person to perform warranty repair services on a vehicle is engaged in business in this state regardless of whether the manufacturer sells or offers for sale new motor vehicles in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.252. LICENSE REQUIRED: SALE OF NEW MOTOR VEHICLES.

(a) A person may not engage in the business of buying, selling, or exchanging new motor vehicles unless the person:

(1) holds a franchised dealer's license issued under this chapter for the make of new motor vehicle being bought, sold, or exchanged; or

(2) is a bona fide employee of the holder of a franchised dealer's license.

(b) For purposes of this section:

(1) the make of a conversion is that of the chassis manufacturer;

(2) the make of a motor home is that of the motor home manufacturer;

(3) the make of an ambulance is that of the ambulance manufacturer; and

(4) the make of a fire-fighting vehicle is that of the fire-fighting vehicle manufacturer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.609(a), eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 4, eff. September 1, 2011.

Sec. 2301.253. LICENSE REQUIRED: VEHICLE LEASE FACILITATORS.

Unless a person holds a vehicle lease facilitator license and complies with this chapter, the person may not:

(1) act in the capacity of or engage in the business of a vehicle lease facilitator;

(2) hold the person out to any other person as a "leasing company," "leasing agent," "lease facilitator," or similar title, directly or indirectly engaged in the business of a vehicle lease facilitator; or

(3) otherwise engage in the solicitation or procurement of a prospective lessee for a motor vehicle that is not titled in the

name of and registered to the person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.254. LICENSE NOT REQUIRED FOR CERTAIN VEHICLE LESSORS OR VEHICLE LEASE FACILITATORS. (a) A person is not required to obtain a license to act as a vehicle lessor or a vehicle lease facilitator if the person is:

(1) a state or federally chartered financial institution or a regulated subsidiary of the financial institution; or

(2) a trust or other entity that owns an interest in a vehicle lease and the vehicle that is the subject of the lease, if the lease covering the vehicle is initiated, managed, serviced, and administered by a licensed vehicle lessor.

(b) A franchised dealer is not required to have a vehicle lessor or vehicle lease facilitator license to engage in any capacity in the business of leasing a motor vehicle that the dealer owns and is licensed under this chapter to sell.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.255. NONFRANCHISED DEALERS; GENERAL DISTINGUISHING NUMBER. (a) A nonfranchised dealer may not operate as a dealer unless the person holds a general distinguishing number. A nonfranchised dealer is not required to obtain an additional license under this chapter.

(b) For purposes of a nonfranchised dealer, a reference to a license in this chapter means a general distinguishing number.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.256. REVIEW OF NEW APPLICATIONS. A new application for a license under this chapter shall be reviewed and may be investigated to determine compliance with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.257. APPLICATION FOR DEALER'S LICENSE. (a) An application for a dealer's license must be on a form prescribed by the department. The application must include:

(1) the information required by Chapter 503, Transportation Code; and

(2) information the board determines by rule is necessary to determine the applicant's qualifications to adequately serve the public.

(b) If a material change occurs in the information included in an application for a dealer's license, the dealer shall notify the department of the change within a reasonable time. The department shall prescribe a form for the disclosure of the change.

(c) A franchised dealer must apply for a separate license under this section for each separate and distinct dealership showroom as determined by the department. Before changing a location, a dealer must obtain a new license for that location.

(d) The act of filing an application under this section or a form prescribed under this section does not establish the applicant as a franchised dealer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 732 (H.B. 2651), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 5, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 8, eff. September 1, 2013.

Sec. 2301.2575. REQUEST FOR DEALER'S LICENSE APPLICATION CONFIDENTIAL. Notwithstanding any other law or rule, a request for an application for a dealer's license is confidential, is not an open record, and is not available for public inspection.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.610(a), eff. Sept. 1, 2003.

Sec. 2301.258. GENERAL REQUIREMENTS FOR APPLICATION FOR MANUFACTURER'S, DISTRIBUTOR'S, CONVERTER'S, OR REPRESENTATIVE'S LICENSE. An application for a manufacturer's, distributor's, converter's, or representative's license must be on a form prescribed by the department. The application must include information the department determines necessary to fully determine the qualifications of an applicant, including financial resources, business integrity and experience, facilities and personnel for serving franchised dealers, and other information the department determines pertinent to safeguard the public interest and welfare.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 6, eff. September 1, 2011.

Sec. 2301.259. APPLICATION FOR MANUFACTURER'S LICENSE. (a) An applicant for a manufacturer's license must provide a list of each distributor or representative acting for the applicant and each dealer franchised to sell the applicant's products in this state and their respective locations. An applicant for or holder of a manufacturer's license must inform the board of a change to the list not later than the 15th day after the date of the change. Information submitted under this subsection becomes a part of the application.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1135, Sec. 140(1), eff. September 1, 2013.

(c) An application for a manufacturer's license must include a statement regarding the manufacturer's compliance with Subchapter I and Sections 2301.451-2301.476.

(d) An application for a manufacturer's license must specify:

(1) the preparation and delivery obligations of the manufacturer's franchised dealers before delivery of a new motor vehicle to a retail purchaser; and

(2) the schedule of compensation to be paid to a franchised dealer for the work and service performed under Subdivision (1).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.611(a), eff. Sept. 1, 2003.



Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 140(1), eff. September 1, 2013.

Sec. 2301.260. APPLICATION FOR DISTRIBUTOR'S LICENSE. (a) An application for a distributor's license must disclose:

- (1) the manufacturer for whom the distributor will act;
- (2) whether the manufacturer is licensed in this state;
- (3) the persons in this state who will be responsible for compliance with the warranty covering the motor vehicles to be sold;
- (4) the terms of the contract under which the distributor will act for the manufacturer; and
- (5) the franchised dealers with whom the distributor will do business.

(b) An applicant for a distributor's license that has a responsibility under a warranty agreement must include a statement regarding the manufacturer's compliance with Subchapter I and Sections 2301.451-2301.476.

(c) An applicant for or holder of a distributor's license must inform the board of a change in the information provided under this section not later than the 15th day after the date of the change. Information submitted under this subsection becomes a part of the application.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 9, eff. September 1, 2013.

Sec. 2301.261. APPLICATION FOR VEHICLE LESSOR'S LICENSE. (a) An application for a vehicle lessor's license must:

- (1) be on a form prescribed by the department;
- (2) contain evidence of compliance with Chapter 503, Transportation Code, if applicable; and
- (3) state other information required by the department.

(b) This chapter does not require a separate license for each employee of a vehicle lessor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 7, eff. September 1, 2011.

Sec. 2301.262. APPLICATION FOR VEHICLE LEASE FACILITATOR LICENSE. (a) An application for a vehicle lease facilitator license must be on a form prescribed by the department and contain the information required by the department.

(b) This chapter does not require a separate license for each employee of a vehicle lease facilitator.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 8, eff. September 1, 2011.

Sec. 2301.263. LICENSE ISSUED SUBJECT TO NEW LAW AND RULES. A license issued under this chapter is subject to each provision of this chapter and board rule in effect on the date the license is issued and each provision of this chapter and board rule that takes effect during the term of the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.264. LICENSE FEES.

(d) The department may refund a fee collected under this chapter that is not due or that exceeds the amount due.

(a) The annual fees for a license issued under this chapter are:

(1) \$900 for a manufacturer or distributor, plus \$20 for each dealer franchised by the manufacturer or distributor;

(2) for a franchised dealer:

(A) \$175, if the dealer sold fewer than 201 new motor vehicles during the preceding calendar year;

(B) \$275, if the dealer sold more than 200 but fewer than 401 new motor vehicles during the preceding calendar year;

(C) \$400, if the dealer sold more than 400 but fewer

than 801 new motor vehicles during the preceding calendar year;

(D) \$500, if the dealer sold more than 800 but fewer than 1,201 new motor vehicles during the preceding calendar year;

(E) \$625, if the dealer sold more than 1,200 but fewer than 1,601 new motor vehicles during the preceding calendar year;

(F) \$750, if the dealer sold more than 1,600 new motor vehicles during the preceding calendar year; and

(G) \$100 for each location separate from the dealership at which the dealer does not offer motor vehicles for sale but performs warranty service work on vehicles the dealer is franchised and licensed to sell;

(3) \$100 for a representative;

(4) \$375 for a converter;

(5) for a vehicle lessor:

(A) \$175, if the lessor leased 200 or fewer motor vehicles during the preceding calendar year;

(B) \$275, if the lessor leased more than 200 but fewer than 401 motor vehicles during the preceding calendar year;

(C) \$400, if the lessor leased more than 400 but fewer than 801 motor vehicles during the preceding calendar year;

(D) \$500, if the lessor leased more than 800 but fewer than 1,201 motor vehicles during the preceding calendar year;

(E) \$625, if the lessor leased more than 1,200 but fewer than 1,601 motor vehicles during the preceding calendar year; and

(F) \$750, if the lessor leased more than 1,600 motor vehicles during the preceding calendar year; and

(6) \$375 for a vehicle lease facilitator.

(b) A person who fails to apply for a license required under this chapter or fails to pay a fee within the required time must pay a penalty equal to 50 percent of the amount of the fee for each 30 days after the date the license is required or the fee is due.

(c) The department may prorate the fee for a representative's license to allow the representative's license and the license of the manufacturer or distributor who employs the representative to expire on the same day.

(e) The fee for an amendment to a license under this chapter is \$25.

(f) The fee for a duplicate license under this chapter is \$50.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.612(a), eff.  
Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 732 (H.B. 2651), Sec. 2, eff.  
September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 9, eff.  
September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 10, eff.  
September 1, 2013.

Sec. 2301.265. SERVICE OF PROCESS ON LICENSE HOLDER. Obtaining a license under this chapter constitutes doing business in this state. A license holder who fails to designate an agent for service of process is considered to have designated the secretary of state as the agent for receipt of service of process.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.266. DUPLICATE LICENSE. The board may:

- (1) issue a duplicate license for any license the board issues;
  - (2) charge a fee for the issuance of a duplicate license;
- and
- (3) adopt rules applicable to the issuance of a duplicate license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.613(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER G. LICENSE EXPIRATION AND RENEWAL**

Sec. 2301.301. LICENSE TERM AND RENEWAL. (a) Licenses issued under this chapter are valid for the period prescribed by the board.

(b) The department may issue a license for a term of less than the period prescribed under Subsection (a) to coordinate the expiration dates of licenses held by a person that is required to obtain more than one license to perform activities under this chapter.

(c) The board by rule may implement a system under which licenses expire on various dates during the year. For a year in which a license expiration date is changed, the fee for the license shall be prorated so that the license holder pays only that portion of the fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the entire license renewal fee is payable.

(d) A license renewal may be administratively granted unless a protest is made to the board.

(e) If the board prescribes the term of a license under this chapter for a period other than one year, the board shall prorate the applicable annual fee required under this chapter as necessary to reflect the term of the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 732 (H.B. 2651), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 732 (H.B. 2651), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 10, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 11, eff. September 1, 2013.

Sec. 2301.302. NOTICE OF LICENSE EXPIRATION. The department shall notify each person licensed under this chapter of the date of license expiration and the amount of the fee required for license renewal. The notice shall be sent at least 30 days before the date of license expiration.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 11, eff. September 1, 2011.

Sec. 2301.303. RENEWAL OF DEALER'S LICENSE. A dealer shall renew the dealer's license on an application prescribed by the department. The department shall include in the renewal application

a request for disclosure of material changes described by Section 2301.257.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 732 (H.B. 2651), Sec. 5, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 12, eff. September 1, 2013.

Sec. 2301.304. PROCEDURE FOR RENEWAL OF CERTAIN LICENSES. The holder of a manufacturer's, distributor's, converter's, or representative's license may apply for a renewal of the license by complying with the application process specified by this chapter and board rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

#### **SUBCHAPTER H. DEALERS**

Sec. 2301.351. GENERAL PROHIBITION. A dealer may not:

- (1) violate a board rule;
- (2) aid or abet a person who violates this chapter, Chapter 503, Transportation Code, or a rule adopted under those chapters; or
- (3) use false, deceptive, or misleading advertising relating to the sale or lease of motor vehicles.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 12, eff. September 1, 2011.

Sec. 2301.352. PROHIBITION: REQUIRING ADDITIONAL EQUIPMENT AFTER RETAIL SALE. A franchised dealer may not require as a condition of the sale and delivery of a new motor vehicle a retail purchaser of the vehicle to purchase special features, equipment, parts, or accessories that the purchaser did not order or desire and that were not already installed on the vehicle at the time of sale.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.353. PROHIBITION: PERFORMANCE OF OBLIGATION UNDER AGREEMENT WITH MANUFACTURER. A franchised dealer may not fail to perform an obligation placed on:

(1) the selling dealer in connection with the preparation and delivery of a new motor vehicle for retail sale as provided in the manufacturer's preparation and delivery agreements that are applicable to the vehicle; or

(2) the dealer in connection with the manufacturer's warranty agreements.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. [2741](#)), Sec. 13, eff. September 1, 2013.

Sec. 2301.354. USE OF SIGNS. (a) A franchised dealer may not operate without appropriate signs that:

(1) are readily and easily visible to the public; and

(2) identify the dealer's place of business and the products the dealer offers for sale.

(b) To the extent of a conflict between this section and another law, including an ordinance, this section prevails.

(c) If a dispute arises under this section:

(1) the board has exclusive jurisdiction to determine whether a sign complies with this section; and

(2) the board shall uphold an ordinance of a home-rule municipality and protect a franchised dealer from retribution by a manufacturer or distributor for complying with the ordinance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.355. USE OF MULTIPLE LOCATIONS. (a) A franchised dealer may conduct business at more than one location, except that the dealer may establish and maintain a separate location for the display and sale of new motor vehicles only if expressly authorized by the dealer's franchise and license.

(b) A franchised dealer must hold a separate license for each separate and distinct dealership as required by Section 2301.257.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.356. NOTICE OF CERTAIN PROPOSED CHANGES. A licensed dealer shall promptly notify the board of any proposed change in its ownership, location, franchise, or any other matter the board by rule may require.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.357. PROHIBITED FEE. (a) A franchised dealer may not directly or indirectly pay a fee to a vehicle lessor or a vehicle lease facilitator.

(b) For purposes of Subsection (a), an adjustment in the purchase price paid for the lease or leased vehicle is not a fee. This subsection does not authorize a fee for referring leases or prospective lessees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.358. VEHICLE SHOW OR EXHIBITION. (a) A person who holds a license issued under this chapter may not participate in a new motor vehicle show or exhibition unless:

(1) the person provides the department with written notice before the date the show or exhibition opens; and

(2) the department grants written approval.

(b) A person who holds a license issued under this chapter may not sell or offer for sale a new motor vehicle at a show or exhibition, but dealership personnel may be present to aid in showing and exhibiting new motor vehicles.

(c) This section does not prohibit the sale of a towable recreational vehicle, motor home, ambulance, fire-fighting vehicle, or tow truck at a show or exhibition if:

(1) the show or exhibition is approved by the department; and

(2) the sale is not otherwise prohibited by law.



(d) A rule adopted by the board regulating the off-site display or sale of towable recreational vehicles must include a provision that authorizes the display and sale of towable recreational vehicles at a private event in a trade area that would not otherwise qualify for the private event under the application of general participation requirements for organized dealer shows and exhibitions.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 85, Sec. 1, eff. Sept. 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 13, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 14, eff. September 1, 2013.

Sec. 2301.359. TRANSFER OF OWNERSHIP BY DEALER. (a) A dealer must notify the manufacturer or distributor of a vehicle the dealer is franchised to sell of the dealer's decision to assign, sell, or otherwise transfer a franchise or a controlling interest in the dealership to another person. The notice is the application by the dealer for approval by the manufacturer or distributor of the transfer.

(b) Notice under Subsection (a) must:

(1) be in writing and include the prospective transferee's name, address, financial qualifications, and business experience; and

(2) be sent by certified mail, return receipt requested.

(c) The notice must be accompanied by:

(1) a copy of pertinent agreements regarding the proposed assignment, sale, or transfer;

(2) completed application forms and related information generally used by the manufacturer or distributor in reviewing prospective dealers, if the forms are on file with the board; and

(3) the prospective transferee's written agreement to comply with the franchise to the extent that the franchise is not in conflict with this chapter.

(d) Not later than the 60th day after the date of receipt of a notice and application under this section, a manufacturer or distributor shall determine whether a dealer's prospective transferee

is qualified and shall send a letter by certified mail, return receipt requested, informing the dealer of the approval or the unacceptability of the prospective transferee. If the prospective transferee is not acceptable, the manufacturer or distributor shall include a statement setting forth the material reasons for the rejection.

(e) A manufacturer or distributor may not unreasonably withhold approval of an application filed under Subsection (a).

(f) An application filed under this section is approved unless rejected by the manufacturer or distributor in the manner provided by this section.

(g) In determining whether to approve an application filed under Subsection (a), a manufacturer or distributor may consider:

(1) the prospective transferee's financial and operational performance as a franchised dealer, if the prospective transferee is or has been a franchised dealer;

(2) the prospective transferee's moral character; or

(3) the extent to which a prospective transferee satisfies any criteria developed by the manufacturer or distributor and made available to the prospective transferee, specifically to determine the business experience and financial qualifications of a prospective transferee.

(h) A manufacturer or distributor may consider the criteria developed under Subsection (g)(3) only if the criteria are in writing, are reasonable, and are uniformly applied in similar situations.

(i) It is unreasonable for a manufacturer or distributor to reject a prospective transferee who is of good moral character and who satisfies the criteria developed under Subsection (g)(3).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 2, eff. September 1, 2011.

Sec. 2301.360. REVIEW BY BOARD FOLLOWING DENIAL OF TRANSFER.

(a) A dealer whose application is rejected under Section 2301.359 may file a protest with the board. A protest filed under this section is a contested case.

(b) In a protest under this section, the board must determine whether the rejection was reasonable under the criteria described by Section 2301.359. The burden is on the manufacturer or distributor to prove that the prospective transferee is not qualified under the criteria. The board shall enter an order holding that the prospective transferee either is qualified or is not qualified.

(c) If the board's order is that the prospective transferee is qualified, the dealer's franchise is amended to reflect the change in franchisee, and the manufacturer or distributor shall accept the transfer for all purposes.

(d) If the board's order is that the prospective transferee is not qualified, the board may include in the order:

(1) specific reasons why the prospective transferee is not qualified; and

(2) specific conditions under which the prospective transferee would be qualified.

(e) If the board's order that a prospective transferee is not qualified includes specific conditions under which the prospective transferee would be qualified, the board may retain jurisdiction of the dispute for a time certain to allow the dealer and prospective transferee to meet the conditions.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 2, eff. September 1, 2009.

Sec. 2301.361. INDEPENDENT MOBILITY MOTOR VEHICLE DEALER. (a) Notwithstanding any other law or rule, an independent mobility motor vehicle dealer may:

(1) purchase or otherwise acquire a new motor vehicle with a lowered floor or frame or a raised roof and door to fit or equip the motor vehicle for retail sale as a mobility motor vehicle;

(2) display a new mobility motor vehicle to a person with a disability to fit or equip the vehicle as a mobility motor vehicle for the person; and

(3) sell or arrange for the sale and delivery of a new mobility motor vehicle to a purchaser at the independent mobility motor vehicle dealer's place of business if the transaction occurs

through or by a franchised dealer of the motor vehicle's chassis line make.

(b) An independent mobility motor vehicle dealer who purchased or acquired a new motor vehicle from a franchised dealer to equip the vehicle as a mobility motor vehicle may not advertise the vehicle for sale until the vehicle is fitted or equipped as a mobility motor vehicle.

(c) An independent mobility motor vehicle dealer may not sell or offer to sell a new motor vehicle other than a new mobility motor vehicle.

Added by Acts 2007, 80th Leg., R.S., Ch. 710 (H.B. [2216](#)), Sec. 2, eff. June 15, 2007.

Sec. 2301.362. OFFSITE SALES. (a) Except as provided by Subsection (b) and Sections 2301.358(c) and (d), a dealer may only sell or offer to sell a motor vehicle from an established and permanent place of business:

- (1) that is approved by the division; and
- (2) for which a general distinguishing number has been

issued.

(b) A dealer may sell or offer to sell a motor vehicle online through an advertisement on the Internet to a buyer who never personally appears at the dealer's established and permanent place of business.

Added by Acts 2007, 80th Leg., R.S., Ch. 1363 (H.B. [2559](#)), Sec. 1, eff. June 15, 2007.

Renumbered from Occupations Code, Section 2301.361 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 27.001(74), eff. September 1, 2009.

Sec. 2301.363. REQUIRED NOTICE. A dealer that sells or exchanges a motor home or a towable recreational vehicle subject to inspection under Chapter 548, Transportation Code, shall notify the buyer in writing at the time of the sale or exchange that the motor vehicle is subject to inspection requirements.

Added by Acts 2009, 81st Leg., R.S., Ch. 717 (H.B. [2918](#)), Sec. 1, eff.

September 1, 2009.

**SUBCHAPTER I. WARRANTIES: REIMBURSEMENT OF DEALER**

Sec. 2301.401. WARRANTY, PREPARATION, AND DELIVERY REQUIREMENTS. (a) On request, a manufacturer or distributor shall provide to the department a copy of the current requirements the manufacturer or distributor imposes on its dealers with respect to the dealer's:

(1) duties under the manufacturer's or distributor's warranty; and

(2) vehicle preparation and delivery obligations.

(b) Warranty or preparation and delivery requirements placed on a dealer by a manufacturer are not enforceable unless the requirements are reasonable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 14, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 15, eff. September 1, 2013.

Sec. 2301.402. RATE OF COMPENSATION. (a) A manufacturer or distributor shall fairly and adequately compensate its dealers for warranty work.

(b) A manufacturer or distributor may not pay or reimburse a dealer an amount of money for warranty work that is less than the amount the dealer charges a retail customer for similar nonwarranty work.

(c) In computing the amount of money a dealer charges a retail customer under Subsection (b), the manufacturer or distributor shall use the greater of:

(1) the average labor rate charged during the preceding six months by the dealer on 100 sequential nonwarranty repair orders, exclusive of routine maintenance; or

(2) the average labor rate charged for 90 consecutive days during the preceding six months by the dealer for nonwarranty repairs, exclusive of routine maintenance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.403. ADJUSTMENT OF WARRANTY LABOR RATE. (a) A dealer may request an adjustment in the dealer's warranty labor rate. The request must be sent to the manufacturer or distributor by certified mail, return receipt requested, and must state the requested rate and include information reasonably necessary to enable the manufacturer or distributor to adequately evaluate the request.

(b) Not later than the 60th day after the date of receipt of a request under this section, the manufacturer or distributor shall provide written notice to the requesting dealer of the approval or disapproval of the request. If the request is disapproved, the manufacturer or distributor shall state the reasons for the disapproval.

(c) A requesting dealer may file a protest with the board if the manufacturer or distributor:

- (1) disapproves the request; or
- (2) fails to respond within the time required by this

section.

(d) After a protest is filed, the board may uphold the manufacturer's or distributor's decision only if the manufacturer or distributor proves by a preponderance of the evidence that the disapproval of the request or failure to respond was reasonable.

(e) If the board does not determine that the disapproval of the request or failure to respond was reasonable, the board shall order the requested rate into effect as of the 60th day after the receipt of the request by the manufacturer or distributor.

(f) Except by agreement of the parties, a warranty labor rate established under this subchapter may not be adjusted more often than once a year.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.404. TIME FOR PAYMENT. (a) A manufacturer or distributor shall pay a dealer's claim for reimbursement for warranty work or dealer preparation and delivery work not later than the 30th day after the date of approval of the claim.

(b) A claim that is not disapproved before the 31st day after

the date of receipt is considered approved.

(c) If a claim is disapproved, the manufacturer or distributor shall provide the dealer written notice of the reasons for the disapproval.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.405. CHARGE BACK TO DEALER. (a) A manufacturer or distributor may not charge back to a dealer money paid by the manufacturer or distributor to satisfy a claim approved and paid under this subchapter unless the manufacturer or distributor shows that:

- (1) the claim was false or fraudulent;
- (2) repair work was not properly performed or was unnecessary to correct a defective condition; or
- (3) the dealer who made the claim failed to substantiate the claim as provided by the manufacturer's or distributor's requirements that were enforceable under Section 2301.401 at the time the claim was filed.

(b) A manufacturer or distributor may not audit a claim filed under this subchapter after the first anniversary of the date the claim is submitted unless the manufacturer or distributor has reasonable grounds to suspect that the claim was fraudulent.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.406. PROHIBITED REQUIREMENTS FOR PAYMENT. A manufacturer or distributor may not require, as a prerequisite to the payment of a claim for reimbursement, that a dealer file a statement of actual time spent in performance of labor, unless actual time is the basis for reimbursement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

#### **SUBCHAPTER J. MANUFACTURERS, DISTRIBUTORS, AND REPRESENTATIVES**

Sec. 2301.451. PROHIBITION: ITEMS NOT ORDERED. A manufacturer, distributor, or representative may not require or attempt to require a franchised dealer to order, accept delivery of,

or pay anything of value, directly or indirectly, for a motor vehicle or an appliance, part, accessory, or any other commodity unless the dealer voluntarily ordered or contracted for the item.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.452. DELIVERY OF MOTOR VEHICLE OR PART. (a) A manufacturer, distributor, or representative shall deliver in a reasonable quantity and within a reasonable time to a franchised dealer who holds a franchise for a motor vehicle sold or distributed by the manufacturer, distributor, or representative any new motor vehicle or part or accessory for a new motor vehicle as covered by the franchise if the vehicle, part, or accessory is publicly advertised as being available for delivery or is actually being delivered.

(b) This section does not apply to a delivery prevented by:

- (1) an act of God;
- (2) a work stoppage or delay because of a strike or labor dispute;
- (3) a freight embargo; or
- (4) another cause beyond the control of the manufacturer, distributor, or representative.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.453. TERMINATION OR DISCONTINUANCE OF FRANCHISE. (a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not terminate or discontinue a franchise with a franchised dealer or directly or indirectly force or attempt to force a franchised dealer to relocate or discontinue a line-make or parts or products related to that line-make unless the manufacturer, distributor, or representative provides notice of the termination or discontinuance as required by Subsection (c) and:

- (1) the manufacturer, distributor, or representative receives the dealer's informed written consent;
- (2) the appropriate time for the dealer to file a protest under Subsection (e) has expired; or
- (3) the board makes a determination of good cause under Subsection (g).



(b) A termination or discontinuance to which this section applies includes a termination or discontinuance of a franchise that results from a change by a manufacturer, distributor, or representative of its:

- (1) distributor;
- (2) method of distribution of its products in this state;

or

- (3) business structure or ownership.

(c) Except as provided by Subsection (d), the manufacturer, distributor, or representative must provide written notice by registered or certified mail to the dealer and the board stating the specific grounds for the termination or discontinuance. The notice must:

- (1) be received not later than the 60th day before the effective date of the termination or discontinuance; and
- (2) contain on its first page a conspicuous statement that reads: "NOTICE TO DEALER: YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE TEXAS MOTOR VEHICLE BOARD IN AUSTIN, TEXAS, AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE PROPOSED TERMINATION OR DISCONTINUANCE OF YOUR FRANCHISE UNDER THE TERMS OF CHAPTER 2301, OCCUPATIONS CODE, IF YOU OPPOSE THIS ACTION."

(d) Notice may be provided not later than the 15th day before the effective date of termination or discontinuance if a licensed dealer fails to conduct its customary sales and service operations during its customary business hours for seven consecutive business days. This subsection does not apply if the failure is caused by:

- (1) an act of God;
- (2) a work stoppage or delay because of a strike or labor dispute;
- (3) an order of the board; or
- (4) another cause beyond the control of the dealer.

(e) A franchised dealer may file a protest with the board of the termination or discontinuance not later than the latter of:

- (1) the 60th day after the date of the receipt of the notice of termination or discontinuance; or
- (2) the time specified in the notice.

(f) After a timely protest is filed under Subsection (e), the board shall notify the party seeking the termination or discontinuance that:

- (1) a timely protest has been filed;

(2) a hearing is required under this chapter; and

(3) the party may not terminate or discontinue the franchise until the board issues its final order or decision.

(g) After a hearing, the board shall determine whether the party seeking the termination or discontinuance has established by a preponderance of the evidence that there is good cause for the proposed termination or discontinuance.

(h) If a franchise is terminated or discontinued, the manufacturer, distributor, or representative shall establish another franchise in the same line-make within a reasonable time unless it is shown to the board by a preponderance of the evidence that the community or trade area cannot reasonably support such a dealership. If this showing is made, a license may not be issued for a franchised dealer in the same area until a change in circumstances is established.

(i) A manufacturer that changes its distributor or the method of distribution of its products in this state in a manner that results in unlawful termination or discontinuance of a franchise without good cause may not directly or indirectly distribute its products in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.614, eff. Sept. 1, 2003.

Sec. 2301.454. MODIFICATION OR REPLACEMENT OF FRANCHISE. (a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not modify or replace a franchise if the modification or replacement would adversely affect to a substantial degree the dealer's sales, investment, or obligations to provide service to the public, unless:

(1) the manufacturer, distributor, or representative provides written notice by registered or certified mail to each affected dealer and the department of the modification or replacement; and

(2) if a protest is filed under this section, the board approves the modification or replacement.

(b) The notice required by Subsection (a)(1) must:

(1) be given not later than the 60th day before the date of

the modification or replacement; and

(2) contain on its first page a conspicuous statement that reads: "NOTICE TO DEALER: YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE TEXAS MOTOR VEHICLE BOARD IN AUSTIN, TEXAS, AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE PROPOSED MODIFICATION OR REPLACEMENT OF YOUR FRANCHISE UNDER THE TERMS OF CHAPTER 2301, OCCUPATIONS CODE, IF YOU OPPOSE THIS ACTION."

(c) A franchised dealer may file a protest with the board of the modification or replacement not later than the latter of:

(1) the 60th day after the date of the receipt of the notice; or

(2) the time specified in the notice.

(d) After a protest is filed, the board shall determine whether the manufacturer, distributor, or representative has established by a preponderance of the evidence that there is good cause for the proposed modification or replacement. The prior franchise continues in effect until the board resolves the protest.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.615, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 15, eff. September 1, 2011.

Sec. 2301.455. DETERMINATION OF GOOD CAUSE FOR TERMINATION, DISCONTINUANCE, MODIFICATION, OR REPLACEMENT. (a) Notwithstanding the terms of any franchise, in determining whether good cause has been established under Section 2301.453 or 2301.454, the board shall consider all existing circumstances, including:

(1) the dealer's sales in relation to the sales in the market;

(2) the dealer's investment and obligations;

(3) injury or benefit to the public;

(4) the adequacy of the dealer's service facilities, equipment, parts, and personnel in relation to those of other dealers of new motor vehicles of the same line-make;

(5) whether warranties are being honored by the dealer;

(6) the parties' compliance with the franchise, except to

the extent that the franchise conflicts with this chapter; and

(7) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms, oppression, adhesion, and the parties' relative bargaining power.

(b) The desire of a manufacturer, distributor, or representative for market penetration does not by itself constitute good cause.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.456. USE OF ADVERTISING. A manufacturer, distributor, or representative may not:

(1) use any false, deceptive, or misleading advertising;  
or

(2) notwithstanding the terms of any franchise, require that a franchised dealer join, contribute to, or affiliate with, directly or indirectly, any advertising association.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.457. PROHIBITION: CHANGE OF FRANCHISED DEALER'S CAPITAL STRUCTURE. Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not prevent a franchised dealer who meets reasonable capital requirements from reasonably changing:

(1) the capital structure of the dealership; or

(2) the means by or through which the dealer finances the operation of the dealership.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.458. PROHIBITION: CHANGE IN DEALER OWNERSHIP. Notwithstanding the terms of any franchise, except as provided by Section 2301.359 or 2301.360, a manufacturer, distributor, or representative may not fail to give effect to or attempt to prevent the sale or transfer of:

(1) a dealer, dealership, or franchise;

- (2) an interest in a dealer, dealership, or franchise; or
- (3) the management of a dealer, dealership, or franchise.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.459. PROHIBITION: USE OF PROMISSORY NOTE, SECURITY AGREEMENT, OR INSURANCE POLICY. Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not require or attempt to require that a franchised dealer assign to or act as an agent for a manufacturer, distributor, or representative to secure:

- (1) a promissory note or security agreement given in connection with the sale or purchase of a new motor vehicle; or
- (2) an insurance policy on or having to do with the operation of a vehicle that is sold.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.460. WARRANTY, PREPARATION, OR DELIVERY AGREEMENT OBLIGATIONS. Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not, after a complaint and a hearing, fail or refuse to perform an obligation placed on the manufacturer in connection with the preparation, delivery, and warranty of a new motor vehicle as provided in the manufacturer's warranty, preparation, and delivery agreements.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.616, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. [2741](#)), Sec. 16, eff. September 1, 2013.

Sec. 2301.461. LIABILITY OF FRANCHISED DEALER. (a) Notwithstanding the terms of any franchise or any other law, a franchised dealer's preparation, delivery, and warranty obligations are the dealer's sole responsibility for product liability as between the dealer and a manufacturer or distributor.

(b) Notwithstanding the terms of any franchise or any other law, a manufacturer or distributor shall reimburse the dealer for any loss incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer having been named a party in a product liability action, except for a loss caused by the dealer's:

- (1) failure to comply with an obligation described by Subsection (a);
- (2) negligence or intentional misconduct; or
- (3) modification of a product without the authorization of the manufacturer or distributor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.617, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. [2741](#)), Sec. 17, eff. September 1, 2013.

Sec. 2301.462. SUCCESSION FOLLOWING DEATH OF FRANCHISED DEALER.

(a) Notwithstanding the terms of any franchise, except as provided by Subsection (b), a manufacturer, distributor, or representative shall honor the succession to a dealership by a legal heir or devisee under:

- (1) the will of a franchised dealer; or
- (2) the laws of descent and distribution of this state.

(b) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may refuse to honor a succession if, after notice and hearing, it is shown to the board that the result of the succession will be detrimental to the public interest and to the representation of the manufacturer or distributor.

(c) This section does not prevent a franchised dealer, during the dealer's lifetime, from designating any person as a successor dealer by a written instrument filed with the manufacturer or distributor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.618, eff. Sept. 1, 2003.

Sec. 2301.463. PROHIBITION: PAYMENT OF REBATE BY FRANCHISED DEALER. Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not require a franchised dealer to directly or indirectly pay or assume any part of a refund, rebate, discount, or other financial adjustment made by the manufacturer, distributor, or representative to, or in favor of, a customer of the dealer, unless the dealer voluntarily agrees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.464. RELOCATION OF FRANCHISE. (a) Not later than the 60th day before the date a franchised dealer proposes to begin the relocation of a dealership, the dealer must provide written notice of the dealer's intent to relocate to the dealer's manufacturer, distributor, or representative. The notice must be sent by certified mail, return receipt requested. Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not deny or withhold approval of a written application to relocate a franchise unless:

(1) the applicant receives written notice of the denial or withholding of approval not later than the 60th day after the date the application is received; and

(2) if the applicant files a protest with the board, the board makes a determination of reasonable grounds under this section.

(b) An application under Subsection (a) to relocate a franchise must contain information reasonably necessary to enable a manufacturer or distributor to adequately evaluate the application.

(c) If the applicant files a protest under Subsection (a)(2), the board shall hold a hearing. After the hearing, the board shall determine whether the manufacturer or distributor has established by a preponderance of the evidence that the grounds for the denial or withholding of approval of the relocation are reasonable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.619, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 3, eff. September 1, 2009.

Sec. 2301.465. PAYMENT TO FRANCHISED DEALER FOLLOWING TERMINATION OF FRANCHISE. (a) In this section:

(1) "Net cost" means the franchised dealer cost for a new, unsold, undamaged, and complete motor vehicle in a dealer's inventory:

(A) plus any charges by the manufacturer, distributor, or representative for distribution, delivery, and taxes; and

(B) less all allowances paid to the franchised dealer by the manufacturer, distributor, or representative.

(2) "Net discount value" is the net cost multiplied by the total mileage, exclusive of mileage placed on the motor vehicle before it was delivered to the dealer, divided by 100,000.

(b) Notwithstanding the terms of any franchise, after the termination of a franchise, a manufacturer, distributor, or representative shall pay to a franchised dealer or any lienholder, in accordance with the interest of each, the following amounts:

(1) the dealer cost of each new motor vehicle in the dealer's inventory with mileage of 5,000 miles or less, exclusive of mileage placed on the vehicle before it was delivered to the dealer, reduced by the net discount value of each vehicle, except that if a vehicle cannot be reduced by the net discount value, the manufacturer or distributor shall pay the dealer the net cost of the vehicle;

(2) the dealer cost of each new, unused, undamaged, and unsold part or accessory that:

(A) is in the current parts catalogue and is still in the original, resalable merchandising package and in an unbroken lot, except in the case of sheet metal, a comparable substitute for the original package may be used; and

(B) was purchased by the dealer either directly from the manufacturer or distributor or from an outgoing authorized dealer as a part of the dealer's initial inventory;

(3) the fair market value of each undamaged sign owned by the dealer that bears a trademark or tradename used or claimed by the manufacturer, distributor, or representative and that was purchased from or at the request of the manufacturer, distributor, or representative;

(4) the fair market value of all special tools, data processing equipment, and automotive service equipment owned by the dealer that:

(A) were recommended in writing and designated as



special tools and equipment;

(B) were purchased from or at the request of the manufacturer, distributor, or representative; and

(C) are in usable and good condition except for reasonable wear and tear;

(5) the cost of transporting, handling, packing, storing, and loading any property subject to repurchase under this section; and

(6) the depreciated value of computer software that was recommended and required in writing by the manufacturer, distributor, or representative.

(c) An amount described by Subsection (b) is due:

(1) for property described by Subsection (b)(1), not later than the 60th day after the date a franchise is terminated; and

(2) for all other property described by Subsection (b), not later than the 90th day after the date a franchise is terminated.

(d) As a condition of payment, a franchised dealer must comply with reasonable requirements provided by the franchise regarding the return of inventory.

(e) A manufacturer or distributor shall reimburse a franchised dealer for the dealer's cost for storing any property covered by this section:

(1) beginning on the 91st day after the date the franchise is terminated; or

(2) before the date described by Subdivision (1) if the dealer notifies the manufacturer or distributor of the commencement of storage charges within that period.

(f) On receipt of notice under Subsection (e)(2), a manufacturer or distributor may immediately take possession of the property by repurchase under this section.

(g) A manufacturer, distributor, or representative who fails to pay an amount within the time required by this section or at the time the dealer and any lienholder proffer good title before the time required for payment, is liable to the dealer for:

(1) the dealer cost, fair market value, or current price of the inventory, whichever amount is highest;

(2) interest on the amount due computed at the rate applicable to a judgment of a court; and

(3) reasonable attorney's fees and costs.

(h) Notwithstanding any other law, this section does not

require a manufacturer, distributor, or representative to repurchase a motor vehicle that:

(1) at the time of termination of the franchise had been in the dealer's inventory for at least 24 months after the date the dealer took delivery of the vehicle; or

(2) the dealer purchased not more than 30 days before the date of termination of the franchise solely in anticipation of the termination and, in the ordinary course of business, would not have purchased.

(i) For purposes of this section, a sale of the assets or stock of a dealership to a buyer who continues the operation of the dealership is not a termination of a franchise.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.620(a), (b), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 3, eff. September 1, 2011.

Sec. 2301.4651. ADDITIONAL PAYMENT TO FRANCHISED DEALER IN CERTAIN SITUATIONS. (a) This section applies to a manufacturer, distributor, or representative that terminates or discontinues a franchise by:

(1) discontinuing a line-make;  
(2) ceasing to do business in this state; or  
(3) changing the distributor or method of distribution of its products in this state.

(b) In addition to the duties placed on a manufacturer, distributor, or representative by Section 2301.465, a manufacturer, distributor, or representative to whom this section applies shall pay to the franchised dealer the following amounts as applicable:

(1) either:  
(A) the dealer's construction costs for a new dealership completed in the two years preceding the date of the termination or discontinuance described by Subsection (a); or  
(B) if the dealer does not have any costs described by

Paragraph (A), the fair monthly rental value of the dealership payable in cash each month beginning on the first day of the first month following the date of the termination or discontinuance described by Subsection (a) and ending on the earlier of:

(i) the first anniversary of the termination or discontinuance date; or

(ii) the date on which the dealer no longer owns the dealership;

(2) the dealer's costs for upgrading or substantially altering a dealership if the upgrades or alterations were completed or added in the two years preceding the date of the termination or discontinuance described by Subsection (a); and

(3) an amount equal to the value of the goodwill associated with the franchise as it existed on the day before the earlier of:

(A) the date of the termination or discontinuance described by Subsection (a); or

(B) the date on which the manufacturer, distributor, or representative announced its intention to terminate or discontinue the franchise in a manner described by Subsection (a).

(c) A franchised dealer receiving money under Subsection (b)(1)(B) shall:

(1) make a reasonable effort to earn income from a dealership after a termination or discontinuance described by Subsection (a); and

(2) inform the manufacturer, distributor, or representative of the dealer's efforts under Subdivision (1) and of any income earned from the dealership.

(d) The amounts to be paid under Subsection (b)(1) or (2) to the dealer by a manufacturer, distributor, or representative shall be based on the percentage of the total square footage of the dealership attributable to sales, service, and parts suggested by a manufacturer or distributor and allocated to the franchise being terminated or discontinued at the time of the termination or discontinuance.

(e) A franchised dealer receiving money under Subsection (b)(1) or (2) shall mitigate damages by listing the dealership for lease or sublease with a real estate broker licensed under Chapter 1101 not later than the 30th day after the effective date of the termination or discontinuance described by Subsection (a) and shall reasonably cooperate with the broker in the performance of the broker's duties.

(f) A manufacturer, distributor, or representative may reduce

the amount of a payment made to a franchised dealer under Subsection (b)(1)(B) by the amount of any income earned by the dealer from the dealership during the month preceding the payment.

(g) The manufacturer, distributor, or representative, as appropriate, shall pay any amount described by Subsection (b)(1)(A), (b)(2), or (b)(3) not later than the 90th day after the date of the termination or discontinuance described by Subsection (a).

(h) An amount payable under Subsection (b)(1)(A) or (b)(2) does not include any tax depreciation benefit received by the franchised dealer or any amount previously paid to the franchised dealer by the manufacturer, distributor, or representative to subsidize the costs incurred by the dealer in performing the activities described by Subsection (b)(1)(A) or (b)(2).

Added by Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 4, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 18, eff. September 1, 2013.

Sec. 2301.466. ARBITRATION. (a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not require a franchised dealer to submit to arbitration on any issue unless the dealer and the manufacturer, distributor, or representative and their respective counsel agree to the arbitration after a controversy arises.

(b) An arbitrator shall apply this chapter in resolving a controversy. Either party may appeal to the board a decision of an arbitrator on the ground that the arbitrator failed to apply this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.467. PROHIBITIONS: SALES STANDARDS, RELOCATIONS, FACILITY CHANGES, PURCHASE OF EQUIPMENT. (a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not:

(1) require adherence to unreasonable sales or service standards; or

(2) unreasonably require a franchised dealer to purchase special tools or equipment.

(b) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not unreasonably require a franchised dealer to relocate, or to replace or substantially change, alter, or remodel the dealer's facilities. Except as provided by Subsections (b-1) and (b-2), an act is reasonable if it is justifiable in light of current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area.

(b-1) Except as necessary to comply with health or safety laws or to comply with technology requirements necessary to sell or service a line-make, it is unreasonable for a manufacturer, distributor, or representative to require a franchised dealer to construct a new dealership or to substantially change, alter, or remodel an existing dealership before the 10th anniversary of the date the construction of the dealership at that location was completed if the construction was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or representative.

(b-2) Except as necessary to comply with health or safety laws or to comply with technology requirements necessary to sell or service a line-make, it is unreasonable for a manufacturer, distributor, or representative to require a franchised dealer to substantially change, alter, or remodel an existing dealership before the 10th anniversary of the date that a prior change, alteration, or remodel of the dealership at that location was completed if the change, alteration, or remodel was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or representative.

(c) This section applies to the relationship between a manufacturer, distributor, or representative and:

(1) a current franchisee of the manufacturer, distributor, or representative;

(2) a successor of a current franchisee of the manufacturer, distributor, or representative; or

(3) a franchised dealer who is seeking to become a franchisee of the manufacturer, distributor, or representative.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 5, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 5, eff. September 1, 2011.

Sec. 2301.4671. FRANCHISE PROVISION ESTABLISHING RESTRICTION ON DEALER'S USE OF DEALERSHIP PROPERTY. Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not:

(1) unreasonably limit or impair the ability of a franchised dealer to use the dealership property as the dealer considers appropriate;

(2) control the use of the dealership property after the franchise is terminated or discontinued; or

(3) at any time exercise exclusive control over the use of the dealership property.

Added by Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 6, eff. September 1, 2011.

Sec. 2301.468. INEQUITABLE TREATMENT OF DEALERS OR FRANCHISEES. Notwithstanding the terms of a franchise, a manufacturer, distributor, or representative may not treat franchised dealers of the same line-make differently as a result of the application of a formula or other computation or process intended to gauge the performance of a dealership or otherwise enforce standards or guidelines applicable to its franchised dealers in the sale of motor vehicles if, in the application of the standards or guidelines, the franchised dealers are treated unfairly or inequitably in the sale of a motor vehicle owned by the manufacturer or distributor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 7, eff. September 1, 2011.

Sec. 2301.469. COSTS OF PRODUCT RECALL. Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative shall compensate a franchised dealer for all costs incurred by the dealer as required by the manufacturer in complying with a product recall by the manufacturer or distributor, including any costs incurred by the dealer in notifying vehicle owners of the existence of the recall.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.470. PROHIBITION: CONDITIONS FOR FINANCING MOTOR VEHICLE. A manufacturer, distributor, or representative may not directly or indirectly, or through a subsidiary or agent, require as a condition for obtaining financing for a motor vehicle that:

- (1) the purchaser of the vehicle purchase any product other than the motor vehicle from the manufacturer, the distributor, or an entity owned or controlled by the manufacturer or distributor; or
- (2) an insurance policy or service contract bought by the purchaser be from a specific source.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.471. USE OF FINANCING SUBSIDIARY. (a) A manufacturer, distributor, or representative may not:

- (1) compel a franchised dealer through a financing subsidiary of the manufacturer or distributor to agree to unreasonable operating requirements; or
- (2) directly or indirectly terminate a franchise through the actions of a financing subsidiary of the manufacturer or distributor.

(b) This section does not limit the right of a financing entity to engage in business practices in accordance with the usage of trade in retail and wholesale motor vehicle financing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.472. ADDITION OF LINE-MAKE. (a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or

representative may not deny or withhold approval of a franchised dealer's application to add a line-make or parts or products related to that line-make unless:

(1) the manufacturer or distributor provides written notice of the denial or withholding of approval to the applicant not later than the 60th day after the date the application is received; and

(2) if the applicant files a protest under this section, the board upholds the denial or withholding of approval.

(b) After receiving notice under Subsection (a)(1), a dealer may file a protest with the board.

(c) If the dealer files a protest, the board may uphold the manufacturer's or distributor's decision to deny or withhold approval of the addition of the line-make only if the manufacturer or distributor establishes by a preponderance of the evidence that the denial or withholding of approval was reasonable.

(d) In determining whether a manufacturer or distributor has established that the denial or withholding of approval is reasonable, the board shall consider all existing circumstances, including:

(1) the dealer's sales in relation to the sales in the market;

(2) the dealer's investment and obligations;

(3) injury or benefit to the public;

(4) the adequacy of the dealer's sales and service facilities, equipment, parts, and personnel in relation to those of other dealers of new motor vehicles of the same line-make;

(5) whether warranties are being honored by the dealer agreement;

(6) the parties' compliance with the franchise, except to the extent that the franchise conflicts with this chapter;

(7) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms, oppression, adhesion, and the parties' relative bargaining power;

(8) whether the dealer complies with reasonable capitalization requirements or will be able to comply with reasonable capitalization requirements within a reasonable time;

(9) any harm to the manufacturer or distributor if the denial or withholding of approval is not upheld;

(10) any harm to the dealer if the denial or withholding of approval is upheld;



(11) the manufacturer's or distributor's investment and obligations; and

(12) whether the denial or withholding of approval is justified in light of current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 6, eff. September 1, 2009.

Sec. 2301.473. MODELS WITHIN LINE-MAKE. A manufacturer, distributor, or representative may not:

(1) fail or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make; or

(2) require as a prerequisite to receiving a model or series of vehicles that a franchised dealer:

(A) pay an extra fee;

(B) purchase unreasonable advertising displays or other materials; or

(C) remodel, renovate, or recondition the dealer's existing facilities.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.474. PAYMENT OF COSTS FOR ADMINISTRATIVE OR CIVIL PROCEEDING. (a) A manufacturer, distributor, or representative may not require a franchised dealer to compensate the manufacturer or distributor for any court costs, attorney's fees, or other expenses incurred in an administrative or civil proceeding arising under this chapter.

(b) This section does not prohibit a manufacturer and a franchised dealer from entering into an agreement to share costs in a proceeding in which the dealer and manufacturer have the same or similar interests.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.4749. MANUFACTURER OR DISTRIBUTOR INCENTIVE PROGRAMS: PAYMENT TO DEALER. (a) A manufacturer or distributor shall pay a dealer's claim filed under a manufacturer or distributor incentive program not later than the 30th day after the date the claim is approved.

(b) A claim is considered approved unless a manufacturer or distributor rejects the claim not later than the 31st day after the date of receipt of the claim by the manufacturer or distributor.

(c) The manufacturer or distributor shall provide the dealer with written notice of a rejection of a claim and the reasons for the rejection.

Added by Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 8, eff. September 1, 2011.

Sec. 2301.475. MANUFACTURER OR DISTRIBUTOR INCENTIVE PROGRAMS: AUDIT OR CHARGEBACK. (a) Except as provided by Subsection (b), after the first anniversary of the date a manufacturer or distributor pays a claim under Section 2301.4749, the manufacturer or distributor may not:

(1) charge back to a dealer money paid by the manufacturer or distributor as a result of the incentive program;

(2) charge back to a dealer the cash value of a prize or other thing of value awarded to the dealer as a result of the incentive program; or

(3) audit the records of a dealer to determine compliance with the terms of the incentive program, unless the manufacturer or distributor has reasonable grounds to believe the dealer committed fraud with respect to the incentive program.

(b) A manufacturer or distributor may make charge-backs to a dealer if, after an audit, the manufacturer or distributor has reasonable grounds to conclude that the dealer committed fraud with respect to the incentive program.

(c) Money paid by a manufacturer or distributor under an incentive program may only be paid to a dealer, unless the dealer agrees to the payment of the money to another person, including an employee of the dealer, before the payment is made.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 7, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 9, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 10, eff. September 1, 2011.

For expiration of Subsections (j), (k), (l), (m), (n), and (o), see Subsection (o).

Sec. 2301.476. MANUFACTURER OR DISTRIBUTOR OWNERSHIP, OPERATION, OR CONTROL OF DEALERSHIP. (a) In this section, "manufacturer" includes:

(1) a representative; or

(2) a person who:

(A) is affiliated with a manufacturer or representative; or

(B) directly or indirectly through an intermediary, is controlled by, or is under common control with, a manufacturer.

(b) For purposes of Subsection (a)(2)(B), a person is controlled by a manufacturer if the manufacturer is directly or indirectly authorized, by law or by agreement of the parties, to direct or influence the person's management and policies.

(c) Except as provided by this section, a manufacturer or distributor may not directly or indirectly:

(1) own an interest in a franchised or nonfranchised dealer or dealership;

(2) operate or control a franchised or nonfranchised dealer or dealership; or

(3) act in the capacity of a franchised or nonfranchised dealer.

(d) A manufacturer or distributor may own an interest in a franchised dealer, or otherwise control a dealership, for a period not to exceed 12 months from the date the manufacturer or distributor acquires the dealership if:

(1) the person from whom the manufacturer or distributor acquired the dealership was a franchised dealer; and

(2) the dealership is for sale by the manufacturer or distributor at a reasonable price and on reasonable terms and conditions.

(e) On a showing of good cause by a manufacturer or distributor, the board may extend the time limit imposed under Subsection (d) for a period not to exceed an additional 12 months. An application for an extension after the first extension is granted is subject to protest by a dealer of the same line-make whose dealership is located in the same county as, or within 15 miles of, the dealership owned or controlled by the manufacturer or distributor.

(f) For the purpose of determining compliance with Subsection (d)(2), the price of a dealership and the other terms and conditions of a contract for the sale of a dealership are reasonable if the purchaser is a franchised dealer who:

(1) has made a significant investment in the dealership, subject to loss;

(2) has an ownership interest in the dealership; and

(3) operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions.

(g) For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group that has been historically underrepresented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer's or distributor's participation in the dealership is in a bona fide relationship with a franchised dealer who:

(1) has made a significant investment in the dealership, subject to loss;

(2) has an ownership interest in the dealership; and

(3) operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms.

(h) A person who on June 7, 1995, held both a motor home manufacturer's license and a motor home dealer's license issued under this chapter may:

(1) continue to hold both licenses; and

(2) operate as both a manufacturer and dealer of motor homes but of no other type of vehicle.

(h-1) A person who on January 18, 2002, held both a converter's license to convert buses with a gross vehicle weight rating of 40,000

pounds or more and a franchised dealer's license to sell buses issued under this chapter may:

(1) regain and hold both licenses; and

(2) operate as both a converter and franchised dealer of bus conversions with a gross vehicle weight rating of 40,000 pounds or more but of no other type of vehicle.

(i) Notwithstanding the terms of this chapter, and subject to the limitations set forth in this subsection, a manufacturer or distributor may own an interest in an entity that holds a general distinguishing number if the entity:

(1) is primarily engaged in the business of renting to other persons passenger vehicles or commercial motor vehicles that the entity owns; and

(2) sells or offers for sale no vehicle other than a vehicle that the entity:

(A) owns and has taken from service in its rental fleet; or

(B) has taken in trade as part of a transaction involving the sale of a vehicle taken from service in its rental fleet.

(j) This section does not prohibit a manufacturer or distributor that owned, on or before January 1, 2007, an interest in a motor vehicle dealer engaged in the sale of used motor vehicles, and that has not agreed to or been ordered by a court order or ruling to comply with Subsection (c), from continuing to directly or indirectly own an interest in the motor vehicle dealer if the manufacturer's or distributor's ownership and control of the motor vehicle dealer does not increase after January 1, 2007. The exception provided by this subsection:

(1) applies if the motor vehicle dealer is engaged in the business of selling or offering for sale only used trucks that have a gross vehicle weight rating of 16,000 pounds or more;

(2) does not apply if the motor vehicle dealer sells a new motor vehicle;

(3) does not permit an increase in the manufacturer's or distributor's ownership interest in the motor vehicle dealer;

(4) does not grant an exception to this chapter other than the exception expressly provided by this subsection;

(5) applies regardless of whether there is a transfer or relocation of the motor vehicle dealer required by:

- (A) an act of God;
- (B) the exercise of eminent domain authority; or
- (C) another reason approved by the division after a

hearing conducted in the same manner as a contested case under Subchapter O; and

(6) does not apply if the manufacturer or distributor no longer owns the interest in the motor vehicle dealer that the manufacturer or distributor owned on or before January 1, 2007.

(k) A motor vehicle dealer under Subsection (j) violates that subsection if the dealer:

(1) sells or offers for sale a motor vehicle with a gross vehicle weight rating of less than 16,000 pounds, other than a motor vehicle the dealer has acquired as a trade-in in a transaction involving the retail sale of a motor vehicle with a gross vehicle weight rating of 16,000 pounds or more and if the trade-in motor vehicle will be sold or offered for sale only to a person who holds a general distinguishing number issued in the category described by Section 503.029(a)(6)(C), Transportation Code;

(2) performs or offers to perform new motor vehicle warranty repair; or

(3) sells or offers for sale a new motor vehicle.

(l) A manufacturer or distributor described by Subsection (j) violates that subsection if the manufacturer or distributor:

(1) sells, assigns, or otherwise transfers an interest in the motor vehicle dealer or a portion of its interest in the motor vehicle dealer to an unaffiliated manufacturer or distributor; or

(2) increases its ownership interest in the motor vehicle dealer.

(m) A person who violates Subsection (j), (k), or (l) is subject to:

(1) a civil penalty under Section 2301.801;

(2) a suit for injunctive relief under Section 2301.804;

and

(3) denial, revocation, or suspension of a license under Section 2301.651.

(n) For purposes of Subsections (j), (k), and (l), a reference to a motor vehicle dealer includes the physical premises, business facilities, and operations where motor vehicle sales occur.

(o) This subsection, Subsections (j) through (n), and the exception provided by Subsection (j) expire September 1, 2023.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 503, Sec. 1, eff. June 20, 2003;  
Acts 2003, 78th Leg., ch. 1276, Sec. 14A.621(a), eff. Sept. 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 105 (H.B. 733), Sec. 1, eff.  
September 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 5.01, eff.  
September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 16, eff.  
September 1, 2011.

Sec. 2301.477. MANUFACTURER DOING BUSINESS IN THIS STATE. A manufacturer whose products are offered for sale in this state under a franchise entered into between its distributor or representative and a dealer is bound by the terms of the franchise and this chapter as if the manufacturer had executed the franchise.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.478. ACTION ON FRANCHISE. (a) Notwithstanding the terms of any franchise or any other law, an action or proceeding brought by a manufacturer, representative, converter, or distributor against a dealer must be brought in an appropriate forum in this state only, and the law of this state applies to the action or proceeding.

(b) Each party to a franchise owes to the other party a duty of good faith and fair dealing that is actionable in tort.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.479. ADVERSE ACTION IN CONNECTION WITH EXPORT OF VEHICLE. (a) Except as otherwise provided by this section, a manufacturer, distributor, or representative may not take an adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States.

(b) A franchise provision that allows a manufacturer, distributor, or representative to take adverse action against a

franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States is enforceable only if, at the time of the original sale or lease, the dealer knew or reasonably should have known that the vehicle would be exported to a location outside the United States.

(c) A franchised dealer is presumed to have no actual knowledge that a vehicle the dealer sells or leases will be exported to a location outside the United States if, under the laws of a state of the United States:

- (1) the vehicle is titled;
- (2) the vehicle is registered; and
- (3) applicable state and local taxes are paid for the vehicle.

(d) The presumption under Subsection (c) may be rebutted by direct, clear, and convincing evidence that the franchised dealer had actual knowledge or reasonably should have known at the time of the original sale or lease that the vehicle would be exported to a location outside the United States.

(e) Except as otherwise permitted by this section, a franchise provision that allows a manufacturer, distributor, or representative to take adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States is void and unenforceable.

Added by Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 8, eff. September 1, 2009.

Sec. 2301.480. DISCLOSURE OF CERTAIN INFORMATION. A manufacturer, distributor, or representative may not require that a franchised dealer provide to the manufacturer, distributor, or representative information regarding a customer, except to the extent that a specific item of information is necessary:

- (1) for the sale or delivery of a new motor vehicle to a customer;
- (2) for reasonable marketing purposes;
- (3) to validate a claim and make payment under an incentive program;
- (4) to support a dealer's claim for reimbursement for repairs performed under a manufacturer's warranty; or



(5) to satisfy a product recall or safety obligation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 11, eff. September 1, 2011.

Sec. 2301.481. PROPERTY USE AGREEMENT. (a) A manufacturer, distributor, or representative may not require that a dealer enter into a property use agreement as a condition of the manufacturer, distributor, or representative:

- (1) entering into a franchise;
- (2) approving a franchised dealer's application to add a line-make;
- (3) approving a franchised dealer's application to relocate a franchise; or
- (4) approving a sale or transfer of a dealer, dealership, or franchise.

(b) The following provisions in a property use agreement are void and unenforceable:

- (1) a limitation on the franchised dealer's ability to add a line-make; or
- (2) a provision that binds a franchised dealer's successor.

(c) A property use agreement expires on the earlier of:

- (1) the date provided by the property use agreement; or
- (2) the termination of the franchise between the parties to the property use agreement.

(d) This section applies to a subsidiary of, or a person controlled by, a manufacturer, distributor, or representative.

Added by Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 11, eff. September 1, 2011.

Sec. 2301.482. CERTAIN PROPERTY USE AGREEMENTS. (a) Notwithstanding Section 2301.481(b)(1), and subject to this section, a dealer may enter into a property use agreement for cash consideration that grants the manufacturer or distributor the exclusive rights to direct the use of the dealership.

(b) In the event the dealer breaches the terms of the property use agreement described by Subsection (a) by altering the use of the property during the term of the agreement in violation of the

agreement, the property use agreement is terminated and the dealer must reimburse the manufacturer or distributor in an amount determined by dividing the amount of the manufacturer's or distributor's cash consideration provided under Subsection (a) by the market value of the property identified in the original property use agreement at the time any necessary real estate has been purchased and any necessary construction has been completed, and multiplying the resulting quotient by the market value of the property at the time of the breach.

(c) For purposes of this section, the market value of property is to be determined by three appraisers chosen as follows:

- (1) one selected by the affected manufacturer or distributor;
- (2) one selected by the affected dealer; and
- (3) one selected by mutual agreement of the manufacturer or distributor and the dealer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 11, eff. September 1, 2011.

Sec. 2301.483. SPECIFIC USE AGREEMENTS. (a) In this section:

(1) "Necessary real estate" means real estate that is necessary for the proper operation of a dealership in the dealership's location as determined by the manufacturer's, distributor's, or representative's facility requirements or to comply with any applicable law or zoning requirement.

(2) "Owner" means a manufacturer, distributor, or representative, including an entity owned or controlled by a manufacturer, distributor, or representative.

(3) "Specific use agreement" means a property use agreement that is executed in conjunction with a sale or as part of the terms of a lease by an owner of real property to a transferee for use by the transferee as a dealership under the terms of a franchise executed or to be executed between the owner and the transferee.

(4) "Transferee" means a person who is a purchaser or lessee of real property subject to a specific use agreement.

(b) To the extent of any conflict between this section and another section of this chapter regarding a specific use agreement, this section controls. Notwithstanding any other section of this

chapter and except as provided by this section, a specific use agreement may include provisions that allow an owner to:

(1) limit the transferee's ability to add a line-make after the transferee has opened a franchised dealership on the property to which the specific use agreement applies;

(2) prohibit the sale or sublease of the dealership property by the transferee to a person for a purpose other than the operation of a dealership under a franchise with the owner of the property; or

(3) make the limitations described by Subdivisions (1) and (2) applicable to any successor or sublessee of the transferee.

(c) An owner may not coerce or attempt to coerce an existing franchised dealer of the owner to relocate an existing dealership of the same line-make to property that is subject to a specific use agreement. If it is proven in a civil suit that a person entered into a specific use agreement containing a provision described by Subsection (b) as a result of coercion, the specific use agreement is void.

(d) A specific use agreement executed in conjunction with the sale of real property may apply only to the necessary real estate.

(e) A specific use agreement executed in conjunction with the sale of real property to an existing franchised dealer for the purpose of relocating an existing dealership of the same line-make to property that is the subject of the specific use agreement or to a person for the purpose of establishing a new dealership expires on the earliest of:

(1) the date established by the specific use agreement;

(2) the termination or discontinuance of the franchise between the parties to the specific use agreement as a result of the owner:

(A) discontinuing all line-makes applicable to the necessary real estate that are under the control of a manufacturer or distributor holding property use rights for the necessary real estate under the specific use agreement;

(B) ceasing to do business in this state; or

(C) changing the distributor or method of distribution of the owner's products in this state;

(3) the 10th anniversary of the date the dealership opens for business; or

(4) any time after the expiration of nine years from the

date the dealership opens for business if the transferee has performed all the transferee's financial duties as provided by the contract and title to the property has passed to the transferee.

(f) Unless a specific use agreement associated with the sale of property expressly provides otherwise, there is no penalty for the full performance by the transferee and transfer of title to the transferee prior to the time set forth by the contract's terms.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1338 (S.B. 854), Sec. 1, eff. June 14, 2013.

#### **SUBCHAPTER K. MEDIATION BETWEEN DEALER AND MANUFACTURER OR DISTRIBUTOR**

Sec. 2301.521. DEFINITION. In this subchapter, "mediation" means a nonbinding forum in which an impartial mediator facilitates communication between parties to promote reconciliation, settlement, or understanding between the parties.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.522. MEDIATION APPLICABLE. (a) In an action brought against a manufacturer or distributor under Subchapter J by a franchised dealer whose franchise provides for arbitration in compliance with this chapter, the board shall order the parties to submit the dispute to mediation in the manner provided by this subchapter.

(b) Subsection (a) applies only if the dealer's franchise does not contain an arbitration provision in conflict with this chapter. In a dispute concerning whether Subsection (a) applies, the board shall enter an order either that the franchise contains a provision in conflict with this chapter or that it does not. If the board determines that the franchise does not contain an arbitration provision that conflicts with this chapter, the board shall order the parties to proceed to mediation as provided by this subchapter.

(c) An order issued under Subsection (b) is not appealable.

(d) This subchapter does not apply to an action brought by the board to enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 12, eff. September 1, 2011.

Sec. 2301.523. MEDIATOR. (a) By agreement, the parties shall select and compensate a mediator who is qualified to serve under Section 154.052(a), Civil Practice and Remedies Code.

(b) Sections 154.053 and 154.055, Civil Practice and Remedies Code, apply to a mediator under this subchapter.

(c) A mediator may not impose the mediator's own judgment on the issues for that of the parties.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.524. LOCATION AND SCHEDULE OF MEDIATION. (a) The parties by agreement shall select a venue and schedule for mediation under this subchapter. If the parties are unable to agree on a venue and schedule, the mediator shall select a venue and schedule.

(b) Except by written agreement of all parties, mediation must be held in this state.

(c) Mediation must be completed not later than the 60th day after the date the board orders the parties to mediate. The deadline may be extended by the board at the request of all parties.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.525. LAW APPLICABLE; CONFLICT OF LAWS. (a) Except as provided by Subsection (b) of this section, Section 154.073, Civil Practice and Remedies Code, applies to mediation under this subchapter.

(b) If Section 154.073, Civil Practice and Remedies Code, conflicts with another legal requirement for disclosure of communications or materials, the issue of confidentiality may be presented to the board to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the board or whether the communications or materials are subject to disclosure.

(c) This subchapter controls over any other law relating to or

requiring mediation between or among license holders.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.526. COSTS OF MEDIATION. (a) The board is not liable for the compensation paid or to be paid to a mediator employed under this subchapter.

(b) Without regard to the outcome of mediation or subsequent regulatory or judicial proceedings, costs incurred by a party in mediation required by this subchapter may not be imposed on the opposing party.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.527. JURISDICTION OF BOARD. The board retains jurisdiction of the subject matter of and parties to a dispute during mediation and may, on the motion of a party or on its own motion, enter appropriate orders.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.528. EFFECT OF MEDIATION ON CHAPTER. (a) Except as provided by this subchapter, mediation under this subchapter does not affect a procedural right or duty conferred by this chapter or by board rule.

(b) Procedural time limits imposed by this chapter or under the authority of this chapter are tolled during mediation.

(c) Mediation does not affect any right of a person who is not a party to the mediation.

(d) The board shall stay proceedings involving the parties in mediation until the board receives the mediator's certification that mediation has concluded.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.529. OUTCOME OF MEDIATION. (a) If mediation resolves the dispute, the board shall enter an order incorporating

the terms of the agreement reached in mediation.

(b) If mediation does not resolve the dispute, the board shall proceed to a contested case hearing or other appropriate exercise of its jurisdiction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

#### **SUBCHAPTER L. VEHICLE LESSORS AND VEHICLE LEASE FACILITATORS**

Sec. 2301.551. ACCEPTANCE AND PAYMENT OF FEES BY VEHICLE LESSOR. (a) A vehicle lessor may not directly or indirectly accept a fee from a dealer. For purposes of this subsection, "fee" does not include an adjustment in the purchase price paid for the lease or leased vehicle. This subsection does not authorize a fee for referring vehicle leases or prospective lessees.

(b) A vehicle lessor may not pay a fee to any person in return for the solicitation, procurement, or production by the person of a prospective lessee of a motor vehicle unless the person:

(1) holds a vehicle lease facilitator license issued under this chapter; and

(2) has an appointment from the lessor as provided by Section 2301.552.

(c) The fees prohibited by this section do not include money paid to:

(1) a franchised dealer as a part of the consideration for the sale or assignment of a lease or leased vehicle; or

(2) a franchised dealer who transfers title of the vehicle or assigns the lease contract to the lessor of the motor vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.552. APPOINTMENT OF VEHICLE LEASE FACILITATOR. (a) A vehicle lessor may appoint one or more vehicle lease facilitators licensed under this chapter to represent the lessor in obtaining prospective vehicle lessees.

(b) An appointment must:

(1) be in writing;

(2) disclose its terms; and

(3) comply with board rules.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.553. DISCLOSURE OF FEE REQUIRED. (a) In a vehicle lease solicited, procured, or produced by a vehicle lease facilitator, the vehicle lessor shall disclose to the lessee that a fee was paid or will be paid to the vehicle lease facilitator for the solicitation, procurement, or production of the lessee or the lease.

(b) The vehicle lessor shall include the disclosure in a prominent position either:

(1) on the face of the written memorandum of the vehicle lease; or

(2) on a separate instrument signed by the lessee at the same time as the signing of the vehicle lease.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.554. TERMS OF LEASE: FOREIGN COUNTRIES. (a) Except as provided by Subsection (b) or by federal law, including a federal agency rule, a vehicle lessor may not, and the vehicle lease may not, prohibit the lessee from taking the vehicle that is the subject of the lease into a specific foreign country unless the lease prohibits the lessee from taking the vehicle into any foreign country.

(b) In the interests of justice and giving deference to standard national business practices, the board may adopt a rule by which a lease may prohibit the lessee from taking the vehicle into a specific foreign country regardless of whether the lease prohibits the lessee from taking the vehicle into another foreign country. In adopting a rule under this subsection the board shall give consideration to the proximity of international borders to prospective Texas lessees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.555. LIMITATIONS ON VEHICLE LEASE FACILITATOR. (a) A vehicle lease facilitator may not:

(1) sell or offer to sell a new motor vehicle;

(2) accept a fee from a dealer;

(3) sign a motor vehicle manufacturer's statement of origin



to a vehicle, accept an assignment of a manufacturer's statement of origin to a vehicle, or otherwise assume any element of title to a new motor vehicle;

(4) procure or solicit a prospective vehicle lessee for or on behalf of any person other than a vehicle lessor; or

(5) act in the capacity of or engage in the business of a vehicle lease facilitator without having an appointment from a vehicle lessor as provided by Section 2301.552.

(b) Except as provided by Subsection (a)(2), a vehicle lease facilitator may accept a fee for procuring a vehicle lessee or prospective vehicle lessee for or on behalf of a lessor.

(c) This section does not:

(1) limit the ability of a vehicle lease facilitator to accept an appointment from more than one vehicle lessor; or

(2) prohibit a vehicle lease facilitator from representing a vehicle lessor or lessee in acquiring a motor vehicle to lease the vehicle to another person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.556. USE OF CERTAIN TERMS. With respect to the regulation of motor vehicle distribution under this chapter, a person may not use the word "lease" or "leasing," or any variation of those words, in the person's name or in the name of an entity owned by the person unless the person is:

(1) licensed under this chapter as a vehicle lessor or vehicle lease facilitator; or

(2) exempt under Section 2301.254 from the requirement to obtain a license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

#### **SUBCHAPTER M. WARRANTIES: RIGHTS OF VEHICLE OWNERS**

Sec. 2301.601. DEFINITIONS. In this subchapter:

(1) "Impairment of market value" means a substantial loss in market value caused by a defect specific to a motor vehicle.

(2) "Owner" means a person who is entitled to enforce a manufacturer's warranty with respect to a motor vehicle, and who:

(A) purchased the motor vehicle at retail from a

license holder;

(B) is a lessor or lessee, other than a sublessee, who purchased or leased the vehicle from a license holder;

(C) is a resident of this state and has registered the vehicle in this state;

(D) purchased or leased the vehicle at retail and is an active duty member of the United States armed forces stationed in this state at the time a proceeding is commenced under this subchapter; or

(E) is:

(i) the transferee or assignee of a person described by Paragraphs (A)-(D);

(ii) a resident of this state; and

(iii) the person who registered the vehicle in this state.

(3) "Reasonable allowance for use" means the amount directly attributable to use of a motor vehicle when the vehicle is not out of service for repair.

(4) "Serious safety hazard" means a life-threatening malfunction or nonconformity that:

(A) substantially impedes a person's ability to control or operate a motor vehicle for ordinary use or intended purposes; or

(B) creates a substantial risk of fire or explosion.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 17, eff. September 1, 2011.

Sec. 2301.602. DUTY OF BOARD. (a) The board shall cause a manufacturer, converter, or distributor to perform an obligation imposed by this subchapter.

(b) The board shall adopt rules for the enforcement and implementation of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.603. CONFORMANCE WITH WARRANTY REQUIRED. (a) A manufacturer, converter, or distributor shall make repairs necessary

to conform a new motor vehicle to an applicable manufacturer's, converter's, or distributor's express warranty.

(b) Subsection (a) applies after the expiration date of a warranty if:

(1) during the term of the warranty, the owner or the owner's agent reported the nonconformity to the manufacturer, converter, or distributor, or to a designated agent or franchised dealer of the manufacturer, converter, or distributor; or

(2) a rebuttable presumption relating to the vehicle is created under Section 2301.605.

(c) This subchapter does not limit a remedy available to an owner under a new motor vehicle warranty that extends beyond the provisions of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.604. REPLACEMENT OF OR REFUND FOR VEHICLE. (a) A manufacturer, converter, or distributor that is unable to conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts shall reimburse the owner for reasonable incidental costs resulting from loss of use of the motor vehicle because of the nonconformity or defect and:

(1) replace the motor vehicle with a comparable motor vehicle; or

(2) accept return of the vehicle from the owner and refund to the owner the full purchase price, less a reasonable allowance for the owner's use of the vehicle, and any other allowances or refunds payable to the owner.

(b) A refund made for a vehicle for which there is a lienholder shall be made to the owner and lienholder in proportion to each person's interest in the vehicle.

(c) As necessary to promote the public interest, the board by rule:

(1) shall define the incidental costs that are eligible for reimbursement;

(2) shall specify other requirements necessary to determine an eligible cost; and

(3) may set a maximum amount that is eligible for reimbursement, either by type of eligible cost or by a total for all costs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.605. REBUTTABLE PRESUMPTION--REASONABLE NUMBER OF ATTEMPTS. (a) A rebuttable presumption that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty is established if:

(1) the same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and:

(A) two of the repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and

(B) the other two repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt;

(2) the same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and:

(A) at least one attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and

(B) at least one other attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt; or

(3) a nonconformity still exists that substantially impairs the vehicle's use or market value and:

(A) the vehicle is out of service for repair for a cumulative total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner; and

(B) at least two repair attempts were made in the 12

months or 12,000 miles following the date of original delivery to an owner.

(b) A period or a number of days or miles described by Subsection (a) is extended for any period that repair services are not available to the owner because of:

- (1) a war, invasion, or strike; or
- (2) a fire, flood, or other natural disaster.

(c) The 30 days described by Subsection (a)(3)(A) do not include any period during which the manufacturer or distributor lends the owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.606. CONDUCT OF PROCEEDINGS. (a) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 140(1), eff. September 1, 2013, and Ch. 1379 (H.B. 1692), Sec. 12, eff. January 1, 2014.

(b) In a hearing under this subchapter, a manufacturer, converter, or distributor may plead and prove as an affirmative defense to a remedy under this subchapter that a nonconformity:

- (1) is the result of abuse, neglect, or unauthorized modification or alteration of the motor vehicle; or
- (2) does not substantially impair the use or market value of the motor vehicle.

Text of subsection as amended by Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 19

(c) The board or a person delegated power from the board under Section 2301.154 may not issue an order requiring a manufacturer, converter, or distributor to make a refund or to replace a motor vehicle unless:

- (1) the owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and
- (2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity.

Text of subsection as amended by Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 3

(c) An order issued under this subchapter may not require a

manufacturer, converter, or distributor to make a refund or to replace a motor vehicle unless:

(1) the owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and

(2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity.

(d) A proceeding under this subchapter must be commenced not later than six months after the earliest of:

(1) the expiration date of the express warranty term; or

(2) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 19, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 140(1), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 3, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 12, eff. January 1, 2014.

Sec. 2301.607. EXHAUSTION OF ADMINISTRATIVE REMEDIES; RIGHT TO SUE. (a) A refund or replacement under this subchapter because a motor vehicle is alleged to not conform to an express warranty is not available to the owner of the vehicle unless the owner has exhausted the administrative remedies provided by this subchapter.

(b) A refund or replacement under this subchapter is not available to a party in an action against a seller under Chapter 2 or 17, Business & Commerce Code, but is available in an action against a manufacturer, converter, or distributor brought under Chapter 17, Business & Commerce Code, after the owner has exhausted the administrative remedies provided by this subchapter.

Text of subsection as amended by Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 20

(c) If a proposal for decision and recommendation for a final

order are not issued before the 151st day after the date a complaint is filed under this subchapter, the department shall provide written notice by certified mail to the complainant and to the manufacturer, converter, or distributor of the expiration of the 150-day period and of the complainant's right to file a civil action. The board or a person delegated power from the board under Section 2301.154 shall extend the 150-day period if a delay is requested or caused by the person who filed the complaint.

Text of subsection as amended by Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 4

(c) If a final order is not issued before the 151st day after the date a complaint is filed under this subchapter, the department shall provide written notice by certified mail to the complainant and to the manufacturer, converter, or distributor of the expiration of the 150-day period and of the complainant's right to file a civil action. The department shall extend the 150-day period if a delay is requested or caused by the person who filed the complaint.

(d) Notwithstanding a requirement of this section that administrative remedies be exhausted, a person who receives notice under Subsection (c) may file a civil action against any person named in the complaint.

(e) The failure to issue notice under Subsection (c) does not affect a person's right to bring an action under this chapter.

(f) This subchapter does not limit a right or remedy otherwise available to an owner under another law.

(g) A contractual provision that excludes or modifies a remedy provided by this subchapter is prohibited and is void as against public policy unless the exclusion or modification is made under a settlement agreement between the owner and the manufacturer, converter, or distributor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1403 (H.B. 3601), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 20, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 4, eff. January 1, 2014.

Text of section as amended by Acts 2013, 83rd Leg., R.S., Ch. 1135  
(H.B. 2741), Sec. 21

For text of section as amended by Acts 2013, 83rd Leg., R.S., Ch.  
1379 (H.B. 1692), Sec. 5, see other Sec. 2301.608.

Sec. 2301.608. ASSESSMENT OF COSTS FOR REPLACEMENT OR REFUND.

(a) In an order issued under this subchapter, the board or a person delegated power from the board under Section 2301.154 shall name the person responsible for paying the cost of any refund or replacement. A manufacturer, converter, or distributor may not cause a franchised dealer to directly or indirectly pay any money not specifically ordered by the board or a person delegated power from the board under Section 2301.154.

(b) If the board or a person delegated power from the board under Section 2301.154 orders a manufacturer, converter, or distributor to make a refund or replace a motor vehicle under this subchapter, the board or person may order the franchised dealer to reimburse the owner, lienholder, manufacturer, converter, or distributor only for an item or option added to the vehicle by the dealer to the extent that the item or option contributed to the defect that served as the basis for the order.

(c) In a case involving a leased vehicle, the board or a person delegated power from the board under Section 2301.154 may terminate the lease and apportion allowances or refunds, including the reasonable allowance for use, between the lessee and lessor of the vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 21, eff.  
September 1, 2013.

Text of section as amended by Acts 2013, 83rd Leg., R.S., Ch. 1379  
(H.B. 1692), Sec. 5

For text of section as amended by Acts 2013, 83rd Leg., R.S., Ch.  
1135 (H.B. 2741), Sec. 21, see other Sec. 2301.608.

Sec. 2301.608. ASSESSMENT OF COSTS FOR REPLACEMENT OR REFUND.

(a) An order issued under this subchapter must name the person responsible for paying the cost of any refund or replacement. A



manufacturer, converter, or distributor may not cause a franchised dealer to directly or indirectly pay any money not specifically required by the order.

(b) If the final order requires a manufacturer, converter, or distributor to make a refund or replace a motor vehicle under this subchapter, the final order may require the franchised dealer to reimburse the owner, lienholder, manufacturer, converter, or distributor only for an item or option added to the vehicle by the dealer to the extent that the item or option contributed to the defect that served as the basis for the order.

(c) In a case involving a leased vehicle, the final order may terminate the lease and apportion allowances or refunds, including the reasonable allowance for use, between the lessee and lessor of the vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 5, eff. January 1, 2014.

Sec. 2301.609. JUDICIAL REVIEW. (a) A party to a proceeding under this subchapter that is affected by a final order related to the proceeding is entitled to judicial review of the order under the substantial evidence rule in a district court of Travis County.

(b) Judicial review is subject to Chapter 2001, Government Code, to the extent that chapter is not inconsistent with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 22, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 6, eff. January 1, 2014.

Sec. 2301.610. DISCLOSURE STATEMENT. (a) A manufacturer, distributor, or converter that has been ordered to repurchase or replace a vehicle shall, through its franchised dealer, issue a disclosure statement stating that the vehicle was repurchased or

replaced by the manufacturer, distributor, or converter under this subchapter. The statement must accompany the vehicle through the first retail purchase following the issuance of the statement and must include the toll-free telephone number described by Subsection (d) that will enable the purchaser to obtain information about the condition or defect that was the basis of the order for repurchase or replacement.

(b) The manufacturer, distributor, or converter must restore the cause of the repurchase or replacement to factory specifications and issue a new 12-month, 12,000-mile warranty on the vehicle.

(c) The board shall adopt rules for the enforcement of this section.

Text of subsection as amended by Acts 2013, 83rd Leg., R.S., Ch. 1135  
(H.B. 2741), Sec. 23

(d) The department shall maintain a toll-free telephone number to provide information to a person who requests information about a condition or defect that was the basis for repurchase or replacement by an order issued under this chapter. The department shall maintain an effective method of providing information to a person who makes a request.

Text of subsection as amended by Acts 2013, 83rd Leg., R.S., Ch. 1379  
(H.B. 1692), Sec. 7

(d) The department shall maintain a toll-free telephone number to provide information to a person who requests information about a condition or defect that was the basis for repurchase or replacement by an order issued under this subchapter. The department shall maintain an effective method of providing information to a person who makes a request.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 23, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 7, eff. January 1, 2014.

Sec. 2301.611. ANNUAL REPORT ON REPURCHASED OR REPLACED VEHICLES. (a) The department shall publish an annual report on the motor vehicles ordered repurchased or replaced under this subchapter.

(b) The report must list the number of vehicles by brand name and model and include a brief description of the conditions or defects that caused the repurchase or replacement.

(c) The department shall make the report available to the public and may charge a reasonable fee to cover the cost of the report.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 18, eff. September 1, 2011.

Sec. 2301.612. OPEN RECORDS EXCEPTION. Information filed with the board under this subchapter is not a public record and is not subject to release under Chapter 552, Government Code, until the complaint is finally resolved by order of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.613. NOTICE TO BUYER. (a) The department shall prepare, publish, and distribute information concerning an owner's rights under this subchapter. The retail seller of a new motor vehicle shall conspicuously post a copy of the information in the area where its customers usually pay for repairs.

(b) The failure to provide notice as required by this section is a violation of this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 19, eff. September 1, 2011.

#### **SUBCHAPTER N. DENIAL, REVOCATION, OR SUSPENSION OF LICENSE**

Sec. 2301.651. DENIAL, REVOCATION, OR SUSPENSION GENERALLY.

(a) The board may deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder if the applicant or license holder:

(1) is unfit under standards described in this chapter or board rules;

(2) makes a material misrepresentation in any application or other information filed under this chapter or board rules;

(3) violates this chapter or a board rule or order;

(4) violates any law relating to the sale, distribution, financing, or insuring of motor vehicles;

(5) fails to maintain the qualifications for a license;

(6) wilfully defrauds a purchaser;

(7) fails to fulfill a written agreement with a retail purchaser of a motor vehicle; or

(8) violates the requirements of Section 503.0631, Transportation Code.

(b) The board may take action under Subsection (a) against an applicant or license holder for an act or omission by an officer, director, partner, trustee, or other person acting in a representative capacity for the applicant or license holder that would be cause for denying, revoking, or suspending a license under this chapter.

(c) The revocation of a license previously held under this chapter may be grounds for denying a subsequent application for a license.

(d) A license may not be denied, revoked, or suspended, and disciplinary action may not be taken under this subchapter, unless the respondent is given an opportunity for a hearing. The board may deny, revoke, or suspend a license or take disciplinary action by order only after the department grants the respondent an opportunity for a hearing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.622(a), 14A.623, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 8.10, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1336 (S.B. 1786), Sec. 10, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 24, eff. September 1, 2013.

Sec. 2301.652. DENIAL OF LICENSE APPLICATION: DEALERSHIP. (a) The board may deny an application for a license to establish a dealership if, following a protest, the applicant fails to establish good cause for establishing the dealership. In determining good cause, the board shall consider:

(1) whether the manufacturer or distributor of the same line-make of new motor vehicle is being adequately represented as to sales and service;

(2) whether the protesting franchised dealer representing the same line-make of new motor vehicle is in substantial compliance with the dealer's franchise, to the extent that the franchise is not in conflict with this chapter;

(3) the desirability of a competitive marketplace;

(4) any harm to the protesting franchised dealer;

(5) the public interest;

(6) any harm to the applicant; and

(7) current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area.

(b) Except as provided by Subsection (c) and Sections 2301.6521 and 2301.6522, a person has standing under this section to protest an application to establish or relocate a dealership if the person filing the protest is a franchised dealer of the same line-make whose dealership is located:

(1) in the county in which the proposed dealership is to be located; or

(2) within a 15-mile radius of the proposed dealership.

(c) A franchised dealer may not protest an application to relocate a dealership under this section if the proposed relocation site is not:

(1) more than two miles from the site where the dealership is currently located; or

(2) closer to the franchised dealer than the site from which the dealership is being relocated.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 9, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 13, eff.

September 1, 2011.

Sec. 2301.6521. RIGHT TO PROTEST: CERTAIN RELOCATIONS. (a)  
In this section, "affected county" means:

(1) a county with a population of one million or more; or  
(2) a county with a population of 500,000 or more but less than one million that is adjacent to a county with a population of one million or more.

(b) Notwithstanding any other provision of this chapter and except as provided by Subsection (d), a franchised dealer may protest an application to relocate a dealership from a location in an affected county to a location within the same affected county or an adjacent affected county only if the dealer is:

(1) a dealer of the same line-make as the relocating dealership and is in the affected county where the proposed dealership is being relocated and is nearest to the proposed relocation site, if no dealership of the same line-make as the relocating dealership is located within 15 miles of the proposed relocation site; or

(2) a dealer of the same line-make as the relocating dealership whose dealership location is within 15 miles of the proposed relocation site.

(c) If more than one dealership location is an equal distance from the proposed relocation site and each dealer and dealership location satisfies the requirements of Subsection (b)(1), each dealer may protest the relocation under Subsection (b)(1).

(d) A franchised dealer may not protest an application to relocate a dealership under this section if the proposed relocation site is not:

(1) more than two miles from the site where the dealership is currently located; or

(2) closer to the franchised dealer than the site from which the dealership is being relocated.

Added by Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 14, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1338 (S.B. 854), Sec. 2, eff. June 14, 2013.

Sec. 2301.6522. RIGHT TO PROTEST: ECONOMICALLY IMPAIRED DEALER. (a) In this section, "economically impaired dealer" means a franchised dealer whose profitability has been, or is reasonably expected to be, substantially reduced at the dealer's current location, with no reasonable expectation of substantial improvement at that location, due to:

- (1) a natural disaster;
- (2) the exercise of eminent domain authority with respect to the dealership; or
- (3) the sale of all or part of the dealership to a governmental entity under threat of the exercise of eminent domain authority.

(b) Notwithstanding any other provision of this chapter and except as provided by Subsections (c) and (d), a dealer may not protest the relocation of an economically impaired dealer if:

- (1) the relocation is reasonably expected to be completed before the first anniversary of the date of the event described by Subsection (a); and
- (2) the proposed relocation site is two miles or less from the economically impaired dealer's current location.

(c) A dealer of the same line-make as an economically impaired dealer whose dealership is nearest to the proposed relocation site of the economically impaired dealer may protest the relocation if the proposed relocation site is more than two miles closer to the protesting dealer's dealership than the site of the economically impaired dealer's current location.

(d) If more than one dealership location is an equal distance from the proposed relocation site and each dealer and dealership location satisfies the requirements of Subsection (c), each dealer may protest the relocation under Subsection (c).

Added by Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. [529](#)), Sec. 14, eff. September 1, 2011.

Sec. 2301.653. REVOCATION OR SUSPENSION OF MANUFACTURER'S OR DISTRIBUTOR'S LICENSE. The revocation or suspension of a manufacturer's or distributor's license may be:

(1) limited to one or more municipalities or counties or any other defined area; or

(2) limited in a defined area only as to:

(A) certain aspects of the manufacturer's or distributor's business; or

(B) specified franchised dealers.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.654. PROBATION. If a suspension of a license is probated, the board may:

(1) require the license holder to report regularly to the board on matters that are the basis of the probation; or

(2) limit activities to those prescribed by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

#### **SUBCHAPTER O. HEARINGS PROCEDURES**

Sec. 2301.701. DEFINITION. In this subchapter, "contested case" has the meaning assigned by Section 2001.003, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.702. CONFLICT WITH OTHER LAW. To the extent of a conflict between this chapter and Chapter 2001, Government Code, this chapter controls.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.7025. LIMITATIONS PERIOD FOR CERTAIN CAUSES OF ACTION BY LICENSE HOLDERS. (a) This section does not apply to:

(1) an action with respect to which this chapter or rules of the board establish specific procedural time limits; or

(2) an action brought under Section 2301.204.

(b) Except as provided by this section, a license holder may not file an action with the board after the fourth anniversary of the date the action accrues.



(c) The limitations period provided by Subsection (b) may be extended for not more than 180 days on a showing that the failure to commence an action in a timely manner was caused by reliance on a fraudulent statement or inducement made by a party to induce a party to refrain from bringing an action.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.624(a), eff. Sept. 1, 2003.

Sec. 2301.703. HEARING REQUIRED IN CONTESTED CASE. (a) A hearing arising under this chapter or a board rule adopted under this chapter must be conducted in accordance with this chapter, any order, decision, or rule of the board, and Chapter 2001, Government Code.

(b) A hearing may be informally disposed of in accordance with Chapter 2001, Government Code.

(c) The parties to a contested case under this chapter or Chapter 503, Transportation Code, other than a contested case in an action brought by the department to enforce this chapter or Chapter 503, Transportation Code, must participate in mediation as provided by board rule before the parties may have a hearing in the case.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 25, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 8, eff. January 1, 2014.

Sec. 2301.704. HEARINGS EXAMINER; ADMINISTRATIVE LAW JUDGE.

(a) Except as otherwise provided by this section, a hearing under this chapter must be held by an administrative law judge of the State Office of Administrative Hearings.

(a-1) A hearing under Section 2301.204 or Subchapter M must be held by a hearings examiner.

(b) An administrative law judge and a hearings examiner have all of the board's power and authority as provided by this chapter to conduct hearings, including the power to:

- (1) hold a hearing;
- (2) administer an oath;

- (3) receive pleadings and evidence;
- (4) issue a subpoena to compel the attendance of a witness;
- (5) compel the production of papers and documents;
- (6) issue an interlocutory order, including a cease and desist order in the nature of a temporary restraining order or a temporary injunction;
- (7) make findings of fact and conclusions of law; and
- (8) issue a proposal for decision and recommend a final order.

(c) In a contested case hearing under Section 2301.204 or Subchapter M, a hearings examiner shall issue a final order.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1403 (H.B. 3601), Sec. 2, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 9, eff. January 1, 2014.

Sec. 2301.705. NOTICE OF CONTESTED CASE HEARING. (a) Notice of a contested case hearing involving a license holder must be given in accordance with this chapter and board rules.

(b) Notice must be given by certified mail, return receipt requested.

(c) Notice may be given to a person's officer, agent, employee, attorney, or other legal representative.

(d) Notice is considered to have been received by a person known to have legal rights, duties, or privileges that may be determined at the hearing if the notice is mailed to the last known address of the person not later than the 10th day before the date of the hearing.

(e) A person may waive notice of a hearing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.706. NOTICE OF RULEMAKING HEARING. Notice of a rulemaking hearing must be given in accordance with Chapter 2001, Government Code, and board rules before the 30th day preceding the date of the hearing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.707. CONTENTS OF HEARING NOTICE. Notice of a hearing shall describe in summary form the purpose of the hearing and the date, time, and place of the hearing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.708. CONDUCT OF HEARING. (a) A hearing must be convened at the time and place stated in the notice.

(b) A hearing may be recessed until a time and place certain:

(1) by giving advance notice as required by Section 2001.057, Government Code; or

(2) without advance notice if the time and place is announced openly before the recess.

(c) Except as otherwise provided by this chapter, a person whose legal rights, duties, or privileges are to be determined at a hearing is entitled to:

(1) appear personally or by counsel;

(2) cross-examine adverse witnesses; and

(3) produce evidence and witnesses in the person's own behalf.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.709. REVIEW BY BOARD. (a) In reviewing a case under this subchapter, the board or a person delegated power from the board under Section 2301.154 may consider only materials that are submitted timely.

(b) The board or a person delegated power from the board under Section 2301.154 may hear such oral argument from any party as the board may allow.

(c) The board or a person delegated power from the board under Section 2301.154 shall take any further action conducive to the issuance of a final order and shall issue a written final decision or order. A majority vote of a quorum of the board is required to adopt a final decision or order of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1403 (H.B. 3601), Sec. 3, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 26, eff. September 1, 2013.

Sec. 2301.710. DISMISSAL OF COMPLAINT. On the motion of any party, the board or other person delegated final order authority under Section 2301.154, without holding a contested case hearing, may issue a final order dismissing a complaint, protest, or response in accordance with the terms and procedures set forth in the Texas Rules of Civil Procedure.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 27, eff. September 1, 2013.

Sec. 2301.711. ORDERS AND DECISIONS. (a) The board or other person delegated final order authority under Section 2301.154 shall issue final orders for the implementation and enforcement of this chapter and Chapter 503, Transportation Code.

(b) An order or decision under this chapter must:

(1) include a separate finding of fact with respect to each specific issue required by law to be considered in reaching a decision;

(2) set forth additional findings of fact and conclusions of law on which the order or decision is based;

(3) give the reasons for the particular actions taken; and

(4) be signed by the presiding officer or assistant presiding officer for the board or other person delegated final order authority under Section 2301.154.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 20, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 28, eff.

September 1, 2013.

Sec. 2301.712. FILING FEE. (a) The filing fee for a contested case or a protest that involves a hearing is:

- (1) \$35 for a complaint filed under Subchapter M; and
- (2) \$200 for any other complaint or protest.

(b) If a person who brings a complaint under Subchapter M prevails in the case, the board or a person delegated power from the board under Section 2301.154 shall order the nonprevailing party in the case to reimburse the amount of the filing fee for the case.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 29, eff. September 1, 2013.

Text of section as amended by Acts 2013, 83rd Leg., R.S., Ch. 1135  
(H.B. 2741), Sec. 30

For text of section as amended by Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 10, see other Sec. 2301.713.

Sec. 2301.713. REHEARING. (a) Except as provided by Subsection (b), a party who seeks a rehearing of an order shall seek the rehearing in accordance with Chapter 2001, Government Code.

(b) The board by rule may establish a procedure to allow parties to contested cases in which the final order is issued by a person to whom final order authority is delegated under Section 2301.154 to file motions for rehearing with the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 30, eff. September 1, 2013.

Text of section as amended by Acts 2013, 83rd Leg., R.S., Ch. 1379  
(H.B. 1692), Sec. 10

For text of section as amended by Acts 2013, 83rd Leg., R.S., Ch.

1135 (H.B. 2741), Sec. 30, see other Sec. 2301.713.

Sec. 2301.713. REHEARING. (a) Except as otherwise provided by this section, a party who seeks a rehearing of an order shall seek the rehearing in accordance with Chapter 2001, Government Code.

(b) The board by rule may establish procedures to allow a party to a contested case to file a motion for rehearing.

(c) A motion for rehearing in a contested case under Section 2301.204 or Subchapter M must be filed with and decided by the chief hearings examiner.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 10, eff. January 1, 2014.

#### **SUBCHAPTER P. JUDICIAL REVIEW**

Sec. 2301.751. JUDICIAL REVIEW GENERALLY. (a) A party to a proceeding affected by a final order, rule, or decision or other final action of the board with respect to a matter arising under this chapter or Chapter 503, Transportation Code, may seek judicial review of the action under the substantial evidence rule in:

- (1) a district court in Travis County; or
- (2) the court of appeals for the Third Court of Appeals

District.

(b) Except as otherwise provided by this chapter, an appeal brought in a district court may be removed to the court of appeals by any party before trial in the district court on the filing of notice of removal with the district court.

(c) Judicial review by a court, to the extent not in conflict with this chapter, is in the manner provided by Chapter 2001, Government Code. Judicial review in the court of appeals:

(1) is initiated under Chapter 2001, Government Code, in the manner review is initiated for a proceeding in a district court; and

(2) is governed by the applicable rules of appellate procedure.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 31, eff.

September 1, 2013.

Sec. 2301.752. TIME FOR FILING; CITATION. (a) A petition for judicial review under this chapter must be filed not later than the 30th day after the date on which the action, ruling, order, or decision becomes final and appealable.

(b) Citation for an appeal must be served on the executive director or the executive director's designee and each party of record in the matter. For an appeal initiated in the court of appeals, the court shall cause the citation to be issued.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 32, eff. September 1, 2013.

Sec. 2301.753. ADDITIONAL EVIDENCE. An appeal in which evidence outside the record of the board is to be taken under Chapter 2001, Government Code, or otherwise, shall be brought in a district court in Travis County or in the court of appeals. An appeal brought in the court of appeals is subject to remand to a district court in Travis County for proceedings under instructions from the court of appeals.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.754. DISMISSAL FOR FAILURE TO PROSECUTE. (a) A person filing an appeal under this subchapter shall pursue the appeal with reasonable diligence.

(b) If the person fails to prosecute the appeal within six months after the date the appeal is filed, the court shall presume that the appeal has been abandoned. On the motion of the attorney general or a party in the case, the court shall dismiss the appeal after notifying the person who filed the appeal, unless the person shows good cause for the delay.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.755. EFFECT OF APPEAL ON ORDER. An appeal under this subchapter does not affect the enforcement of a final board order unless:

(1) the enforcement of the order is enjoined under Chapter 65, Civil Practice and Remedies Code, and under principles of primary jurisdiction; or

(2) the board, in the interest of justice, suspends the enforcement of the order pending final determination of the appeal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.756. REVIEW OF INTERLOCUTORY ORDER. (a) A writ of error is allowed from the supreme court for an appeal of an interlocutory order described by Section 51.014(a)(3) or (6), Civil Practice and Remedies Code, in a civil action involving a license holder.

(b) The supreme court shall give precedence to a writ of error under this section over other writs of error.

(c) The right to appeal by writ of error is without prejudice to the right of any party to seek relief by an application for leave to file a petition for writ of mandamus with respect to the order.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

#### **SUBCHAPTER Q. PENALTIES AND OTHER ENFORCEMENT PROVISIONS**

Sec. 2301.801. CIVIL PENALTY. (a) If, after a proceeding under this chapter and board rules, the board determines that a person is violating or has violated this chapter, a rule adopted or order issued under this chapter, or Section 503.038(a), Transportation Code, the board may impose a civil penalty. The amount of the penalty may not exceed \$10,000 for each violation. Each act of violation and each day a violation continues is a separate violation.

(b) In determining the amount of the penalty, the board shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public;

(2) the economic damage to the public caused by the



violation;

- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

(c) Notwithstanding any other law to the contrary, a civil penalty recovered under this chapter shall be deposited in the state treasury to the credit of the Texas Department of Motor Vehicles fund.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1287 (H.B. [2202](#)), Sec. 5, eff. September 1, 2013.

Sec. 2301.802. CEASE AND DESIST ORDER. (a) If it appears to the board that a person is violating this chapter or a board rule or order, the board after notice may require the person engaged in the conduct to appear and show cause why a cease and desist order should not be issued prohibiting the conduct described in the notice.

(b) An interlocutory cease and desist order may be granted with or without bond or other undertaking if:

(1) the order is necessary to the performance of the duties delegated to the board by this chapter;

(2) the order is necessary or convenient to maintaining the status quo between two or more adverse parties before the board;

(3) a party before the board is entitled to relief demanded of the board and all or part of the relief requires the restraint of some act prejudicial to the party;

(4) a person is performing, about to perform, or procuring or allowing the performance of an act:

(A) relating to the subject of a contested case pending before the board, in violation of the rights of a party before the board; and

(B) that would tend to render the board's order in the case ineffectual; or

(5) substantial injury to the rights of a person subject to the board's jurisdiction is threatened regardless of any remedy available at law.

(c) A proceeding under this section is governed by:

(1) this chapter and the board's rules; and

(2) Chapter 2001, Government Code, relating to a contested case, to the extent that chapter is not in conflict with Subdivision (1).

(d) An interlocutory cease and desist order remains in effect until vacated or incorporated in a final order. An appeal of an interlocutory cease and desist order must be made to the board before seeking judicial review as provided by this chapter.

(e) A permanent cease and desist order may be issued regardless of the requirements of Subsection (b) but only under the procedures for a final order under this chapter. An appeal of a permanent cease and desist order is made in the same manner as an appeal of a final order under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. [2741](#)), Sec. 33, eff. September 1, 2013.

Sec. 2301.803. STATUTORY STAY. (a) On the initiation of a proceeding under this chapter or Chapter 503, Transportation Code, whether by complaint, protest, or otherwise, a person who receives notice from the board of a statutory stay imposed by this chapter may not allow or commit any act or omission that would:

(1) violate this chapter, Chapter 503, Transportation Code, any rule, order, or decision of the board, or an order or decision of a person delegated power from the board under Section 2301.154;

(2) affect a legal right, duty, or privilege of any party to a proceeding under this chapter or Chapter 503, Transportation Code; or

(3) tend to render ineffectual an order in a pending proceeding.

(b) A statutory stay imposed by this chapter remains in effect until vacated or until the proceeding is concluded by a final order or decision.

(c) A person affected by a statutory stay imposed by this chapter may request a hearing to modify, vacate, or clarify the extent and application of the statutory stay.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 21, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 34, eff. September 1, 2013.

Sec. 2301.804. SUIT FOR INJUNCTIVE RELIEF OR CIVIL PENALTY.

(a) If it appears that a person has violated, is violating, or is threatening to violate this chapter, Chapter 503, Transportation Code, a board rule adopted under this chapter or Chapter 503, Transportation Code, or an order issued under this chapter or Chapter 503, Transportation Code, the board or the executive director, if authorized by the presiding officer of the board, may cause a suit to be instituted in a court for:

- (1) injunctive relief to restrain the person from committing the violation or threat of violation;
- (2) imposition of a civil penalty; or
- (3) both injunctive relief and a civil penalty.

(b) At the request of the board or the executive director, if authorized by the presiding officer of the board, the attorney general shall bring in the name of the state a suit for an injunction or a civil penalty as described by Subsection (a).

(c) In a suit for injunctive relief under this chapter, the court shall grant, without bond or other undertaking, any prohibitory or mandatory injunction the facts warrant, including a temporary restraining order, temporary injunction, or permanent injunction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 35, eff. September 1, 2013.

Sec. 2301.805. RELIEF UNDER OTHER LAW. (a) Notwithstanding any other law, including Subchapter E, Chapter 17, Business & Commerce Code, in addition to the other remedies provided by this subchapter, a person may institute an action under Subchapter E, Chapter 17, Business & Commerce Code, or any successor statute to

that subchapter, and is entitled to any procedure or remedy under that subchapter, if the person:

(1) has sustained damages as a result of a violation of Sections 2301.351-2301.354 or Section 2301.357; or

(2) is a franchised dealer who has sustained damages as a result of a violation of:

(A) Subchapter J of this chapter; or

(B) Subchapter E, Chapter 17, Business & Commerce Code.

(b) In an action brought under this section, and in the interest of judicial economy and efficiency, a judgment entered in the action must give deference to the findings of fact and conclusions of law of the board contained in any final order that is the basis of the action.

(c) In an action brought against a license holder under this section, or for any other type of conduct for which an action may be brought under Subchapter E, Chapter 17, Business & Commerce Code, the \$1,000 limitation contained in Section 17.50(b)(1), Business & Commerce Code, as that provision existed on September 1, 1979, shall be adjusted to reflect a change in the consumer price index after that date. The limitation shall be increased or decreased, as applicable, by an amount equal to 1,000 multiplied by the percentage of increase or decrease in the consumer price index between September 1, 1979, and the time the damages are awarded by final judgment or settlement. In this subsection, "consumer price index" means the National Consumer Price Index For All Urban Consumers, or a substantially similar successor. A court may take judicial notice of that index.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 15, eff. September 1, 2011.

Sec. 2301.806. BOARD EXEMPT FROM FILING FEE. Notwithstanding the other provisions of this chapter, the board is not required to pay a filing fee when filing a complaint or other enforcement action.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.625(a), eff. Sept. 1, 2003.

**SUBCHAPTER R. REGULATION OF CERTAIN COMMERCIAL USES OF MOTOR  
VEHICLES**

Sec. 2301.851. CERTAIN CHARGES INCLUDED IN CUSTOMER AGREEMENT.

(a) A person required to register under Section 152.065, Tax Code, may include in a customer agreement subject to Subsection (b) a separate charge for the proportionate amount of title fees, registration fees, and property taxes paid in the preceding calendar year on the person's vehicle fleet.

(b) A person who includes the charge must do so:

(1) on a nondiscriminatory basis; and

(2) in each agreement other than an agreement that is exempt from the tax imposed under Section 152.026, Tax Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.31, eff. April 1, 2009.

Sec. 2301.852. USE OR RETENTION OF SALVAGE MOTOR VEHICLE. (a)

Notwithstanding Section 2301.002, in this section, "certificate of title," "motor vehicle," and "owner" have the meanings assigned by Section 501.002, Transportation Code.

(b) An owner required to register under Section 152.065, Tax Code, may not use or retain for use for a usual commercial purpose of the owner a motor vehicle that has been issued a certificate of title under Section 501.100, Transportation Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.31, eff. April 1, 2009.

Sec. 2301.853. CRIMINAL PENALTY. (a) A person commits an

offense if the person violates this subchapter.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.31, eff. April 1, 2009.

**CHAPTER 2302. SALVAGE VEHICLE DEALERS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2302.001. DEFINITIONS. In this chapter:

(1) "Casual sale," "damage," "insurance company," "major component part," "metal recycler," "motor vehicle," "nonrepairable motor vehicle," "nonrepairable vehicle title," "out-of-state buyer," "salvage motor vehicle," "salvage vehicle title," "salvage vehicle dealer," and "used part" have the meanings assigned by Section 501.091, Transportation Code.

(2) "Board" means the board of the Texas Department of Motor Vehicles.

(3) "Department" means the Texas Department of Motor Vehicles.

(4) "Federal safety certificate" means the label or tag required under 49 U.S.C. Section 30115 that certifies that a motor vehicle or equipment complies with applicable federal motor vehicle safety standards.

(5) "Salvage pool operator" means a person who engages in the business of selling nonrepairable motor vehicles or salvage motor vehicles at auction, including wholesale auction, or otherwise.

(6) "Salvage vehicle agent" means a person who acquires, sells, or otherwise deals in nonrepairable or salvage motor vehicles in this state as directed by the salvage vehicle dealer under whose license the person operates. The term does not include a person who:

(A) is a licensed salvage vehicle dealer or a licensed used automotive parts recycler;

(B) is a partner, owner, or officer of a business entity that holds a salvage vehicle dealer license or a used automotive parts recycler license;

(C) is an employee of a licensed salvage vehicle dealer or a licensed used automotive parts recycler; or

(D) only transports salvage motor vehicles for a licensed salvage vehicle dealer or a licensed used automotive parts recycler.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.03, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.04, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.01, eff. September 1, 2009.

Sec. 2302.0015. CONSENT TO ENTRY AND INSPECTION. (a) A person consents to an entry or inspection described by Subsection (b) by:

- (1) accepting a license under this chapter; or
- (2) engaging in a business or activity regulated under this

chapter.

(b) For the purpose of enforcing or administering this chapter or Chapter 501 or 502, Transportation Code, a member of the board, an employee or agent of the board or department, a member of the Public Safety Commission, an officer of the Department of Public Safety, or a peace officer may at a reasonable time:

(1) enter the premises of a business regulated under one of those chapters; and

(2) inspect or copy any document, record, vehicle, part, or other item regulated under one of those chapters.

(c) A person described by Subsection (a):

(1) may not refuse or interfere with an entry or inspection under this section; and

(2) shall cooperate fully with a person conducting an inspection under this section to assist in the recovery of stolen motor vehicles and parts and to prevent the sale or transfer of stolen motor vehicles and parts.

(d) An entry or inspection occurs at a reasonable time for purposes of Subsection (b) if the entry or inspection occurs:

(1) during normal business hours of the person or activity regulated under this chapter; or

(2) while an activity regulated under this chapter is occurring on the premises.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 17.04, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.05, eff. September 1, 2009.

Sec. 2302.005. APPLICABILITY OF CERTAIN MUNICIPAL ORDINANCES,

LICENSES, AND PERMITS. This chapter:

(1) is in addition to any municipal ordinance relating to the regulation of a person who deals in nonrepairable or salvage motor vehicles or used parts; and

(2) does not prohibit the enforcement of a requirement of a municipal license or permit that is related to an activity regulated under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.05, eff. Sept. 1, 2003.

Sec. 2302.006. APPLICATION OF CHAPTER TO METAL RECYCLERS. (a) Except as provided by Subsections (b) and (c), this chapter does not apply to a transaction in which a metal recycler is a party.

(b) This chapter applies to a transaction in which a motor vehicle:

(1) is sold, transferred, released, or delivered to a metal recycler for the purpose of reuse or resale as a motor vehicle; and

(2) is used for that purpose.

(c) Sections 2302.0015 and 2302.205 apply to a metal recycler.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.05, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. [1095](#)), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. [3097](#)), Sec. 4.02, eff. September 1, 2009.

Sec. 2302.007. APPLICATION OF CHAPTER TO INSURANCE COMPANIES. This chapter does not apply to an insurance company.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.05, eff. Sept. 1, 2003.



Sec. 2302.008. APPLICABILITY OF CHAPTER TO USED AUTOMOTIVE PARTS RECYCLERS. This chapter does not apply to a used automotive parts recycler licensed under Chapter 2309.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 3, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.03, eff. September 1, 2009.

#### **SUBCHAPTER B. BOARD POWERS AND DUTIES**

Sec. 2302.051. RULES AND ENFORCEMENT POWERS. The board shall adopt rules as necessary to administer this chapter and may take other action as necessary to enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.05, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.07, eff. September 1, 2009.

Sec. 2302.052. DUTY TO SET FEES. The board shall set application fees, license fees, renewal fees, and other fees as required to implement this chapter. The board shall set the fees in amounts reasonable and necessary to implement and enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.05, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.07, eff. September 1, 2009.

Sec. 2302.053. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt a rule under Section 2302.051 restricting advertising or competitive bidding by a person who holds a license issued under this chapter except to prohibit false,

misleading, or deceptive practices by the person.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the use of a trade name in advertising by the person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.07, eff. September 1, 2009.

#### **SUBCHAPTER C. LICENSE REQUIREMENTS**

Sec. 2302.101. LICENSE REQUIRED FOR SALVAGE VEHICLE DEALER.

Unless a person holds a salvage vehicle dealer license issued under this chapter, the person may not:

- (1) act as a salvage vehicle dealer or rebuilder; or
- (2) store or display a motor vehicle as an agent or escrow agent of an insurance company.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.05, eff. Sept. 1, 2003.

Sec. 2302.102. SALVAGE VEHICLE DEALER LICENSE CLASSIFICATION.

(a) The department shall classify a salvage vehicle dealer according to the type of activity performed by the dealer.

(b) A salvage vehicle dealer may not engage in activities of a particular classification unless the dealer holds a license with an endorsement in that classification.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.103. APPLICATION FOR SALVAGE VEHICLE DEALER LICENSE.

(a) To apply for a salvage vehicle dealer license, a person must submit to the department an application on a form prescribed by the department and the application fee.

(b) An applicant may apply for a salvage vehicle dealer license with an endorsement in one or more of the following classifications:

- (1) new automobile dealer;
- (2) used automobile dealer;
- (3) salvage pool operator;
- (4) salvage vehicle broker; or
- (5) salvage vehicle rebuilder.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.04, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 36, eff. September 1, 2013.

Sec. 2302.104. CONTENTS OF APPLICATION. (a) An application for a salvage vehicle dealer license must include:

- (1) the name, business address, and business telephone number of the applicant;
- (2) the name under which the applicant proposes to conduct business;
- (3) the location, by number, street, and municipality, of each office at which the applicant proposes to conduct business;
- (4) a statement indicating whether the applicant previously applied for a license under this chapter and, if so, a statement indicating the result of the previous application and indicating whether the applicant has ever been the holder of a license issued under this chapter that was revoked or suspended;
- (5) a statement of the previous history, record, and associations of the applicant to the extent sufficient to establish, to the satisfaction of the department, the business reputation and character of the applicant;
- (6) the applicant's federal tax identification number, if any;

(7) the applicant's state sales tax number; and  
(8) any other information required by rules adopted under this chapter.

(b) In addition to the information required by Subsection (a), the application of a corporation must include:

- (1) the state of its incorporation;
- (2) the name, address, date of birth, and social security number of each principal officer or director of the corporation;
- (3) a statement of the previous history, record, and associations of each officer and each director to the extent sufficient to establish, to the satisfaction of the department, the business reputation and character of the applicant; and
- (4) a statement showing whether an officer, director, or employee of the applicant has been refused a license as a salvage vehicle dealer or has been the holder of a license issued under this chapter that was revoked or suspended.

(c) In addition to the information required by Subsection (a), the application of a partnership must include:

- (1) the name, address, date of birth, and social security number of each owner or partner;
- (2) a statement of the previous history, record, and associations of each owner and each partner to the extent sufficient to establish, to the satisfaction of the department, the business reputation and character of the applicant; and
- (3) a statement showing whether an owner, partner, or employee of the applicant has been refused a license as a salvage vehicle dealer or has been the holder of a license issued under this chapter that was revoked or suspended.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.105. DEPARTMENT INVESTIGATION. (a) The department may not issue a license under this chapter until the department completes an investigation of the applicant's qualifications.

(b) The department shall conduct the investigation not later than the 15th day after the date the department receives the application. The department shall report to the applicant the results of the investigation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.106. LICENSE ISSUANCE. (a) The department shall issue a license to an applicant who meets the license qualifications adopted under this chapter and pays the required fees.

(b) A license may not be issued in a fictitious name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.107. SALVAGE VEHICLE AGENT LICENSE. (a) A person may not act as a salvage vehicle agent unless the person holds a salvage vehicle agent license issued under this chapter.

(b) A person is entitled to a salvage vehicle agent license on application to the department, payment of the required fee, and authorization from a salvage vehicle dealer to operate under the dealer's license.

(c) A salvage vehicle dealer may authorize not more than five persons to operate as salvage vehicle agents under the dealer's license.

(d) A salvage vehicle agent may acquire, sell, or otherwise deal in, nonrepairable or salvage motor vehicles as directed by the authorizing dealer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.06, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.05, eff. September 1, 2009.

Sec. 2302.108. DISCIPLINARY ACTION. (a) The department may deny, suspend, revoke, or reinstate a license issued under this chapter.

(b) The board by rule shall establish the grounds for denial, suspension, revocation, or reinstatement of a license issued under

this chapter and the procedures for disciplinary action. A rule adopted under this subsection may not conflict with a rule adopted by the State Office of Administrative Hearings.

(c) A proceeding under this section is subject to Chapter 2001, Government Code.

(d) A person whose license is revoked may not apply for a new license before the first anniversary of the date of the revocation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.08, eff. September 1, 2009.

#### **SUBCHAPTER D. LICENSE EXPIRATION AND RENEWAL**

Sec. 2302.151. LICENSE EXPIRATION. (a) A license issued under this chapter expires on the first anniversary of the date of issuance.

(b) A person whose license has expired may not engage in the activities that require a license until the license has been renewed under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.152. NOTICE OF EXPIRATION. Not later than the 31st day before the expiration date of a person's license, the department shall send written notice of the impending expiration to the person at the person's last known address according to department records.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.153. PROCEDURES FOR RENEWAL. (a) A person who is otherwise eligible to renew a license issued under this chapter may renew an unexpired license by paying the required renewal fee to the department on or before the expiration date of the license.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90

days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or longer may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and has been doing business in the other state for the two years preceding the date of application may renew an expired license. The person must pay to the department a renewal fee that is equal to two times the normally required renewal fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

#### **SUBCHAPTER E. CONDUCTING BUSINESS**

Sec. 2302.201. DUTIES ON ACQUISITION OF SALVAGE MOTOR VEHICLE.

(a) Except as provided by Section 501.0935, Transportation Code, a salvage vehicle dealer who acquires ownership of a salvage motor vehicle from an owner must receive from the owner a properly assigned title.

(b) The dealer shall comply with Subchapter E, Chapter 501, Transportation Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.07, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1136 (H.B. [1422](#)), Sec. 6, eff. September 1, 2011.

Sec. 2302.202. RECORDS OF PURCHASES. A salvage vehicle dealer shall maintain a record of each salvage motor vehicle purchased or sold by the dealer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.07, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 6, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.06, eff. September 1, 2009.

Sec. 2302.203. REGISTRATION OF NEW BUSINESS LOCATION. Before moving a place of business or opening an additional place of business, a salvage vehicle dealer must register the new location with the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.204. CASUAL SALES. This chapter does not apply to a person who purchases fewer than five nonrepairable motor vehicles or salvage motor vehicles from a salvage vehicle dealer, an insurance company or salvage pool operator in a casual sale at auction, except that:

(1) the board shall adopt rules as necessary to regulate casual sales by salvage vehicle dealers, insurance companies, or salvage pool operators and to enforce this section; and

(2) a salvage vehicle dealer, insurance company, or salvage pool operator who sells a motor vehicle in a casual sale shall comply with those rules and Subchapter E, Chapter 501, Transportation Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.07, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.09, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1296 (H.B. 2357), Sec. 245, eff. January 1, 2012.

Sec. 2302.205. DUTY OF METAL RECYCLER. A metal recycler who purchases a motor vehicle shall submit a regular certificate of title or a nonrepairable or salvage vehicle title or comparable out-of-state ownership document to the department and comply with Subchapter E, Chapter 501, Transportation Code.



Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.07, eff. Sept. 1, 2003.

**SUBCHAPTER F. ADDITIONAL DUTIES OF SALVAGE VEHICLE DEALER IN  
CONNECTION WITH MOTOR VEHICLE COMPONENT PARTS**

Sec. 2302.251. DEFINITIONS. In this subchapter:

(1) "Component part" means a major component part as defined in Section 501.091, Transportation Code, or a minor component part.

(2) "Interior component part" means a seat or radio of a motor vehicle.

(3) "Minor component part" means an interior component part, a special accessory part, or a motor vehicle part that displays or should display one or more of the following:

(A) a federal safety certificate;

(B) a motor number;

(C) a serial number or a derivative; or

(D) a manufacturer's permanent vehicle identification number or a derivative.

(4) "Special accessory part" means a tire, wheel, tailgate, or removable glass top of a motor vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.07, eff. Sept. 1, 2003.

Sec. 2302.252. REMOVAL OF LICENSE PLATES; INVENTORY. (a) Immediately on receipt of a motor vehicle, a salvage vehicle dealer shall remove any unexpired license plates from the vehicle and place the license plates in a secure, locked place.

(b) A salvage vehicle dealer shall maintain on a form provided by the department an inventory of unexpired license plates removed under Subsection (a). The inventory must include:

(1) each license plate number;

(2) the make of the motor vehicle from which the license plate was removed;

(3) the motor number of that vehicle; and

(4) the vehicle identification number of that vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.254. RECORD OF PURCHASE; INVENTORY OF PARTS. (a) A salvage vehicle dealer shall keep an accurate and legible inventory of each used component part purchased by or delivered to the dealer. The inventory must contain a record of each part that includes:

(1) the date of purchase or delivery;

(2) the name, age, address, sex, and driver's license number of the seller and a legible photocopy of the seller's driver's license;

(3) the license plate number of the motor vehicle in which the part was delivered;

(4) a complete description of the part, including the type of material and, if applicable, the make, model, color, and size of the part; and

(5) the vehicle identification number of the motor vehicle from which the part was removed.

(b) Instead of the information required by Subsection (a), a salvage vehicle dealer may record:

(1) the name of the person who sold the part or the motor vehicle from which the part was obtained; and

(2) the Texas certificate of inventory number or the federal taxpayer identification number of that person.

(c) The department shall prescribe the form of the record required under Subsection (a) and shall make the form available to salvage vehicle dealers.

(d) This section does not apply to:

(1) an interior component part or special accessory part that is from a motor vehicle more than 10 years of age; or

(2) a part delivered to a salvage vehicle dealer by a commercial freight line or commercial carrier.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.255. ASSIGNMENT OF INVENTORY NUMBER. (a) A salvage vehicle dealer shall:

(1) assign a unique inventory number to each transaction in

which the dealer purchases or takes delivery of a component part;

(2) attach the unique inventory number to each component part the dealer obtains in the transaction; and

(3) retain each component part in its original condition on the business premises of the dealer for at least three calendar days, excluding Sundays, after the date the dealer obtains the part.

(b) An inventory number attached to a component part under Subsection (a) may not be removed while the part remains in the inventory of the salvage vehicle dealer.

(c) A salvage vehicle dealer shall record a component part on an affidavit bill of sale if:

(1) the component part does not have a vehicle identification number or the vehicle identification number has been removed; or

(2) the vehicle identification number of the vehicle from which the component part was removed is not available.

(d) The department shall prescribe and make available the form for the affidavit bill of sale.

(e) This section does not apply to the purchase by a salvage vehicle dealer of a nonoperational engine, transmission, or rear axle assembly from another salvage vehicle dealer or an automotive-related business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.256. MAINTENANCE OF RECORDS. A salvage vehicle dealer shall keep a record required under this subchapter on a form prescribed by the department. The dealer shall maintain two copies of each record required under this subchapter until the first anniversary of the date the dealer sells or disposes of the item for which the record is maintained.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.257. SURRENDER OF CERTAIN DOCUMENTS OR LICENSE PLATES. (a) On demand, a salvage vehicle dealer shall surrender to the department for cancellation a certificate of title or authority, sales receipt or transfer document, license plate, or inventory list that the dealer is required to possess or maintain.

(b) The department shall provide a signed receipt for a surrendered certificate of title or license plate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.258. INSPECTION OF RECORDS. (a) A peace officer at any reasonable time may inspect a record required to be maintained under this subchapter, including an inventory record and affidavit bill of sale.

(b) On demand of a peace officer, a salvage vehicle dealer shall give to the officer a copy of a record required to be maintained under this subchapter.

(c) A peace officer may inspect the inventory on the premises of a salvage vehicle dealer at any reasonable time in order to verify, check, or audit the records required to be maintained under this subchapter.

(d) A salvage vehicle dealer or an employee of the dealer shall allow and may not interfere with a peace officer's inspection of the dealer's inventory, premises, or required inventory records or affidavit bills of sale.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

#### **SUBCHAPTER G. MOTOR VEHICLE SALVAGE YARDS IN CERTAIN COUNTIES**

Sec. 2302.301. APPLICATION OF SUBCHAPTER. This subchapter applies only to a motor vehicle salvage yard located in a county with a population of 2.8 million or more.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.302. LIMITS ON OPERATION OF HEAVY MACHINERY. (a) A salvage vehicle dealer may not operate heavy machinery in a motor vehicle salvage yard between the hours of 7 p.m. of one day and 7 a.m. of the following day.

(b) This section does not apply to conduct necessary to a sale or purchase by the dealer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.07, eff. Sept. 1, 2003.

#### **SUBCHAPTER H. PENALTIES AND ENFORCEMENT**

Sec. 2302.351. INJUNCTIONS. (a) The prosecutor in the county where a motor vehicle salvage yard is located or the city attorney in the municipality where the salvage yard is located may bring suit to enjoin for a period of less than one year a violation of this chapter.

(b) If a salvage vehicle dealer, an employee of the dealer acting in the course of employment, or a salvage vehicle agent operating under the dealer's license is convicted of more than one offense under Section 2302.353(a), the district attorney for a county in which the dealer's salvage business is located may bring an action in that county to enjoin the dealer's business operations for a period of at least one year.

(c) An action under Subsection (b) must be brought in the name of the state. If judgment is in favor of the state, the court shall:

(1) enjoin the dealer from maintaining or participating in the business of a salvage vehicle dealer for a definite period of at least one year or indefinitely, as determined by the court; and

(2) order that the dealer's place of business be closed for the same period.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.07, eff. Sept. 1, 2003.

Sec. 2302.353. OFFENSES. (a) A person commits an offense if the person knowingly violates:

(1) a provision of this chapter other than Subchapter G;  
or

(2) a rule adopted under a provision of this chapter other than Subchapter G.

(b) A person commits an offense if the person knowingly violates Subchapter G.

(c) An offense under Subsection (a) is a Class A misdemeanor unless it is shown on the trial of the offense that the defendant has

been previously convicted of an offense under that subsection, in which event the offense is punishable as a state jail felony.

(d) An offense under Subsection (b) is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.07, eff. Sept. 1, 2003.

Sec. 2302.354. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty may not be less than \$50 or more than \$1,000, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount of the penalty shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice requires.

(c) The person may stay enforcement during the time the order is under judicial review if the person pays the penalty to the court clerk or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the department to contest the affidavit as provided by those rules.

(d) A proceeding to impose an administrative penalty is subject to Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1296 (H.B. 2357), Sec. 246(a), eff. September 1, 2011.

**CHAPTER 2303. VEHICLE STORAGE FACILITIES**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2303.001. SHORT TITLE. This chapter may be cited as the Vehicle Storage Facility Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.002. DEFINITIONS. In this chapter:

(1) "Abandoned nuisance vehicle" means a motor vehicle that is:

(A) at least 10 years old; and

(B) of a condition only to be demolished, wrecked, or dismantled.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Executive director" means the executive director of the department.

(5) "Owner of a vehicle" means a person:

(A) named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501, Transportation Code;

(B) in whose name the vehicle is registered under Chapter 502, Transportation Code, or a member of the person's immediate family;

(C) who holds the vehicle through a lease agreement;

(D) who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or

(E) who is a lienholder, holds an affidavit of repossession, and is entitled to repossess the vehicle.

(6) "Principal" means an individual who:

(A) personally or constructively holds, including as the beneficiary of a trust:

(i) at least 10 percent of a corporation's outstanding stock; or

(ii) more than \$25,000 of the fair market value of a business entity;

(B) has the controlling interest in a business entity;

(C) has a direct or indirect participating interest through shares, stock, or otherwise, regardless of whether voting

rights are included, of more than 10 percent of the profits, proceeds, or capital gains of a business entity;

(D) is a member of the board of directors or other governing body of a business entity; or

(E) serves as an elected officer of a business entity.

(7) "Vehicle" means:

(A) a motor vehicle for which the issuance of a certificate of title is required under Chapter 501, Transportation Code; or

(B) any other device designed to be self-propelled or transported on a public highway.

(8) "Vehicle storage facility" means a garage, parking lot, or other facility that is:

(A) owned by a person other than a governmental entity; and

(B) used to store or park at least 10 vehicles each year.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.626(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.01, eff. September 1, 2007.

Sec. 2303.003. EXEMPTIONS. (a) This chapter does not apply to a vehicle stored or parked at a vehicle storage facility with the consent of the owner of the vehicle.

(b) This chapter does not apply to a vehicle storage facility operated by a person licensed under Chapter 2301.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

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

Sec. 2303.051. RULEMAKING: LICENSE REQUIREMENTS. The commission shall adopt rules that:

(1) establish the requirements for a person to be licensed to operate a vehicle storage facility to ensure that the facility maintains adequate standards for the care of stored vehicles;



(2) relate to the administrative sanctions that may be imposed on a person licensed under this chapter;

(3) govern the administration of this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.02, eff. September 1, 2007.

Sec. 2303.052. ISSUANCE OF LICENSE; FEES. (a) The department may issue licenses to operate vehicle storage facilities.

(b) The department may impose and collect a fee for a license in an amount sufficient to cover the costs incurred by the department in administering this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.053. RULES REGARDING PAYMENT OF FEE. (a) The commission may adopt rules regarding the method of payment of a fee under this chapter.

(b) The rules may authorize the use of:

(1) electronic funds transfer; or

(2) a credit card issued by a financial institution

chartered by:

(A) a state or the federal government; or

(B) a nationally recognized credit organization

approved by the department.

(c) The rules may require the payment of a discount or a service charge for a credit card payment in addition to the fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.054. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commission may not adopt a rule restricting advertising or competitive bidding by a person licensed under this chapter except to prohibit a false, misleading, or deceptive practice.

(b) In its rules to prohibit a false, misleading, or deceptive

practice, the commission may not include a rule that:

- (1) restricts the person's use of any advertising medium;
- (2) restricts the person's personal appearance or the use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.055. EXAMINATION OF CRIMINAL CONVICTION. The department may conduct an examination of any criminal conviction of an applicant, including by obtaining any criminal history record information permitted by law.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.03, eff. September 1, 2007.

Sec. 2303.056. PERIODIC AND RISK-BASED INSPECTIONS. (a) The department may enter and inspect at any time during business hours:

- (1) the place of business of any person regulated under this chapter; or
  - (2) any place in which the department has reasonable cause to believe that a license holder is in violation of this chapter or in violation of a rule or order of the commission or executive director.
- (b) At least once every two years, the department shall inspect a vehicle storage facility that holds a license under this chapter.
- (c) The department shall conduct additional inspections based on a schedule of risk-based inspections using the following criteria:
- (1) the type and nature of the vehicle storage facility;
  - (2) the inspection history of the vehicle storage facility;
  - (3) any history of violations involving the vehicle storage facility; and
  - (4) any other factor determined by the commission by rule.
- (d) The vehicle storage facility shall pay a fee for each risk-based inspection performed under Subsection (c). The commission by rule shall set the amount of the fee.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.03, eff. September 1, 2007.

Sec. 2303.057. PERSONNEL. The department may employ personnel necessary to administer and enforce this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.03, eff. September 1, 2007.

Sec. 2303.058. ADVISORY BOARD. The Towing, Storage, and Booting Advisory Board under Chapter 2308 shall advise the commission in adopting vehicle storage rules under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.03, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 30, eff. September 1, 2009.

#### **SUBCHAPTER C. LICENSE REQUIREMENTS, ISSUANCE, AND RENEWAL**

Sec. 2303.101. FACILITY LICENSE REQUIRED. (a) A person may not operate a vehicle storage facility unless the person holds a license issued under this chapter.

(b) A license issued under this chapter:

- (1) is valid only for the person who applied for the license; and
- (2) applies only to a single vehicle storage facility named on the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.04, eff. September 1, 2007.

Sec. 2303.1015. EMPLOYEE LICENSE REQUIRED. (a) A person may not work at a vehicle storage facility unless the person holds a license issued under this chapter.

(b) The commission shall adopt rules governing the application for and issuance of a license under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.05, eff. September 1, 2007.

Sec. 2303.1016. VEHICLE STORAGE FACILITY EMPLOYEE AND TOWING OPERATOR; DUAL LICENSE. (a) The commission shall adopt rules for the issuance of a dual license for a person who is a vehicle storage facility employee and towing operator. The department shall issue the license to an applicant who:

- (1) meets the requirements established under:
    - (A) Section 2303.1015;
    - (B) Section 2308.153, 2308.154, or 2308.155; and
    - (C) any applicable rules adopted under this subchapter or Subchapter D, Chapter 2308; and
  - (2) submits to the department:
    - (A) an application on a department-approved form; and
    - (B) the required license fee.
- (b) A person holding a license issued under this section may:
- (1) work at a vehicle storage facility; and
  - (2) perform towing operations.

Added by Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 1, eff. June 1, 2010.

Sec. 2303.102. LICENSE APPLICATION. (a) The commission by rule shall determine the types of information to be included in an application for a license under this chapter on a form prescribed by the executive director.

(b) The rules adopted under this section must require an application for a facility license to list:

- (1) the name and address of each partner, if the applicant is a partnership; and
- (2) the name and address of the president, secretary, and treasurer of the corporation, if the applicant is a corporation.

(c) A corporation's application must be signed and sworn to by the president and secretary of the corporation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.06, eff. September 1, 2007.

Sec. 2303.103. ELIGIBILITY. The department shall approve an application submitted as provided by Section 2303.102 unless the department determines that:

(1) the applicant knowingly supplied false or incomplete information on the application;

(2) in the three years preceding the date of application, the applicant, a partner, principal, or officer of the applicant, or the general manager of the applicant, was convicted of:

(A) a felony; or

(B) a misdemeanor punishable by confinement in jail or by a fine exceeding \$500; or

(3) the vehicle storage facility for which the license is sought does not meet the standards for storage facilities established by commission rules.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.104. NOTICE OF DENIAL; OPPORTUNITY TO COMPLY. (a) If the department denies an application for a license under this chapter, the department shall send written notice of the decision to the applicant at the address shown on the application by certified mail, return receipt requested.

(b) The notice must state the reason for the department's decision and that the applicant is entitled to a hearing before the department under Subchapter E.

(c) The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with this chapter and commission rules not later than the 14th day after the date the applicant receives the notice, the department shall approve the application.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.105. TERM OF LICENSE; NOTICE OF EXPIRATION. (a) A license issued under this chapter is valid for the period set by the department.

(b) Not later than the 30th day before the expiration date of a person's license, the department shall send written notice of the impending license expiration to the person at the person's last known address according to the department's records.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.106. PROCEDURE FOR RENEWAL. (a) A person may apply to the department to renew the person's license. The application for renewal must be:

- (1) made on a form approved by the department;
- (2) submitted to the department before the expiration date of the license; and
- (3) accompanied by a nonrefundable fee.

(b) A person whose license expires and is not renewed under this section may apply for a new license under Section 2303.102.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

#### **SUBCHAPTER D. PRACTICE BY LICENSE HOLDER**

Sec. 2303.151. NOTICE TO VEHICLE OWNER OR LIENHOLDER. (a) The operator of a vehicle storage facility who receives a vehicle that is registered in this state and that is towed to the facility for storage shall send a written notice to the registered owner and the primary lienholder of the vehicle not later than the fifth day after the date but not earlier than 24 hours after the date the operator receives the vehicle.

(b) Except as provided by Section 2303.152, the operator of a vehicle storage facility who receives a vehicle that is registered outside this state shall send a written notice to the registered owner and each recorded lienholder of the vehicle not later than the 14th day after the date but not earlier than 24 hours after the date the operator receives the vehicle.

(c) It is a defense to an action initiated by the department for a violation of this section that the operator of the facility unsuccessfully attempted in writing or electronically to obtain

information from the governmental entity with which the vehicle is registered.

(d) A notice under this section must:

- (1) be correctly addressed;
- (2) carry sufficient postage; and
- (3) be sent by certified mail, return receipt requested or electronic certified mail.

(e) A notice under this section is considered to have been given on the date indicated on the postmark and to be timely filed if:

(1) the postmark indicates that the notice was mailed within the period described by Subsection (a) or (b), as applicable; or

(2) the notice was published as provided by Section 2303.152.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1034, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.07, eff. September 1, 2007.

Sec. 2303.1511. VEHICLE STORAGE FACILITY'S DUTY TO REPORT AFTER ACCEPTING UNAUTHORIZED VEHICLE. (a) A vehicle storage facility accepting a vehicle that is towed under this chapter shall, within two hours after receiving the vehicle, report to the local law enforcement agency with jurisdiction over the area from which the vehicle was towed:

- (1) a general description of the vehicle;
- (2) the state and number of the vehicle's license plate, if any;
- (3) the vehicle identification number of the vehicle, if it can be ascertained;
- (4) the location from which the vehicle was towed; and
- (5) the name and location of the vehicle storage facility where the vehicle is being stored.

(b) The report required by this section must be made by telephone or electronically or delivered personally or by facsimile.

(c) This section does not apply to a vehicle received as a result of an incident management tow requested by a law enforcement agency unless the law enforcement agency requests a report of incident management tows within the jurisdiction of the agency. In this subsection, "incident management tow" has the meaning assigned by Section 2308.002.

Added by Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 2, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 1, eff. September 1, 2011.

Sec. 2303.152. NOTICE BY PUBLICATION. (a) Notice to the registered owner and the primary lienholder of a vehicle towed to a vehicle storage facility may be provided by publication in a newspaper of general circulation in the county in which the vehicle is stored if:

- (1) the vehicle is registered in another state;
- (2) the operator of the storage facility submits to the governmental entity with which the vehicle is registered a written request for information relating to the identity of the registered owner and any lienholder of record;
- (3) the identity of the registered owner cannot be determined;
- (4) the registration does not contain an address for the registered owner; or
- (5) the operator of the storage facility cannot reasonably determine the identity and address of each lienholder.

(b) The written request must:

- (1) be correctly addressed;
- (2) carry sufficient postage; and
- (3) be sent by certified mail, return receipt requested.

(c) Notice by publication is not required if each notice sent as provided by Section 2303.151 is returned because:

- (1) the notice was unclaimed or refused; or
- (2) the person to whom the notice was sent moved without leaving a forwarding address.

(d) Only one notice is required to be published for an



abandoned nuisance vehicle.

(e) Notice to the registered owner and the primary lienholder of a vehicle towed to a vehicle storage facility may be provided by publication in a newspaper of general circulation in the county in which the vehicle is stored if:

- (1) the vehicle does not display a license plate or a vehicle inspection certificate indicating the state of registration;
- (2) the identity of the registered owner cannot reasonably be determined by the operator of the storage facility; or
- (3) the operator of the storage facility cannot reasonably determine the identity and address of each lienholder.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.627(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 9, eff. September 1, 2005.

Sec. 2303.153. CONTENTS OF NOTICE. (a) A notice by mail provided under Section 2303.151 must include:

- (1) the date the vehicle was accepted for storage;
- (2) the first day for which a storage fee is assessed;
- (3) the daily storage rate;
- (4) the type and amount of any other charge to be paid when the vehicle is claimed;
- (5) the full name, street address, and telephone number of the vehicle storage facility;
- (6) the hours during which the owner may claim the vehicle;

and

(7) the facility license number preceded by "Texas Department of Licensing and Regulation Vehicle Storage Facility License Number" or "TDLR VSF Lic. No."

(b) A notice by publication provided under Section 2303.152 must include:

- (1) the vehicle description;
- (2) the total charges;
- (3) the full name, street address, and telephone number of the facility; and

(4) the department registration number.

(c) Notice by publication is not required to include any information other than that listed in Subsection (b).

(d) Notice by publication may include a list of more than one vehicle, watercraft, or outboard motor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.627(b), eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 764 (S.B. 1053), Sec. 1, eff. September 1, 2013.

Sec. 2303.154. SECOND NOTICE; CONSENT TO SALE. (a) If a vehicle is not claimed by a person permitted to claim the vehicle or a law enforcement agency has not taken an action in response to a notice under Section 683.031(c), Transportation Code, before the 15th day after the date notice is mailed or published under Section 2303.151 or 2303.152, the operator of the vehicle storage facility shall send a second notice to the registered owner and the primary lienholder of the vehicle.

(a-1) If a vehicle is not claimed by a person permitted to claim the vehicle before the 10th day after the date notice is mailed or published under Section 2303.151 or 2303.152, the operator of the vehicle storage facility shall consider the vehicle to be abandoned and send notice of abandonment to a law enforcement agency under Chapter 683, Transportation Code.

(b) Notice under this section must include:

(1) the information listed in Section 2303.153(a);

(2) a statement of the right of the facility to dispose of the vehicle under Section 2303.157; and

(3) a statement that the failure of the owner or lienholder to claim the vehicle before the 30th day after the date the notice is provided is:

(A) a waiver by that person of all right, title, or interest in the vehicle; and

(B) a consent to the sale of the vehicle at a public sale.

(c) Notwithstanding Subsection (b), if publication is required

for notice under this section, the notice must include:

- (1) the information listed in Section 2303.153(b); and
- (2) a statement that the failure of the owner or lienholder to claim the vehicle before the date of sale is:
  - (A) a waiver of all right, title, and interest in the vehicle; and
  - (B) a consent to the sale of the vehicle at a public sale.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.627(c), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 10, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 2, eff. September 1, 2011.

Sec. 2303.1545. DISPOSITION OF ABANDONED NUISANCE VEHICLE. (a) A vehicle storage facility that holds an abandoned nuisance vehicle is not required to send or publish a second notice and is entitled to dispose of the vehicle on the 30th day after the date the notice is mailed or published under Section 2303.151 or 2303.152.

(b) The facility may:

(1) notify the department that notices under Chapter 683, Transportation Code, have been provided and shall pay a fee of \$10 to the department; or

(2) in the alternative, notify the appropriate law enforcement agency and pay a fee of \$10 to that agency.

(c) A law enforcement agency described by Subsection (b)(2) may sign a document issued by the department.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.627(d), eff. Sept. 1, 2003.

Sec. 2303.155. CHARGES RELATED TO STORAGE. (a) For the purposes of this section, "governmental vehicle storage facility" means a garage, parking lot, or other facility that is:

- (A) owned by a governmental entity; and

(B) used to store or park at least 10 vehicles each year.

(b) The operator of a vehicle storage facility or governmental vehicle storage facility may charge the owner of a vehicle stored or parked at the facility:

(1) a notification fee set in a reasonable amount for providing notice under this subchapter, including notice under Section 2303.154(c);

(2) an impoundment fee of \$20 for any action that:

(A) is taken by or at the direction of the owner or operator of the facility; and

(B) is necessary to preserve, protect, or service a vehicle stored or parked at the facility;

(3) a daily storage fee of:

(A) not less than \$5 and not more than \$20 for each day or part of a day the vehicle is stored at the facility if the vehicle is not longer than 25 feet; or

(B) \$35 for each day or part of a day the vehicle is stored at the facility if the vehicle is longer than 25 feet;

(4) any fee that is required to be submitted to a law enforcement agency, the agency's authorized agent, or a governmental entity; and

(5) a fee in an amount set by the commission for the remediation, recovery, or capture of an environmental or biological hazard.

(c) A notification fee under Subsection (b) may not exceed \$50, except that if notice by publication is required by this chapter and the cost of publication exceeds 50 percent of the notification fee, the vehicle storage facility may recover the additional amount of the cost of publication from the vehicle owner or agent.

(d) For purposes of imposing a daily storage fee, a day is considered to begin at midnight and to end at the next following midnight. A daily storage fee may be charged regardless of whether the vehicle is stored for 24 hours of the day, except that a daily storage fee may not be charged for more than one day if the vehicle remains at the facility for less than 12 hours.

(e) The operator of a vehicle storage facility or governmental vehicle storage facility may charge a daily storage fee under Subsection (b):

(1) for not more than five days before the date notice is

mailed or published under this subchapter, if the vehicle is registered in this state;

(2) for not more than five days before the date the request for owner information is sent to the appropriate governmental entity as required by this subchapter, if the vehicle is registered in another state; and

(3) for each day the vehicle is in storage after the date the notice is mailed or published until the vehicle is removed and all accrued charges are paid.

(f) The operator of a vehicle storage facility or governmental vehicle storage facility may not charge an additional fee related to the storage of a vehicle other than a fee authorized by this section or a towing fee authorized by Chapter 2308.

(g) This section controls over any conflicting municipal ordinance or charter provision.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1034, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.627(e), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 11, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.08, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 3.04, eff. September 1, 2007.

Sec. 2303.1551. REQUIRED POSTING. (a) All storage fees shall be posted at the licensed vehicle storage facility to which the motor vehicle has been delivered and shall be posted in view of the person who claims the vehicle.

(b) A vehicle storage facility accepting a nonconsent towed vehicle shall post a sign in one inch letters stating "Nonconsent tow fees schedules available on request." The vehicle storage facility shall provide a copy of a nonconsent towing fees schedule on request.

Added by Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 2, eff.

September 1, 2009.

Sec. 2303.156. PAYMENT BY LIENHOLDER OR INSURANCE COMPANY. (a) A lienholder who repossesses a vehicle delivered to a vehicle storage facility is liable to the operator of the facility for any money owed to the operator in relation to delivery of the vehicle to or storage of the vehicle in the facility regardless of whether an amount accrued before the lienholder repossessed the vehicle.

(b) An insurance company that pays a claim of total loss on a vehicle in a vehicle storage facility is liable to the operator of the facility for any money owed to the operator in relation to delivery of the vehicle to or storage of the vehicle in the facility regardless of whether an amount accrued before the insurance company paid the claim.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.157. DISPOSAL OF CERTAIN ABANDONED VEHICLES. (a) The operator of a vehicle storage facility may dispose of a vehicle for which notice is given under Section 2303.154 if, before the 30th day after the date notice is mailed, the vehicle is not:

(1) claimed by a person entitled to claim the vehicle; or  
(2) taken into custody by a law enforcement agency under Chapter 683, Transportation Code.

(b) An operator entitled to dispose of a vehicle under this section may sell the vehicle at a public sale without obtaining a release or discharge of any lien on the vehicle, regardless of whether notice was provided by mail or by publication under this chapter. The proceeds from the sale of the vehicle shall be applied to the charges incurred for the vehicle under Section 2303.155. The operator shall pay any excess proceeds to the person entitled to those proceeds.

(c) Notwithstanding Subsection (a), the operator of a vehicle storage facility may dispose of a vehicle for which notice was given under this subchapter as provided by this section if:

(1) the vehicle is an abandoned nuisance vehicle; and  
(2) before the 30th day after the date the notice was sent, the facility submits an application to the department for disposal of

the vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.628(a), eff.  
Sept. 1, 2003.

Sec. 2303.158. ACCESS TO GLOVE COMPARTMENT, CONSOLE, OR OTHER INTERIOR STORAGE AREA TO ESTABLISH IDENTITY OR OWNERSHIP. The operator of a vehicle storage facility or a governmental vehicle storage facility must allow a person claiming to be the owner of a vehicle stored or parked at the facility to have access to the vehicle's glove compartment, console, or other interior storage area if documents necessary to establish the person's identity or ownership of the vehicle are located in the glove compartment, console, or other interior storage area.

Added by Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 3, eff. September 1, 2005.

Sec. 2303.159. FORMS OF PAYMENT OF CHARGES. (a) The operator of a vehicle storage facility shall accept payment by an electronic check, debit card, or credit card for any charge associated with delivery or storage of a vehicle. The facility shall conspicuously post a sign that states: "This vehicle storage facility must accept payment by an electronic check, credit card, or debit card for any fee or charge associated with delivery or storage of a vehicle." The operator of a vehicle storage facility may not refuse to release a vehicle based on the inability of the facility to accept payment by electronic check, debit card, or credit card of a fee or charge associated with delivery or storage of the vehicle unless the operator, through no fault of the operator, is unable to accept the electronic check, debit card, or credit card because of a power outage or a machine malfunction.

(b) In this section, "vehicle storage facility" includes a governmental vehicle storage facility as defined by Section 2303.155.

Added by Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 4, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 21, eff. September 1, 2009.

Sec. 2303.160. RELEASE OF VEHICLES. (a) A vehicle storage facility may not refuse to release a vehicle to the owner or operator of the vehicle or require a sworn affidavit of the owner or operator of the vehicle solely because the owner or operator presents valid photo identification issued by this state, another state, or a federal agency that includes a different address than the address contained in the title and registration records of the vehicle.

(b) A vehicle storage facility must accept evidence of financial responsibility, as required by Section 601.051, Transportation Code, as an additional form of identification that establishes ownership or right of possession or control of the vehicle.

(c) Subsection (b) does not require a vehicle storage facility to release a vehicle to the owner or operator of the vehicle if the owner or operator of the vehicle does not:

(1) pay the charges for services regulated under this chapter or Chapter 2308, including charges for an incident management tow, as defined by Section 2308.002; and

(2) present valid photo identification issued by this state, another state, a federal agency, or a foreign government.

Added by Acts 2007, 80th Leg., R.S., Ch. 271 (H.B. 90), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 3, eff. September 1, 2011.

Sec. 2303.161. DRUG TESTING OF EMPLOYEES. (a) A license holder shall establish a drug testing policy for employees of the vehicle storage facility operated by the license holder. A license holder that establishes a drug testing policy under this subsection may adopt the model drug testing policy adopted by the commission or may use another drug testing policy that the department determines is at least as stringent as the policy adopted by the commission.

(b) The commission by rule shall adopt a model drug testing



policy for use by license holders. The model drug testing policy must be designed to ensure the safety of the public through appropriate drug testing and to protect the rights of employees. The model drug testing policy must:

(1) require at least one scheduled drug test each year for each employee of a vehicle storage facility who has direct contact with the public; and

(2) authorize random, unannounced drug testing for employees described by Subdivision (1).

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.09, eff. September 1, 2007.

Renumbered from Occupations Code, Section 2303.160 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(75), eff. September 1, 2009.

#### **SUBCHAPTER G. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

Sec. 2303.301. INJUNCTION; CIVIL PENALTY. (a) If a person has violated, is violating, or is threatening to violate this chapter or a rule or order adopted under this chapter, the department or the attorney general at the request of the department may institute an action for:

(1) injunctive relief;

(2) a civil penalty not to exceed \$1,000 for each violation; or

(3) both injunctive relief and the civil penalty.

(b) If the department or the attorney general prevails in an action under this section, the department or the attorney general is entitled to recover reasonable attorney's fees and court costs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.302. CRIMINAL PENALTIES. (a) A person commits an offense if the person:

(1) violates the licensing requirements of this chapter; or

(2) employs an individual who does not hold an appropriate license required by this chapter.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.10, eff. September 1, 2007.

Sec. 2303.303. AUTHORITY TO ARREST. A peace officer or license and weight inspector for the Department of Public Safety may make an arrest for a violation of a rule adopted under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.304. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a registration, permit, or license under this chapter, if the person violates:

- (1) this chapter or a rule adopted under this chapter; or
- (2) a rule or order of the executive director or

commission.

(b) An administrative penalty may not be imposed unless the person charged with a violation is provided the opportunity for a hearing.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.11, eff. September 1, 2007.

Sec. 2303.305. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. (a) The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) The attorney general or executive director may institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.11, eff. September 1, 2007.

**CHAPTER 2304. NONMECHANICAL REPAIRS TO MOTOR VEHICLES****SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2304.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Natural Resource Conservation Commission.
- (2) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.
- (3) "Motor vehicle" means a vehicle with at least four wheels that is self-propelled and that can transport a person or property on a public street or highway. The term does not include a vehicle that is used exclusively on stationary tracks.
- (4) "Repair facility" means a person that engages in the business of repairing or replacing the nonmechanical exterior or interior body parts of a damaged motor vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.002. APPLICATION OF CHAPTER. This chapter does not apply to a repair facility located in a county with a population of 50,000 or less.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

**SUBCHAPTER B. CERTIFICATE OF REGISTRATION**

Sec. 2304.051. REGISTRATION REQUIRED. A repair facility shall register with the commission as provided by this chapter and the rules adopted by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.052. APPLICATION. (a) The commission by rule shall:

- (1) prescribe an application form for the issuance or renewal of a certificate of registration; and
- (2) determine the information to be disclosed on the application.

(b) The application must include:

- (1) the name, street address, and mailing address of each location at which the applicant operates a repair facility;

- (2) the name and address of:
- (A) each owner, partner, officer, or director of the applicant; and
  - (B) if the applicant is a corporation, each shareholder holding 10 percent or more of the outstanding shares;
- (3) the identification number assigned by, or a statement of other evidence of compliance with any applicable requirements of:
- (A) the United States Environmental Protection Agency;
  - (B) the United States Occupational Safety and Health Administration;
  - (C) the commission;
  - (D) the Texas Department of Health;
  - (E) the comptroller; and
  - (F) a municipality or county; and
- (4) a statement of each conviction obtained against the applicant or a partner or officer of the applicant during the three years preceding the date of the application of:
- (A) a felony; or
  - (B) a misdemeanor punishable by confinement in jail or by a fine exceeding \$200.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.053. ISSUANCE AND RENEWAL OF CERTIFICATE. (a) An applicant for the issuance or renewal of a certificate of registration shall submit to the executive director a sworn application on the form prescribed by the commission accompanied by a \$50 fee.

(b) On receipt of the application and required fee, the executive director shall issue a certificate of registration to the applicant.

(c) A certificate of registration expires on the first anniversary of the date of issuance and may be renewed annually in the manner prescribed by the commission. An application for renewal must be submitted to the executive director within 30 days before the expiration date of the certificate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.054. FORM OF CERTIFICATE; TRANSFERABILITY. A certificate of registration:

- (1) must contain a unique number;
- (2) applies only to the person whose name appears on the certificate or an employee of that person; and
- (3) is not transferable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.055. REPLACEMENT CERTIFICATE. (a) If a certificate of registration is lost or destroyed, the certificate holder may apply to the executive director for a replacement certificate of registration.

(b) The certificate holder must submit:

- (1) an affidavit verifying that the certificate of registration was lost or destroyed; and
- (2) a \$25 replacement fee.

(c) The executive director shall issue a replacement certificate of registration on receipt of the affidavit and replacement fee.

(d) A replacement certificate of registration must be clearly identified as a replacement certificate on the certificate and in the records of the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.056. VOLUNTARY SURRENDER OF CERTIFICATE. A certificate holder may terminate a certificate of registration at any time by voluntarily surrendering the certificate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.057. CANCELLATION OF CERTIFICATE. (a) On the expiration, termination, or surrender of a certificate of registration, the certificate holder shall deliver the certificate to the executive director.

(b) The executive director shall:

- (1) cancel the certificate; or

(2) endorse on the certificate the date of expiration, termination, or surrender.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.058. MAINTENANCE OF REGISTRATION INFORMATION. (a) The executive director shall maintain each application for a certificate of registration and a copy of each certificate of registration in a convenient form that is available to the public.

(b) The executive director shall annually publish a list of:

(1) the name and address of each person registered under this chapter; and

(2) the name of each person whose registration has been revoked, suspended, or surrendered during the period and the specific date of the suspension, revocation, or surrender.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

#### **SUBCHAPTER C. PRACTICE BY CERTIFICATE HOLDER**

Sec. 2304.101. DISPLAY OF CERTIFICATE. A certificate holder shall publicly display the current certificate of registration at the certificate holder's place of business in a location readily visible to a customer paying for repairs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.102. REGISTRATION NUMBER. A certificate holder shall include the certificate holder's registration number:

(1) on each repair estimate, repair order, or correspondence; and

(2) in each advertisement for motor vehicle repairs by the repair facility.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.103. FALSE STATEMENTS. A certificate holder may not make a false or fraudulent statement in connection with:

- (1) a repair; or
- (2) an attempt to collect compensation for a repair.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.104. RECORD OF VEHICLE REPAIRS. (a) A certificate holder shall maintain in a convenient place a record of each motor vehicle that enters the certificate holder's premises for a repair. Except as provided by Subsection (b), the certificate holder shall include in the record:

- (1) a description of the vehicle;
- (2) the vehicle identification number;
- (3) the date the vehicle entered the certificate holder's premises;
- (4) the odometer reading at the time the vehicle is received;
- (5) the name and address of the person from whom the vehicle is received; and
- (6) a signed authorization for the work to be performed on the vehicle.

(b) If a motor vehicle is towed to the certificate holder's repair facility without the consent of the owner of the vehicle, the information in the record is the information provided by the law enforcement agency that initiated the towing process.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

#### **SUBCHAPTER D. ENFORCEMENT PROVISIONS**

Sec. 2304.151. INSPECTION OF PREMISES AND RECORD. The executive director or an employee of the commission may, at any time, inspect:

- (1) a record maintained under Section 2304.104; and
- (2) the premises of a certificate holder's place of business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.152. ADMINISTRATIVE DISCIPLINARY ACTION AND

PROCEDURES. (a) The commission shall adopt rules establishing:

(1) grounds for suspension, revocation, or reinstatement of a certificate of registration; and

(2) procedures for taking disciplinary action.

(b) The executive director may suspend or revoke a certificate of registration based on a ground established under this section.

(c) Procedures for the suspension or revocation of a certificate of registration are governed by Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.153. FAILURE TO REGISTER; CIVIL PENALTY. (a) A repair facility that fails to register under this chapter is liable to the state for a civil penalty of \$250.

(b) The executive director shall waive the penalty if the repair facility applies for registration not later than the 10th day after the date of notice of the violation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.154. VIOLATION OF CHAPTER; CIVIL PENALTY. Except as provided by Section 2304.153, a person that violates this chapter is liable to the state for a civil penalty in an amount not to exceed \$100.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

## **CHAPTER 2305. RECORDS OF CERTAIN VEHICLE REPAIRS, SALES, AND PURCHASES**

### **SUBCHAPTER A. RECORDS MAINTAINED BY CERTAIN ENTITIES**

Sec. 2305.001. DEFINITIONS. In this subchapter:

(1) "Person" means an individual, corporation, or firm.

(2) "Repair" includes the rebuilding of a motor vehicle, the installation of a new or used part or accessory on a motor vehicle, and the performance of electrical work in connection with the repair of a motor vehicle. The term does not include a repair covered by Chapter 2304.



(3) "Used motor vehicle" includes a secondhand motor vehicle.

(4) "Motor vehicle" has the meaning assigned by Section 501.002, Transportation Code.

(5) "Board" means the board of the Texas Department of Motor Vehicles.

(6) "Department" means the Texas Department of Motor Vehicles.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 761 (H.B. 3221), Sec. 1, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 37, eff. September 1, 2013.

Sec. 2305.002. APPLICATION OF SUBCHAPTER. This subchapter applies to any person who:

(1) operates a shop or garage that is engaged in the business of repairing motor vehicles; or

(2) engages in the business of purchasing or selling used motor vehicles in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 761 (H.B. 3221), Sec. 2, eff. September 1, 2005.

Sec. 2305.003. REGISTER OF REPAIRS. (a) A person subject to this subchapter shall maintain a register of each repair the person makes to a motor vehicle. The register must contain a substantially complete and accurate description of each motor vehicle that is repaired.

(b) This section does not apply to a repair having a value of \$1 or less.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 761 (H.B. 3221), Sec. 3, eff. September

1, 2005.

Sec. 2305.004. REGISTER OF USED MOTOR VEHICLE SALES AND PURCHASES. (a) A person subject to this subchapter shall maintain a register of each sale or purchase the person makes of a used motor vehicle.

(b) If the person buys a used motor vehicle, the register must contain:

(1) the make and model, the number of cylinders, the motor number, the vehicle identification number, and the passenger capacity of the motor vehicle, if applicable;

(2) the name, date of birth, usual place of address, and official identification number of each person claiming to be the owner of the motor vehicle; and

(3) the state registration number of the motor vehicle, if applicable.

(c) If the person sells a used motor vehicle, in addition to the requirements of Subsection (b), the register must contain the name and address of the purchaser of the motor vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 761 (H.B. [3221](#)), Sec. 4, eff. September 1, 2005.

Sec. 2305.005. RECORD OF REPLACED CYLINDER BLOCK. The owner of the garage or repair shop that installs a replacement cylinder block and stamps the original engine number on the block as required by Section 2305.051 shall record in a substantially bound book:

(1) the name and address of the vehicle's owner; and

(2) the engine number and registration number of the vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2305.006. MAINTENANCE OF RECORDS. (a) All records required to be maintained under this subchapter shall be kept until at least the first anniversary of the date the record is made.

(b) The registers required by Sections 2305.003 and 2305.004 shall be maintained in a clear and intelligent manner in a well-bound book or an electronic recordkeeping system and kept in a secure place in the office or place of business where the work is performed or the business is conducted.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 761 (H.B. 3221), Sec. 5, eff. September 1, 2005.

Sec. 2305.007. ENTRY AND INSPECTION. (a) Except as provided by Subsection (b), for the purpose of enforcing or administering this chapter, Chapter 2302 of this code, or Chapter 501 or 502, Transportation Code, a member of the board, an employee of the department, a member of the Public Safety Commission, an officer of the Department of Public Safety, or another peace officer who is interested in tracing or locating a stolen motor vehicle may at a reasonable time:

(1) enter the premises of a business regulated under one of those chapters; and

(2) inspect or copy any document, record, vehicle, part, or other item regulated under one of those chapters.

(b) For the purposes of tracing or locating a stolen motor vehicle on the premises of a person engaging in a business or activity regulated under this chapter who is also licensed under Chapter 348 or 353, Finance Code, only an officer of the Department of Public Safety may at a reasonable time:

(1) enter the premises of the person's business; and

(2) inspect or copy any document, record, vehicle, part, or other item regulated under:

(A) this chapter; or

(B) Chapter 348 or 353, Finance Code.

(c) A person engaging in a business or activity regulated under this chapter shall cooperate with a person conducting an inspection under this section to assist in the recovery of stolen motor vehicles and parts and to prevent the sale or transfer of stolen motor vehicles and parts.

(d) An entry or inspection occurs at a reasonable time for

purposes of Subsection (a) or (b) if the entry or inspection occurs:

- (1) during normal business hours of the person or activity regulated under a chapter listed in Subsection (a) or (b); or
- (2) while an activity regulated under a chapter listed in Subsection (a) or (b) is occurring on the premises.

Added by Acts 2005, 79th Leg., Ch. 761 (H.B. 3221), Sec. 6, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 21, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 38, eff. September 1, 2013.

#### **SUBCHAPTER B. REQUIREMENT APPLICABLE TO OWNERS OF CERTAIN MOTOR VEHICLES**

Sec. 2305.051. REPLACEMENT OF CYLINDER BLOCK. The owner of a motor vehicle registered under Chapter 502, Transportation Code, that has a damaged cylinder block replaced shall have the original engine number of the motor vehicle stamped with a steel die on the replacement cylinder block.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

#### **SUBCHAPTER C. ENFORCEMENT**

Sec. 2305.101. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter.

(b) Except as provided by Subsection (c), an offense under this section is punishable by a fine of not less than \$10 and not more than \$100.

(c) An offense under this chapter that consists of the violation of Section 2305.007 is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 761 (H.B. 3221), Sec. 7, eff. September 1, 2005.

**CHAPTER 2306. VEHICLE PROTECTION PRODUCT WARRANTORS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2306.001. SHORT TITLE. This chapter may be cited as the Vehicle Protection Product Regulatory Act.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Sec. 2306.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Consumer" means a person in this state who purchases or otherwise possesses a vehicle protection product.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Executive director" means the executive director of the department.

(5) "Person" means an individual or a partnership, company, corporation, association, or other group, however organized.

(6) "Reimbursement insurance policy" means a policy of insurance issued to a warrantor to:

(A) provide reimbursement to the warrantor under the terms of the insured vehicle protection product issued or sold by the warrantor; and

(B) pay on behalf of the warrantor, in the event of the warrantor's nonperformance, all covered obligations incurred by the warrantor under the terms of the insured vehicle protection product issued or sold by the warrantor.

(7) "Seller" means a person engaged in the business of offering a vehicle protection product for sale to a consumer.

(8) "Vehicle protection product" means a product or system, including a written warranty, that is:

(A) installed on or applied to a vehicle;

(B) designed to prevent loss or damage to a vehicle from a specific cause; and

(C) subject to the limitation of Section 2306.003.

(9) "Warrantor" means a person named under the terms of a vehicle protection product warranty as the contractual obligor to the consumer.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Sec. 2306.003. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a vehicle protection product under which, after installation or application of the vehicle protection product, if loss or damage results from the failure of the vehicle protection product to perform as represented in the warranty, the warrantor, to the extent agreed on as part of the warranty, is required to pay expenses to the consumer for the loss of or damage to the vehicle.

(b) Loss of or damage to the vehicle under Subsection (a) may also include unreimbursed incidental expenses that may be incurred by the warrantor, including expenses for a replacement vehicle, temporary vehicle rental expenses, and registration expenses for replacement vehicles.

(c) A vehicle protection product may also include identity recovery, as defined by Section 1304.003, if the vehicle protection product is financed under Chapter 348 or 353, Finance Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 36 (S.B. 778), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 22, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1207 (S.B. 1388), Sec. 6, eff. September 1, 2013.

Sec. 2306.004. EXEMPTIONS FROM CERTAIN OTHER LAWS. Marketing, selling, offering for sale, issuing, making, proposing to make, and administering a vehicle protection product are exempt from:

- (1) Chapter 1304;
- (2) the Insurance Code and other laws of this state regulating the business of insurance; and
- (3) Chapter 722, Transportation Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Sec. 2306.005. EXEMPTIONS FROM CHAPTER. The following contracts and agreements are exempt from this chapter and are only subject to any other statute or law that specifically applies to them:

- (1) warranties or guarantees, other than those provided as part of a vehicle protection product;
- (2) service contracts regulated by Chapter 1304; and
- (3) agreements issued by an automobile service club that holds a certificate of authority under Chapter 722, Transportation Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Sec. 2306.006. APPLICABILITY OF OTHER LAW. Section 51.405 does not apply to this chapter.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.010(a), eff. September 1, 2005.

#### **SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

Sec. 2306.051. POWERS AND DUTIES OF EXECUTIVE DIRECTOR. (a) The commission may adopt rules as necessary to implement this chapter.

(b) The executive director may conduct investigations of warrantors or other persons as reasonably necessary to enforce this chapter and to protect consumers in this state.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.010(b), eff. September 1, 2005.

Sec. 2306.052. FEES. (a) The department shall develop a tiered fee structure under which registration fees are assessed on

warrantors based on the number of vehicle protection products sold within this state in the 12 months preceding the date of registration.

(b) The information submitted to the department under this section regarding the number of vehicle protection products sold by a warrantor may only be used by the department in determining the tiered fee structure. Information concerning the number of vehicle protection products sold by a warrantor submitted under this section is a trade secret and subject to Section 552.110, Government Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER C. ADVISORY BOARD**

Sec. 2306.101. ADVISORY BOARD. (a) The Vehicle Protection Product Warrantor Advisory Board is an advisory body to the commission.

(b) The advisory board consists of six members appointed by the presiding officer of the commission, with the commission's approval, as follows:

(1) two members who are officers, directors, or employees of a warrantor who has been approved or expects to be approved by the department;

(2) two members who are officers, directors, or employees of a retail outlet or other entity located in this state that sells vehicle protection products and is approved or expected to be approved by the department; and

(3) two members who are residents of this state and, at the time of appointment, are consumers of vehicle protection products issued by warrantors registered or expected to be registered under this chapter.

(c) The executive director or the executive director's designee serves as an ex officio nonvoting member of the advisory board.

(d) Chapter 2110, Government Code, does not apply to the advisory board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.010(c), eff.



September 1, 2005.

Sec. 2306.102. ADVISORY BOARD DUTIES. The advisory board shall advise the commission on adopting rules, enforcing and administering this chapter, and setting fees.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.010(d), eff. September 1, 2005.

Sec. 2306.103. TERMS; VACANCY. (a) Members of the advisory board serve staggered six-year terms, with the terms of two members expiring on February 1 of each odd-numbered year.

(b) The presiding officer of the commission, with the commission's approval, shall fill any vacancy on the advisory board by appointing an individual who meets the qualifications for the vacant advisory board position to serve the remainder of the unexpired term.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.010(e), eff. September 1, 2005.

Sec. 2306.104. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, shall designate one member of the advisory board to serve as presiding officer of the board for two years.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.010(f), eff. September 1, 2005.

Sec. 2306.105. MEETINGS. (a) The advisory board shall meet at least every six months and may meet at other times at the call of the presiding officer of the board or the presiding officer of the commission.

(b) The advisory board shall meet at a location in this state designated by the advisory board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.010(g), eff. September 1, 2005.

Sec. 2306.106. VOTE REQUIRED FOR ACTION. A decision of the advisory board is not effective unless it receives the affirmative vote of at least four members.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Sec. 2306.107. COMPENSATION; REIMBURSEMENT. (a) Advisory board members serve without compensation.

(b) A member of the advisory board appointed under Section 2306.101(b)(3) is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the advisory board, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER D. REGISTRATION**

Sec. 2306.151. REGISTRATION REQUIRED. (a) A person may not operate as a warrantor or represent to the public that the person is a warrantor unless the person is registered with the department.

(b) A person who sells or solicits a vehicle protection product but who is not a warrantor is not required to register with the department as a warrantor.

(c) A seller is not a warrantor unless, in addition to acting as a seller, the person is named under the terms of a vehicle protection product warranty as the contractual obligor to the consumer.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Sec. 2306.152. APPLICATION. Each applicant for registration must file an application on a form prescribed by the department that includes evidence satisfactory to the department of compliance with the financial security requirements adopted under Section 2306.202.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Sec. 2306.153. REGISTRATION FEE. Each registered warrantor must pay an annual registration fee as set by the commission to cover the costs of administering this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.010(h), eff. September 1, 2005.

Sec. 2306.154. RENEWAL OF REGISTRATION. The commission shall adopt rules providing for the renewal of a warrantor's registration.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.010(i), eff. September 1, 2005.

#### **SUBCHAPTER E. PRACTICE BY WARRANTOR**

Sec. 2306.201. GENERAL WARRANTOR OPERATION REQUIREMENTS. (a)

A warrantor may appoint a designee to be responsible for any or all of the administration of vehicle protection products and for compliance with this chapter.

(b) A vehicle protection product may not be issued, sold, or offered for sale in this state unless at the time of sale the warrantor provides to the consumer:

- (1) a copy of the vehicle protection product warranty; or
- (2) a receipt for, or other written evidence of, the purchase of the vehicle protection product.

(c) A warrantor who complies with Subsection (b)(2) shall, within a reasonable time after the date of purchase, provide to the consumer a copy of the vehicle protection product warranty.

(d) A warrantor shall indemnify a seller who pays or is obligated to pay a consumer any money the warrantor is obligated to pay under the terms of the vehicle protection product warranty, including damages, attorney's fees, and costs.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Sec. 2306.202. FINANCIAL SECURITY REQUIREMENTS. (a) To ensure the adequate performance of a warrantor's obligations to a consumer, each warrantor must comply with financial security requirements by:

(1) insuring its vehicle protection products under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state or by a surplus lines insurer eligible to place coverage in this state under Chapter 981, Insurance Code; or

(2) providing any other form of comparable financial security approved by the executive director.

(b) The department may not require any other financial security requirements or financial standards for warrantors.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Sec. 2306.2025. FINANCIAL SECURITY REQUIREMENTS; VALET PARKING SERVICES. (a) In this section, "valet parking service" has the meaning assigned by Section 686.001(3), Transportation Code.

(b) A valet parking service must abide by the financial responsibility requirements provided by Chapter 686, Transportation Code.

(c) The department may coordinate with the Texas Department of Insurance to assure consistency with the standard proof of motor vehicle liability insurance form prescribed by Section 601.081, Transportation Code.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.010(j), eff. September 1, 2005.

Sec. 2306.203. REIMBURSEMENT INSURANCE POLICY. (a) In order for a warrantor to comply with Section 2306.202(a)(1), the warrantor's insurance policy must state that:

(1) the insurer that issued the policy shall:

(A) reimburse or pay on behalf of the warrantor any covered amounts the warrantor is legally obligated to pay; or

(B) provide the service that the warrantor is legally obligated to perform according to the warrantor's obligations under the insured vehicle protection product issued or sold by the warrantor; and

(2) if the covered amounts are not paid or the covered service is not provided by the warrantor to a consumer before the 61st day after the date the consumer provides proof of loss, payment shall be made or the service shall be provided directly from the reimbursement insurer to the consumer.

(b) An insurer who issues a reimbursement insurance policy under this chapter may not cancel the policy until the insurer delivers to the warrantor a written notice of cancellation that complies with the notice requirements prescribed by Subchapters B and C, Chapter 551, Insurance Code, for cancellation of an insurance policy under those subchapters. The warrantor shall forward a copy of the cancellation notice to the department not later than the 15th business day after the date the notice is delivered to the warrantor.

(c) The cancellation of a reimbursement insurance policy does not reduce the insurer's responsibility for vehicle protection products issued by the warrantor and insured under the policy before the date of the cancellation.

(d) For purposes of this section, a warrantor is considered to

be the representative of the insurer who issues the reimbursement insurance policy for purposes of obligating the insurer to consumers in accordance with the vehicle protection product and this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.156, eff. September 1, 2005.

Sec. 2306.204. WARRANTOR RECORDS. (a) Each warrantor shall maintain accurate accounts, books, and other records regarding transactions regulated under this chapter. The warrantor's records must include:

(1) a copy of the warranty for each unique form of vehicle protection product sold;

(2) the name and address of each consumer;

(3) a list of the locations where the warrantor's vehicle protection products are marketed, sold, or offered for sale; and

(4) files that contain at least the dates and descriptions of payments to consumers related to the vehicle protection product.

(b) On request of the executive director, a warrantor shall make the warrantor's records maintained under this section regarding vehicle protection products sold by the warrantor available to the department as necessary to enable the department to reasonably determine compliance with this chapter.

(c) The records required to be maintained under this section may be maintained in an electronic medium or through another recordkeeping technology. If a record is maintained in a format other than paper, the warrantor must be able to reformat the record into a legible paper copy at the request of the department.

(d) Except as provided by Subsection (e), each warrantor shall retain all records required under Subsection (a) until at least the first anniversary of the expiration date of the obligations under the vehicle protection product warranty.

(e) A warrantor who discontinues business in this state shall maintain the warrantor's records until the date the warrantor provides the department with proof satisfactory to the department that the warrantor has discharged all obligations to consumers in

this state.

(f) The commission shall adopt rules governing how a warrantor shall protect nonpublic personal information provided by a consumer to the warrantor.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.010(k), eff. September 1, 2005.

Sec. 2306.205. FORM OF VEHICLE PROTECTION PRODUCT WARRANTY AND REQUIRED DISCLOSURES. (a) Each Vehicle Protection product warranty marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state must be written, printed, or typed, in clear, understandable, and easy-to-read language and must disclose the applicable requirements set forth in this section.

(b) A vehicle protection product warranty insured under a reimbursement insurance policy must contain a statement substantially similar to the following:

"Obligations of the warrantor under this vehicle protection product are insured under a reimbursement insurance policy."

(c) The vehicle protection product warranty must state the name and address of the insurer and state that if a covered service is not provided by the warrantor before the 61st day after the date the consumer provides proof of loss, the consumer may apply for reimbursement directly to the vehicle protection product's reimbursement insurer.

(d) A vehicle protection product warranty that is not insured under a reimbursement insurance policy must contain a statement substantially similar to the following:

"Obligations of the warrantor under this vehicle protection product are backed by the full faith and credit of the warrantor."

(e) Each vehicle protection product warranty must state the name, address, and telephone number of the warrantor. All warrantors shall report to the department before the 31st day after the date of any change in the information required to be provided in this subsection.

(f) Each vehicle protection product warranty must identify any

administrator, if different from the warrantor, the vehicle protection product seller, and the consumer, if the name of the consumer has been provided by the consumer. The identities of those persons are not required to be preprinted on the warranty and may be added to the warranty at the time of sale.

(g) Each vehicle protection product warranty must state the product's purchase price, or the warrantor's suggested purchase price, and the terms under which the product is sold. The purchase price is not required to be preprinted on the vehicle protection product warranty and may be negotiated with the consumer at the time of sale.

(h) Each vehicle protection product warranty must:

(1) specify the products and services to be provided and any limitations, exceptions, or exclusions;

(2) specify any restrictions governing the transferability of the vehicle protection product;

(3) state the duties of the consumer, including any duty to protect against any further damage and any requirement to follow the warranty's instructions;

(4) state the name, mailing address, and telephone number of the department; and

(5) include a statement that unresolved complaints concerning a registered warrantor or questions concerning the regulation of a warrantor may be addressed to the department.

(i) The requirements of Subsections (h)(4) and (5) may be stamped on the vehicle protection product warranty.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Sec. 2306.206. CANCELLATION OF WARRANTY. (a) Each vehicle protection product warranty must state the terms, restrictions, or conditions, if any, governing cancellation of the warranty by the warrantor before the expiration date of the warranty. Cancellation may only occur under this section for:

(1) nonpayment by the consumer for the vehicle protection product;

(2) a material misrepresentation by the consumer to the seller or warrantor;



(3) fraud by the consumer; or

(4) a substantial breach of duties by the consumer relating to the warranty.

(b) A warrantor shall mail written notice of cancellation to the consumer at the last address of the consumer contained in the records of the warrantor before the fifth day preceding the effective date of the cancellation. The notice must state the effective date of the cancellation and the reason for the cancellation.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Sec. 2306.207. LIMITATIONS ON WARRANTOR'S NAME. (a) A warrantor may not use a name that:

(1) includes "casualty," "surety," "insurance," or "mutual" or any other word descriptive of the casualty, insurance, or surety business; or

(2) is deceptively similar to the name or description of any insurer or surety corporation or to the name of any other warrantor.

(b) A warrantor may use the word "guaranty" or a similar word in the warrantor's name.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Sec. 2306.208. PROHIBITED ACTS. (a) A warrantor or a warrantor's representative may not, in the warrantor's vehicle protection product warranty or in an advertisement or literature for the warranty:

(1) make, permit, or cause to be made any false or misleading statement; or

(2) deliberately omit a material statement that would be considered misleading if omitted.

(b) A warrantor may not require as a condition of sale or financing that a retail purchaser of a motor vehicle purchase a vehicle protection product that is not installed on the motor vehicle at the time of sale.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

#### **SUBCHAPTER F. ENFORCEMENT AND PENALTY PROVISIONS**

Sec. 2306.252. INJUNCTION. The executive director may bring an action against a warrantor for injunctive relief under Section 51.352 for a threatened or existing violation of this chapter or of an order or rule adopted under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.010(l), eff. September 1, 2005.

Sec. 2306.253. CIVIL PENALTY. (a) In addition to injunctive relief under Section 2306.252, the executive director may bring an action against a warrantor for a civil penalty as provided by Section 51.352.

(b) A civil penalty assessed under this section may not exceed:

(1) \$1,000 for each violation; or

(2) \$50,000 in the aggregate for all violations of a

similar nature.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Sec. 2306.254. VIOLATIONS OF A SIMILAR NATURE. For purposes of Section 2306.253, violations are of a similar nature if the violations consist of the same or a similar course of conduct, action, or practice, regardless of the number of times the conduct, act, or practice determined to be a violation of this chapter occurred.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.629(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.010(m), eff.

September 1, 2005.

**CHAPTER 2307. INSURER INTERESTS IN REPAIR FACILITIES**

Sec. 2307.001. DEFINITIONS. In this chapter:

(1) "Arm's length transaction" means the standard of conduct under which two parties having substantially equal bargaining power, each acting in its own interest, would negotiate or carry out a particular transaction.

(2) "Claims center" means a location designated by an insurer where a claims adjuster, employee, or agent of the insurer performs an initial damage estimate on a vehicle under the terms of an insurance policy.

(3) "Favored facility agreement" means an agreement between an insurer and a repair facility under which the insurer agrees to recommend, directly or indirectly, to its policyholders or other beneficiaries under the insurer's policies, that the policyholder or other beneficiary obtain repairs at that repair facility or in any other way agrees to influence its policyholders or other beneficiaries under the insurer's policies to obtain repairs at that repair facility.

(4) "Insurer" means an insurer authorized by the Texas Department of Insurance to write motor vehicle insurance in this state, including a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange if that insurer owns an interest in a repair facility in this state. The term includes an entity that is an affiliate of an insurer as described by Section 823.003, Insurance Code.

(5) "Repair facility" has the meaning assigned by Section 2304.001.

(6) "Support services" means basic services, provided nonspecifically, that are provided internally and to each affiliate or subsidiary, by an insurer, its parent company, or a separate affiliate created to provide basic corporate support. The term does not include a service related to the operation of a repair facility if that service would have no value, or minimal value to any other type of business.

(7) "Tied repair facility" means a repair facility in which an insurer owns an interest.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 206, Sec. 20.01, eff. Sept. 1, 2003.

Renumbered from Occupations Code, Section 2306.001 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.002. INSURER INTERESTS. (a) Except as provided by this section, an insurer may not own or acquire an interest in a repair facility.

(b) An insurer that owns an interest in a tied repair facility that was open for business, or on which construction had commenced, on April 15, 2003, may maintain that ownership interest and may operate that facility.

(c) An insurer may relocate a tied repair facility described by Subsection (b), but may not obtain an ownership interest in any additional facility not described by Subsection (b).

(d) Subsections (b) and (c) are applicable to an insurer only if the insurer and its tied repair facility are otherwise in compliance with this chapter.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003.  
Renumbered from Occupations Code, Section 2306.002 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.003. FAVORED FACILITY AGREEMENT PRESUMED. An insurer is presumed to have a favored facility agreement with a repair facility in which it owns an interest.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003.  
Renumbered from Occupations Code, Section 2306.003 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.004. CONTRACTUAL CONDITIONS. (a) An insurer that owns an interest in a repair facility may use only one favored facility agreement.

(b) Except as otherwise provided by this subsection, the terms under which the insurer enters into a favored facility agreement must be identical for all repair facilities, including a tied repair

facility. An insurer may vary the terms as necessary to implement technical differences required by geographical factors or other legitimate business factors.

(c) Except as provided by Subsection (d), an insurer may not cancel a favored facility agreement until the expiration of the 30th day after the date on which the insurer provides notice to the repair facility of the insurer's intent to cancel the agreement. The insurer shall include with the notice a statement explaining the reason for the cancellation of the agreement.

(d) An insurer may summarily cancel a favored facility agreement with a repair facility if the insurer, a policyholder of the insurer, or another beneficiary under the insurer's policy establishes reasonable grounds to believe that the repair facility is fraudulent in its dealings with the insurer or the policyholder or other beneficiaries under the insurer's policy.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 2306.004 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.005. NOTICE. (a) An insurer that owns an interest in a repair facility shall post the following notice in each of its tied repair facilities:

"THIS REPAIR FACILITY IS OWNED IN WHOLE OR IN PART BY (NAME OF INSURER). YOU ARE HEREBY NOTIFIED THAT YOU ARE ENTITLED TO SEEK REPAIRS AT ANY REPAIR FACILITY OF YOUR CHOICE."

(b) The notice required by Subsection (a) must be posted prominently in a location in which it is likely to be seen and read by a customer of the repair facility.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 2306.005 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.006. PROHIBITIONS. An insurer may not:

(1) condition the provision of a product, service, insurance policy renewal, pricing, or other benefit on the purchase of any good or service from its tied repair facilities;

(2) share information with its tied repair facilities that

is not made available on identical terms and conditions to other repair facilities with which the insurer has entered into a favored facility agreement;

(3) engage in a joint marketing program with its tied repair facilities;

(4) provide its tied repair facilities a recommendation, referral, description, advantage, or access to its policyholders or other beneficiaries under its insurance policies that is not provided on identical terms to other repair facilities with which the insurer has entered into a favored facility agreement;

(5) provide a tied repair facility access to the insurer's products or services on terms and conditions different from those under which the insurer provides access to the same products or services to another repair facility with which the insurer has entered into a favored facility agreement;

(6) allow a tied repair facility to use the insurer's name, trademark, tradename, brand, or logo in a manner different than that allowed for any other favored facility;

(7) subsidize the business activities or operating expenses of a tied repair facility;

(8) directly or indirectly require a policyholder of the insurer or other beneficiary under the insurer's policy to obtain a damage estimate on a vehicle covered by the insurance policy at a tied repair facility;

(9) authorize or allow a person representing the insurer, whether an employee or an independent contractor, to recommend to a policyholder or other beneficiary under the insurance policy that the policyholder or other beneficiary obtain repairs at a tied repair facility, except to the same extent that the person recommends other repair facilities with whom the insurer has entered into a favored facility agreement;

(10) require a policyholder or beneficiary to use a claims center located on the premises of a tied repair facility;

(11) enter into a favored facility agreement exclusively with its tied repair facilities;

(12) retaliate or discriminate against a person who:  
(A) files an action as provided by this chapter; or  
(B) assists or participates in any manner in an investigation, judicial proceeding, or other action brought or maintained as provided by this chapter; or

(13) include earnings or losses of a tied repair facility in a rate filing made under Chapter 5, Insurance Code.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 2306.006 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.007. CONFLICT OF INTEREST PROHIBITED. Except as otherwise provided by this chapter, an agreement between an insurer and its tied repair facility must be negotiated and executed as an arm's length transaction.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 2306.007 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.008. SUPPORT SERVICES. (a) Notwithstanding this chapter, and except as provided by Subsection (b), an insurer may provide support services to its tied repair facilities if those services:

(1) are priced at a level that is fair and reasonable to both the insurer and the tied repair facility; and

(2) do not directly or indirectly confer a competitive advantage to the tied repair facility.

(b) Notwithstanding Subsection (a), an agreement by an insurer to provide support services to its tied repair facility may not create the potential for confusion among the policyholders of the insurer, other beneficiaries of an insurance policy issued by the insurer, or other parties.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 2306.008 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.009. ACTION TO COMPEL COMPLIANCE; DISCIPLINARY ACTION. (a) A person, including a repair facility, aggrieved by a violation of this chapter by an insurer may bring an action for injunctive or other appropriate relief to compel the insurer to

comply with this chapter.

(b) In an action brought under this section, in addition to other appropriate relief, the court may impose a civil penalty as provided by this section.

(c) A civil penalty imposed under this section may not be less than \$1,000 or more than \$5,000 per violation. Each day during which a violation occurs is a separate violation.

(d) The amount of a civil penalty under this section is based on the seriousness of the violation, and must reflect the following factors:

(1) the nature, circumstances, extent, and gravity of the act or omission that constitutes the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the need to deter future violations by the person charged with a violation;

(5) efforts, if any, made to correct the violation; and

(6) any other factors the court considers appropriate to implement the remedial intent of this chapter.

(e) A civil penalty collected under this section shall be sent to the comptroller for deposit in the general revenue fund.

(f) A plaintiff who prevails in an action under this section is entitled to recover reasonable attorney's fees and court costs.

(g) If a court finds that an action brought under this section was groundless, brought in bad faith, or brought for the purpose of harassment, the court may award reasonable attorney's fees to the prevailing defendant.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 2306.009 by Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.010. ANTITRUST ENFORCEMENT. This chapter does not confer immunity from an antitrust law of this state or the United States. A sanction or penalty imposed in an action brought under this chapter is in addition to other relief granted on the basis of the violation of an antitrust law of this state or the United States.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 2306.010 by Acts 2005, 79th



Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.011. EXCLUSIVITY. Unless otherwise specifically provided by this chapter, this chapter provides the exclusive authority and rules applicable to the regulation of the relations between an insurer and a tied repair facility.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 2306.011 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

## CHAPTER 2308. VEHICLE TOWING AND BOOTING

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2308.001. SHORT TITLE. This chapter may be cited as the Texas Towing and Booting Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 2, eff. September 1, 2009.

Sec. 2308.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Towing, Storage, and Booting Advisory Board.

(1-a) "Boot" means a lockable road wheel clamp or similar vehicle immobilization device that is designed to immobilize a parked vehicle and prevent its movement until the device is unlocked or removed.

(1-b) "Booting company" means a person that controls, installs, or directs the installation and removal of one or more boots.

(1-c) "Boot operator" means an individual who installs or removes a boot on or from a vehicle.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Consent tow" means any tow of a motor vehicle in which the tow truck is summoned by the owner or operator of the vehicle or

by a person who has possession, custody, or control of the vehicle. The term does not include an incident management tow or a private property tow.

(4) "Department" means the Texas Department of Licensing and Regulation.

(5) "Driver's license" has the meaning assigned by Section 521.001, Transportation Code.

(5-a) "Incident management tow" means any tow of a vehicle in which the tow truck is summoned to the scene of a traffic accident or to an incident, including the removal of a vehicle, commercial cargo, and commercial debris from an accident or incident scene.

(6) "Nonconsent tow" means any tow of a motor vehicle that is not a consent tow, including:

(A) an incident management tow; and

(B) a private property tow.

(7) "Parking facility" means public or private property used, wholly or partly, for restricted or paid vehicle parking. The term includes:

(A) a restricted space on a portion of an otherwise unrestricted parking facility; and

(B) a commercial parking lot, a parking garage, and a parking area serving or adjacent to a business, church, school, home that charges a fee for parking, apartment complex, property governed by a property owners' association, or government-owned property leased to a private person, including:

(i) a portion of the right-of-way of a public roadway that is leased by a governmental entity to the parking facility owner; and

(ii) the area between the facility's property line abutting a county or municipal public roadway and the center line of the roadway's drainage way or the curb of the roadway, whichever is farther from the facility's property line.

(7-a) "Parking facility authorized agent" means an employee or agent of a parking facility owner with the authority to:

(A) authorize the removal of a vehicle from the parking facility on behalf of the parking facility owner; and

(B) accept service on behalf of the parking facility owner of a notice of hearing requested under this chapter.

(8) "Parking facility owner" means:

(A) an individual, corporation, partnership, limited

partnership, limited liability company, association, trust, or other legal entity owning or operating a parking facility;

(B) a property owners' association having control under a dedicatory instrument, as that term is defined in Section 202.001, Property Code, over assigned or unassigned parking areas; or

(C) a property owner having an exclusive right under a dedicatory instrument, as that term is defined in Section 202.001, Property Code, to use a parking space.

(8-a) "Private property tow" means any tow of a vehicle authorized by a parking facility owner without the consent of the owner or operator of the vehicle.

(9) "Property owners' association" has the meaning assigned by Section 202.001, Property Code.

(10) "Public roadway" means a public street, alley, road, right-of-way, or other public way, including paved and unpaved portions of the right-of-way.

(11) "Tow truck" means a motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle. The term does not include:

(A) a motor vehicle owned and operated by a governmental entity, including a public school district;

(B) a motor vehicle towing:

(i) a race car;

(ii) a motor vehicle for exhibition; or

(iii) an antique motor vehicle;

(C) a recreational vehicle towing another vehicle;

(D) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise;

(E) a motor vehicle that is controlled or operated by a farmer or rancher and used for towing a farm vehicle; or

(F) a motor vehicle that:

(i) is owned or operated by an entity the primary business of which is the rental of motor vehicles; and

(ii) only tows vehicles rented by the entity.

(12) "Towing company" means an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more tow trucks over a public roadway in this state but does not include a political subdivision of the state.

(13) "Unauthorized vehicle" means a vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.

(14) "Vehicle" means a device in, on, or by which a person or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer but does not include a device moved by human power or used exclusively on a stationary rail or track.

(15) "Vehicle owner" means a person:

(A) named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501, Transportation Code;

(B) in whose name the vehicle is registered under Chapter 502, Transportation Code, or a member of the person's immediate family;

(C) who holds the vehicle through a lease agreement;

(D) who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or

(E) who is a lienholder holding an affidavit of repossession and entitled to repossess the vehicle.

(16) "Vehicle storage facility" means a vehicle storage facility, as defined by Section 2303.002, that is operated by a person who holds a license issued under Chapter 2303 to operate the facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 4, eff. September 1, 2011.

Sec. 2308.004. EXEMPTION. (a) This chapter does not apply to a person who, while exercising a statutory or contractual lien right

with regard to a vehicle:

- (1) installs or removes a boot; or
- (2) controls, installs, or directs the installation and removal of one or more boots.

(b) This chapter does not apply to a commercial office building owner or manager who installs or removes a boot in the building's parking facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 4, eff. September 1, 2009.

#### **SUBCHAPTER B. ADVISORY BOARD**

Sec. 2308.051. TOWING, STORAGE, AND BOOTING ADVISORY BOARD.

Text of subsection as amended by Acts 2009, 81st Leg., R.S., Ch. 457  
(H.B. 2548), Sec. 7

(a) The advisory board consists of the following members appointed by the presiding officer of the commission with the approval of the commission:

- (1) one representative of a towing company operating in a county with a population of less than one million;
- (2) one representative of a towing company operating in a county with a population of one million or more;
- (3) one owner of a vehicle storage facility located in a county with a population of less than one million;
- (4) one owner of a vehicle storage facility located in a county with a population of one million or more;
- (5) one parking facility owner;
- (6) one law enforcement officer from a county with a population of less than one million;
- (7) one law enforcement officer from a county with a population of one million or more;
- (8) one representative of property and casualty insurers who write automobile insurance in this state; and
- (9) one public member.

Text of subsection as amended by Acts 2009, 81st Leg., R.S., Ch. 845  
(S.B. 2153), Sec. 6

(a) The advisory board consists of the following members appointed by the presiding officer of the commission with the

approval of the commission:

- (1) one representative of a towing company operating in a county with a population of less than one million;
- (2) one representative of a towing company operating in a county with a population of one million or more;
- (3) one owner of a vehicle storage facility located in a county with a population of less than one million;
- (4) one owner of a vehicle storage facility located in a county with a population of one million or more;
- (5) one parking facility owner;
- (6) one law enforcement officer from a county with a population of less than one million;
- (7) one law enforcement officer from a county with a population of one million or more;
- (8) one representative of property and casualty insurers who write automobile insurance in this state; and
- (9) one representative of a booting company.

(b) The advisory board must include representation for each classification of towing.

(c) An appointment to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 457 (H.B. 2548), Sec. 7, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 6, eff. September 1, 2009.

Sec. 2308.052. TERMS; VACANCIES. (a) Advisory board members serve terms of six years, with the terms of two or three members, as appropriate, expiring on February 1 of each odd-numbered year.

(b) A member may not serve more than two full consecutive terms.

(c) If a vacancy occurs during a term, the presiding officer of

the commission shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.053. PRESIDING OFFICER. The presiding officer of the commission shall appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.054. COMPENSATION; REIMBURSEMENT OF EXPENSES. Advisory board members may not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.055. MEETINGS. The advisory board shall meet twice annually and may meet at other times at the call of the presiding officer of the commission or the executive director.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.056. GENERAL POWERS AND DUTIES. The executive director or commission, as appropriate, may take action as necessary to administer and enforce this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12,

eff. September 1, 2007.

Sec. 2308.057. RULES. (a) The commission shall adopt rules for permitting tow trucks and licensing towing operators, towing companies, booting companies, and boot operators. The commission may adopt different rules applicable to each type of permit or license.

(a-1) The commission shall adopt rules for denial of applications and permits if the applicant, a partner, principal, officer, or general manager of the applicant, or other license or permit holder has:

(1) a criminal conviction, or has pleaded guilty or nolo contendere to an offense, before the date of the application, for:

(A) a felony; or

(B) a misdemeanor punishable by confinement in jail or by a fine in an amount that exceeds \$500;

(2) violated an order of the commission or executive director, including an order for sanctions or administrative penalties;

(3) failed to submit a license or permit bond in an amount established by the commission;

(4) knowingly submitted false or incomplete information on the application; or

(5) filed an application to permit a tow truck previously permitted by a license or permit holder.

(b) The commission by rule shall adopt:

(1) standards of conduct for license and permit holders under this chapter; and

(2) requirements for a consent tow, private property tow, and incident management tow.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. [2094](#)), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. [2153](#)), Sec. 7, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. [2571](#)), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. [3510](#)), Sec. 5, eff. September 1, 2011.



Sec. 2308.0575. RULES ON FEES; CONTRACT FOR STUDY; CONFIDENTIAL INFORMATION. (a) To protect the public health and safety, the commission by rule shall establish:

(1) the fees that may be charged in connection with a private property tow;

(2) the maximum amount that may be charged for fees, other than tow fees, that may be assessed by a towing company in connection with a private property tow; and

(3) a maximum amount that may be charged for the following private property tows:

(A) standard light-duty tows of motor vehicles with a gross weight rating of 10,000 pounds or less;

(B) medium-duty tows of motor vehicles with a gross weight rating of more than 10,000 pounds, but less than 25,000 pounds; and

(C) heavy-duty tows of motor vehicles with a gross weight rating that exceeds 25,000 pounds.

(b) In adopting rules under Subsection (a), the commission shall contract for a study that:

(1) examines towing fee studies conducted by municipalities in this state; and

(2) analyzes the cost of towing services by company, the consumer price index, the geographic area, and individual cost components.

(c) The commission may structure the maximum amounts that may be charged for private property tows based on hourly or flat fees or by geographic location.

(d) The commission shall maintain the confidentiality of information contained in a study conducted under this section that is claimed to be confidential for competitive purposes and may not release information that identifies a person or company. The confidential information is exempt from disclosure under Chapter 552, Government Code.

(e) To protect the confidentiality of the information, the commission shall aggregate the information to the maximum extent possible considering the purpose of the study.

(f) The department shall contract to conduct a study on private property towing fees under this section at least once every two

years.

Added by Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 3, eff. September 1, 2010.

Sec. 2308.058. FEES. The commission shall establish and collect reasonable and necessary fees in amounts sufficient to cover the costs of administering this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.059. PERIODIC AND RISK-BASED INSPECTIONS. (a) The department may enter and inspect at any time during business hours:

(1) the place of business of any person regulated under this chapter; or

(2) any place in which the department has reasonable cause to believe that a license or permit holder is in violation of this chapter or in violation of a rule or order of the commission or executive director.

(b) The department shall conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

(1) the type and nature of the towing company or operator;

(2) the inspection history;

(3) any history of complaints involving the towing company or operator; and

(4) any other factor determined by the commission by rule.

(c) The towing company shall pay a fee for each risk-based inspection performed under this section. The commission by rule shall set the amount of the fee.

(d) In conducting an inspection under this section, the department may inspect a vehicle, a facility, business records, or any other place or thing reasonably required to enforce this chapter or a rule or order adopted under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.060. POWERS AND DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, continuing education requirements, and maximum amounts that may be charged for fees related to private property tows.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 4, eff. September 1, 2009.

Sec. 2308.061. PERSONNEL. The department may employ personnel necessary to administer and enforce this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

#### **SUBCHAPTER C. TOW TRUCK PERMIT REQUIREMENTS**

Sec. 2308.101. PERMIT REQUIRED. A tow truck may not be used for consent towing or nonconsent towing on a public roadway in this state unless an appropriate permit has been issued for the tow truck under this subchapter. Each tow truck requires a separate permit.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.102. APPLICATION REQUIREMENTS. (a) An applicant for a permit under this subchapter must submit to the department:

(1) a completed application on a form prescribed by the executive director;

(2) evidence of insurance or financial responsibility required under this subchapter;

(3) the required fees; and

(4) any other information required by the executive director.

(b) The department may conduct an examination of any criminal

conviction of an applicant, including by obtaining any criminal history record information permitted by law.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.103. REQUIREMENTS FOR INCIDENT MANAGEMENT TOWING PERMIT. (a) An incident management towing permit is required for a tow truck used to perform any nonconsent tow initiated by a peace officer, including a tow authorized under Section 545.3051, Transportation Code.

(b) To be eligible for an incident management towing permit, an applicant must submit evidence that:

(1) the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's towing guidelines;

(2) the applicant has at least \$500,000 of liability insurance for the tow truck; and

(3) the applicant has at least \$50,000 of cargo insurance for the tow truck.

(c) A tow truck permitted under this section may also be used for private property towing and consent towing.

(d) When a tow truck is used for a nonconsent tow initiated by a peace officer under Section 545.3051, Transportation Code, the permit holder is an agent of law enforcement and is subject to Section 545.3051(e), Transportation Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.104. REQUIREMENTS FOR PRIVATE PROPERTY TOWING PERMIT.

(a) A private property towing permit is required for a tow truck used to perform a nonconsent tow authorized by a parking facility owner under this chapter.

(b) To be eligible for a private property towing permit, an applicant must submit evidence that:

(1) the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's towing guidelines;

(2) the applicant has at least \$300,000 of liability insurance for the tow truck; and

(3) the applicant has at least \$50,000 of cargo insurance for the tow truck.

(c) A tow truck permitted under this section may also be used for consent towing but not for incident management towing.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.105. REQUIREMENTS FOR CONSENT TOWING PERMIT. (a) A consent towing permit is required for a tow truck used to perform a consent tow authorized by the vehicle owner.

(b) To be eligible for a consent towing permit, an applicant must submit evidence that:

(1) the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's towing guidelines; and

(2) the applicant has at least \$300,000 of liability insurance for the tow truck.

(c) A tow truck permitted under this section may not be used for nonconsent towing, including incident management towing and private property towing.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.106. DEPARTMENT APPROVAL; ISSUANCE OF PERMIT. (a) The department shall issue a permit under this subchapter to an applicant who meets the requirements for a permit. The department may deny an application if the applicant has had a permit revoked under this chapter.

(b) The department shall issue a certificate containing a single unique permit number for each tow truck, regardless of whether the permit holder holds more than one permit.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.107. PERMIT RENEWAL. (a) A permit issued under this chapter is valid for one year. The department may adopt a system

under which permits expire at different times during the year.

(b) The department shall notify the permit holder at least 30 days before the date a permit expires. The notice must be in writing and sent to the permit holder's last known address according to the records of the department.

(c) A permit holder may renew a permit under this chapter by:

- (1) paying a fee for each tow truck; and
- (2) providing to the department evidence of continuing insurance or financial responsibility in an amount required by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.108. CAB CARDS. (a) The department shall issue a cab card for each tow truck issued a permit. The cab card must:

- (1) show the permit number of the certificate issued under Section 2308.106(b);
- (2) show the type of permit issued;
- (3) show the vehicle unit number;
- (4) show the vehicle identification number; and
- (5) contain a statement that the vehicle has been issued a permit under this subchapter.

(b) The department shall issue a cab card when the department issues or renews a permit under this subchapter.

(c) A permit holder must keep the cab card in the cab of each permitted tow truck.

(d) The department may order a permit holder to surrender a cab card if the permit is suspended or revoked under this chapter.

(e) If the department determines that the cab card system described by Subsections (a) through (c) is not an efficient means of enforcing this subchapter, the executive director by rule may adopt an alternative method that is accessible by law enforcement personnel in the field and provides for the enforcement of the permit requirements of this subchapter.

(f) A cab card or a permit issued under the alternative method described in Subsection (e) must be valid for the same duration as a certificate issued under Section 2308.106.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12,

eff. September 1, 2007.

Sec. 2308.109. DISPLAY OF INFORMATION ON TOW TRUCK. (a) A permit holder shall display on each permitted tow truck:

- (1) the permit holder's name;
- (2) the permit holder's telephone number;
- (3) the city and state where the permit holder is located;

and

- (4) the permit number for the tow truck.

(b) The information required to be displayed must be:

(1) printed in letters and numbers that are at least two inches high and in a color that contrasts with the color of the background surface; and

(2) permanently affixed in conspicuous places on both sides of the tow truck.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.110. FINANCIAL RESPONSIBILITY. (a) A permit holder shall maintain liability insurance for each tow truck according to the requirements under this subchapter.

(b) Unless state law permits a tow truck to be self-insured, any insurance required for a tow truck must be obtained from an insurer authorized to do business in this state.

(c) An applicant or permit holder must file with the department evidence of insurance as required by this subchapter.

(d) A permit holder shall keep evidence of insurance in a form approved by the department in the cab of each permitted tow truck.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

#### **SUBCHAPTER D. LICENSE REQUIREMENTS**

Sec. 2308.151. LICENSE REQUIRED. Unless the person holds an appropriate license under this subchapter, a person may not:

- (1) perform towing operations;
- (2) operate a towing company;

- (3) perform booting operations; or
- (4) operate a booting company.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 8, eff. September 1, 2009.

Sec. 2308.152. GENERAL LICENSE APPLICATION REQUIREMENTS. An applicant for a license under this subchapter must submit to the department:

- (1) a completed application on a form prescribed by the executive director;
- (2) the required fees; and
- (3) any other information required by commission rule.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.1521. VEHICLE STORAGE FACILITY EMPLOYEE AND TOWING OPERATOR; DUAL LICENSE. (a) The commission shall adopt rules for the issuance of a dual license for a person who is a vehicle storage facility employee and towing operator. The department shall issue the license to an applicant who:

- (1) meets the requirements established under:
  - (A) Section 2308.153, 2308.154, or 2308.155;
  - (B) Section 2303.1015; and
  - (C) any applicable rules adopted under this subchapter or Subchapter C, Chapter 2303; and
- (2) submits to the department:
  - (A) an application on a department-approved form; and
  - (B) the required license fee.
- (b) A person holding a license issued under this section may:
  - (1) work at a vehicle storage facility; and
  - (2) perform towing operations.
- (c) The fee for a license issued under this section may not be:
  - (1) less than the fee for a license issued under this subchapter or Section 2303.1015; or



(2) more than the sum of the fees for a license issued under this subchapter and a license issued under Section 2303.1015.

Added by Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 4, eff. June 1, 2010.

Sec. 2308.153. INCIDENT MANAGEMENT TOWING OPERATOR'S LICENSE.

(a) An incident management towing operator's license is required to operate a tow truck permitted under Section 2308.103.

(b) An applicant for an incident management towing operator's license must:

(1) hold a valid driver's license issued by a state in the United States; and

(2) be certified by a program approved by the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 5, eff. September 1, 2009.

Sec. 2308.154. PRIVATE PROPERTY TOWING OPERATOR'S LICENSE. (a)

A private property towing operator's license is required to operate a tow truck permitted under Section 2308.104.

(b) An applicant for a private property towing operator's license must:

(1) hold a valid driver's license issued by a state in the United States; and

(2) be certified by a program approved by the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 6, eff. September 1, 2009.

Sec. 2308.155. CONSENT TOWING OPERATOR'S LICENSE. (a) A

consent towing operator's license is required to operate a tow truck

permitted under Section 2308.105.

(b) An applicant for a consent towing operator's license must hold a valid driver's license issued by a state in the United States.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 7, eff. September 1, 2009.

Sec. 2308.1551. TRAINING LICENSE. (a) The department may issue a training license to an applicant for a license under this subchapter if the applicant:

(1) holds a valid driver's license issued by a state in the United States;

(2) meets the qualifications established by rule by the commission; and

(3) is engaged in the process of learning and assisting in the operation of a tow truck under the supervision of a licensed tow truck operator.

(b) Notwithstanding Subsection (a), an applicant for a license under Section 2308.153 may be supervised by an operator who holds a license issued under Section 2308.153, 2308.154, or 2308.155.

(c) A training license issued under this section expires on the 91st day after the date of issuance and may not be renewed.

(d) The commission by rule shall set the fee, establish the qualifications, and provide for the issuance of a training license under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 8, eff. June 1, 2010.

Sec. 2308.1555. BOOT OPERATOR'S LICENSE. (a) A boot operator's license is required to install or remove a boot from a vehicle.

(b) An applicant for a boot operator's license must be at least 18 years of age.

Added by Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 9, eff.

September 1, 2009.

Sec. 2308.1556. BOOTING COMPANY LICENSE. (a) A booting company license is required for a person to operate a booting company.

(b) To be eligible for a booting company license, an applicant must submit evidence that the applicant is covered by:

(1) a general liability insurance policy on a broad form with:

(A) a combined single limit for bodily injury and property damage for each occurrence of at least \$500,000; and

(B) an aggregate limit for all occurrences for each policy year of at least \$500,000; and

(2) an automobile liability insurance policy covering the applicant and the applicant's employees for vehicles owned, hired, or otherwise used in the applicant's business, with a combined single limit for each occurrence of at least \$500,000.

Added by Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. [2153](#)), Sec. 9, eff. September 1, 2009.

Sec. 2308.156. NONTRANSFERABILITY OF LICENSE. A license issued by the executive director is valid throughout this state and is not transferable.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. [2094](#)), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.157. CONTINUING EDUCATION. (a) The commission by rule shall recognize, prepare, or administer continuing education programs for license holders. Except as provided by Subsection (c), each license holder must complete a continuing education program before the license holder may renew the license holder's license.

(b) A person recognized by the commission to offer a continuing education program must:

(1) register with the department; and

(2) comply with rules adopted by the commission relating to continuing education.

(c) To renew an incident management towing operator's license the first time, a license holder must complete a professional development course relating to incident management towing that is approved and administered by the department under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 9, eff. September 1, 2009.

Sec. 2308.158. ALCOHOL AND DRUG TESTING OF TOWING OPERATORS.

(a) A towing company shall establish an alcohol and drug testing policy for towing operators. A towing company that establishes an alcohol and drug testing policy under this subsection may adopt the model alcohol and drug testing policy adopted by the commission or may use another alcohol and drug testing policy that the department determines is at least as stringent as the policy adopted by the commission.

(b) The commission by rule shall adopt a model alcohol and drug testing policy for use by a towing company. The model alcohol and drug testing policy must be designed to ensure the safety of the public through appropriate alcohol and drug testing and to protect the rights of employees. The model alcohol and drug testing policy must:

(1) require at least one scheduled drug test each year for each towing operator; and

(2) authorize random, unannounced alcohol and drug testing for towing operators.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 10, eff. September 1, 2009.

Sec. 2308.159. LICENSE RENEWAL. (a) A license issued under this subchapter is valid for one year. The department may adopt a system under which licenses expire at different times during the

year.

(b) The department shall notify the license holder at least 30 days before the date a license expires. The notice must be in writing and sent to the license holder's last known address according to the records of the department.

(c) A license holder may renew a license issued under this chapter by:

(1) submitting an application on a form prescribed by the executive director;

(2) submitting evidence demonstrating compliance with the requirements for the license type as required by this chapter or commission rule;

(3) paying a renewal fee; and

(4) completing continuing education as required by Section 2308.157.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 6, eff. September 1, 2011.

#### **SUBCHAPTER E. LOCAL REGULATION OF TOWING AND BOOTING**

Sec. 2308.201. TOW TRUCK REGULATION BY POLITICAL SUBDIVISIONS.

(a) A political subdivision of this state may regulate the operation of a tow truck to the extent allowed by federal law, except that a political subdivision may not issue a more restrictive regulation for the use of lighting equipment on a tow truck than is imposed by Title 7, Transportation Code.

(b) A political subdivision may not require the registration of a tow truck that performs consent tows in the political subdivision unless the owner of the tow truck has a place of business in the territory of the political subdivision.

(c) A political subdivision may require the registration of a tow truck that performs a nonconsent tow in the political subdivision, regardless of whether the owner of the tow truck has a place of business in the territory of the political subdivision.

(d) A political subdivision may not require a person who holds a driver's license or commercial driver's license to obtain a license

or permit for operating a tow truck unless the person performs nonconsent tows in the territory of the political subdivision. A fee charged for a license or permit may not exceed \$15.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 30.150(a), eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1303, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1034, Sec. 9, eff. Sept. 1, 2003. Renumbered from Transportation Code, Section 643.201 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.01, eff. September 1, 2007.

Sec. 2308.202. REGULATION BY POLITICAL SUBDIVISIONS OF FEES FOR NONCONSENT TOWS. The governing body of a political subdivision may regulate the fees that may be charged or collected in connection with a nonconsent tow originating in the territory of the political subdivision if the private property tow fees:

- (1) are authorized by commission rule; and
- (2) do not exceed the maximum amount authorized by commission rule.

Added by Acts 2003, 78th Leg., ch. 1034, Sec. 10, eff. Sept. 1, 2003. Renumbered from Transportation Code, Section 643.203 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.01, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 5, eff. September 1, 2010.

Sec. 2308.203. TOWING FEE STUDIES. (a) The governing body of a political subdivision that regulates nonconsent tow fees shall establish procedures by which a towing company may request that a towing fee study be performed.

(b) The governing body of the political subdivision shall establish or amend the allowable fees for nonconsent tows at amounts that represent the fair value of the services of a towing company and are reasonably related to any financial or accounting information provided to the governing body.

Added by Acts 2003, 78th Leg., ch. 1034, Sec. 10, eff. Sept. 1, 2003.

Renumbered from Transportation Code, Section 643.204 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.01, eff. September 1, 2007.

Sec. 2308.205. STORAGE OF TOWED VEHICLES. (a) A towing company that makes a nonconsent tow shall tow the vehicle to a vehicle storage facility that is operated by a person who holds a license to operate the facility under Chapter 2303, unless the towing company agrees to take the vehicle to a location designated by the vehicle's owner.

(b) A storage or notification fee imposed in connection with a motor vehicle towed to a vehicle storage facility is governed by Chapter 2303.

(c) Except as provided by this chapter, Article 18.23, Code of Criminal Procedure, or Chapter 2303, a fee may not be charged or collected without the prior written consent of the vehicle owner or operator.

Added by Acts 2003, 78th Leg., ch. 1034, Sec. 10, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 5, eff. September 1, 2005.

Renumbered from Transportation Code, Section 643.206 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.01, eff. September 1, 2007.

Sec. 2308.2065. FEES FOR NONCONSENT TOWS; REFUNDS. (a) A license or permit holder may not charge a fee for a nonconsent tow that is greater than:

(1) the fee for a nonconsent tow established under Section 2308.0575; or

(2) a fee for a nonconsent tow authorized by a political subdivision.

(b) A license or permit holder may not charge a fee for a service related to a nonconsent tow that is not included in the list of fees established:

(1) under Section 2308.0575; or

(2) by a political subdivision.

(c) The department may require a license or permit holder to refund to a vehicle owner or operator the:

(1) amount charged to the owner or operator in excess of the amounts established by commission rule or by a political subdivision; or

(2) total amount of the charges for a service not listed in the amounts established by commission rule or by a political subdivision.

Added by Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 7, eff. September 1, 2011.

Sec. 2308.208. MUNICIPAL OR COUNTY ORDINANCE REGULATING UNAUTHORIZED VEHICLES AND TOWING OF MOTOR VEHICLES. The governing body of a municipality or the commissioners court of a county may adopt an ordinance that is identical to this chapter or that imposes additional requirements that exceed the minimum standards of this chapter but may not adopt an ordinance conflicting with this chapter.

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

Renumbered from Transportation Code, Section 684.101 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.02, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 8, eff. September 1, 2009.

Sec. 2308.2085. MUNICIPAL ORDINANCE REGULATING BOOTING COMPANIES AND OPERATORS. (a) A municipality may adopt an ordinance that is identical to the booting provisions in this chapter or that imposes additional requirements that exceed the minimum standards of the booting provisions in this chapter but may not adopt an ordinance that conflicts with the booting provisions in this chapter.

(b) A municipality may regulate the fees that may be charged in connection with the booting of a vehicle, including associated parking fees.

(c) A municipality may require booting companies to obtain a permit to operate in the municipality.



Added by Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 11, eff. September 1, 2009.

Sec. 2308.209. TOW ROTATION LIST IN CERTAIN COUNTIES. (a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 27.002(37), eff. September 1, 2009.

(b) This section applies only to the unincorporated area of a county:

(1) with a population of 550,000 or more that is adjacent to a county with a population of 3.3 million or more;

(2) with a population of less than 10,000 that is located in a national forest; or

(3) adjacent to a county described by Subdivision (2) that has a population of less than 75,000.

(c) The sheriff's office may maintain a list of towing companies to perform nonconsent tows of motor vehicles initiated by a peace officer investigating a traffic accident or a traffic incident. The towing companies must operate in a county to which this section applies.

(d) A peace officer initiating a nonconsent tow of a motor vehicle involved in a traffic accident or traffic incident that the officer is investigating shall notify the sheriff's office that the tow is being initiated. The sheriff's office shall contact successive towing companies on the tow rotation list until a company agrees to carry out the tow.

(e) The sheriff's office may assess a towing company an administrative fee to be included on the tow rotation list in an amount not to exceed the amount necessary to implement this section.

(f) The commissioners court of a county in which a list is maintained under Subsection (c) shall adopt policies to implement this section in a manner that ensures:

(1) equal distribution of nonconsent tows among the towing companies that perform nonconsent tows in the county; and

(2) consumer protection, including fair pricing, for owners or operators of motor vehicles towed by towing companies on the tow rotation list.

(g) The sheriff's office shall make a list maintained under this section available for public inspection.

(h) In a county in which a list is maintained under Subsection

(c), a person commits an offense if:

(1) the person arrives at the scene of a traffic accident or traffic incident to perform a nonconsent tow of a motor vehicle without first being contacted by the sheriff's office;

(2) the person directly or indirectly solicits, on streets located in the county, towing services, including towing, removing, repairing, wrecking, storing, trading, selling, or purchasing related to a vehicle that has been damaged in an accident to the extent that it cannot be normally and safely driven; or

(3) the person enters the scene of a traffic accident, traffic incident, or other area under the control of a peace officer without the permission of the peace officer.

(i) An offense under Subsection (h) is a misdemeanor punishable by a fine of not less than \$1 or more than \$200.

Added by Acts 2007, 80th Leg., R.S., Ch. 162 (S.B. 500), Sec. 1, eff. September 1, 2007.

Transferred from Transportation Code, Section 643.209 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(109), eff. September 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.002(37), eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 108, eff. September 1, 2011.

#### **SUBCHAPTER F. UNAUTHORIZED VEHICLES**

Sec. 2308.251. PROHIBITION AGAINST UNATTENDED VEHICLES IN CERTAIN AREAS. (a) The owner or operator of a vehicle may not leave unattended on a parking facility a vehicle that:

(1) is in or obstructs a vehicular traffic aisle, entry, or exit of the parking facility;

(2) prevents a vehicle from exiting a parking space in the facility;

(3) is in or obstructs a fire lane marked according to Subsection (c);

(4) does not display the special license plates issued under Section 504.201, Transportation Code, or the disabled parking placard issued under Chapter 681, Transportation Code, for a vehicle

transporting a disabled person and is in a parking space that is designated for the exclusive use of a vehicle transporting a disabled person; or

(5) is leaking a fluid that presents a hazard or threat to persons or property.

(b) Subsection (a) does not apply to an emergency vehicle that is owned by, or the operation of which is authorized by, a governmental entity.

(c) If a government regulation governing the marking of a fire lane applies to a parking facility, a fire lane in the facility must be marked as provided by the regulation. If a government regulation on the marking of a fire lane does not apply to the parking facility, all curbs of fire lanes must be painted red and be conspicuously and legibly marked with the warning "FIRE LANE--TOW AWAY ZONE" in white letters at least three inches tall, at intervals not exceeding 50 feet.

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

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 20.003(j), eff. September 1, 2005.

Renumbered from Transportation Code, Section 684.011 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.03, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 11, eff. September 1, 2009.

Sec. 2308.252. REMOVAL AND STORAGE OF UNAUTHORIZED VEHICLE.

(a) A parking facility owner may, without the consent of the owner or operator of an unauthorized vehicle, cause the vehicle and any property on or in the vehicle to be removed and stored at a vehicle storage facility at the vehicle owner's or operator's expense if:

(1) signs that comply with Subchapter G prohibiting unauthorized vehicles are located on the parking facility at the time of towing and for the preceding 24 hours and remain installed at the time of towing;

(2) the owner or operator of the vehicle has received actual notice from the parking facility owner that the vehicle will

be towed at the vehicle owner's or operator's expense if it is in or not removed from an unauthorized space;

(3) the parking facility owner gives notice to the owner or operator of the vehicle under Subsection (b); or

(4) on request the parking facility owner provides to the owner or operator of the vehicle information on the name of the towing company and vehicle storage facility that will be used to remove and store the vehicle and the vehicle is:

(A) left in violation of Section 2308.251 or 2308.253; or

(B) in or obstructing a portion of a paved driveway or abutting public roadway used for entering or exiting the facility.

(b) A parking facility owner is considered to have given notice under Subsection (a)(3) if:

(1) a conspicuous notice has been attached to the vehicle's front windshield or, if the vehicle has no front windshield, to a conspicuous part of the vehicle stating:

(A) that the vehicle is in a parking space in which the vehicle is not authorized to be parked;

(B) a description of all other unauthorized areas in the parking facility;

(C) that the vehicle will be towed at the expense of the owner or operator of the vehicle if it remains in an unauthorized area of the parking facility; and

(D) a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to locate the vehicle; and

(2) a notice is mailed after the notice is attached to the vehicle as provided by Subdivision (1) to the owner of the vehicle by certified mail, return receipt requested, to the last address shown for the owner according to the vehicle registration records of the Texas Department of Motor Vehicles, or if the vehicle is registered in another state, the appropriate agency of that state.

(c) The notice under Subsection (b)(2) must:

(1) state that the vehicle is in a space in which the vehicle is not authorized to park;

(2) describe all other unauthorized areas in the parking facility;

(3) contain a warning that the unauthorized vehicle will be towed at the expense of the owner or operator of the vehicle if it is

not removed from the parking facility before the 15th day after the postmark date of the notice; and

(4) state a telephone number that is answered 24 hours a day to enable the owner or operator to locate the vehicle.

(d) The mailing of a notice under Subsection (b)(2) is not required if after the notice is attached under Subsection (b)(1) the owner or operator of the vehicle leaves the vehicle in another location where parking is unauthorized for the vehicle according to the notice.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 442, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 6, eff. September 1, 2005.

Renumbered from Transportation Code, Section 684.012 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.03, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 9, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 764 (S.B. 1053), Sec. 2, eff. September 1, 2013.

Sec. 2308.253. UNATTENDED VEHICLES ON PARKING FACILITY OF APARTMENT COMPLEX; REMOVAL AND STORAGE OF VEHICLES. (a) This section applies only to a parking facility serving or adjacent to an apartment complex consisting of one or more residential apartment units and any adjacent real property serving the apartment complex.

(b) The owner or operator of a vehicle may not leave unattended on a parking facility a vehicle that:

(1) obstructs a gate that is designed or intended for the use of pedestrians or vehicles;

(2) obstructs pedestrian or vehicular access to an area that is used for the placement of a garbage or refuse receptacle used in common by residents of the apartment complex;

(3) is in or obstructs a restricted parking area or parking space designated under Subchapter G, including a space designated for the use of employees or maintenance personnel of the parking facility

or apartment complex;

(4) is in a tow away zone, other than a fire lane covered by Section 2308.251(c), that is brightly painted and is conspicuously and legibly marked with the warning "TOW AWAY ZONE" in contrasting letters at least three inches tall;

(5) is a semitrailer, trailer, or truck-tractor, as defined by Chapter 502, Transportation Code, unless the owner or operator of the vehicle is permitted under the terms of a rental or lease agreement with the apartment complex to leave the unattended vehicle on the parking facility; or

(6) is leaking a fluid that presents a hazard or threat to persons or property.

(c) A parking facility owner may not have an emergency vehicle described by Section 2308.251(b) removed from the parking facility.

Text of subsection effective until March 1, 2015

(d) Except as provided by a contract described by Subsection (e), a parking facility owner may not have a vehicle removed from the parking facility merely because the vehicle does not display:

(1) an unexpired license plate or registration insignia issued for the vehicle under Chapter 502, Transportation Code, or the vehicle registration law of another state or country; or

(2) a valid vehicle inspection certificate issued under Chapter 548, Transportation Code, or the vehicle inspection law of another state or country.

Text of subsection effective on March 1, 2015

(d) Except as provided by a contract described by Subsection (e), a parking facility owner may not have a vehicle removed from the parking facility merely because the vehicle does not display an unexpired license plate or registration insignia issued for the vehicle under Chapter 502, Transportation Code, or the vehicle registration law of another state or country.

Text of subsection effective until March 1, 2015

(e) A contract provision providing for the removal from a parking facility of a vehicle that does not display an unexpired license plate or registration insignia or a valid inspection certificate is valid only if the provision requires the owner or operator of the vehicle to be given at least 10 days' written notice that the vehicle will be towed from the facility at the vehicle owner's or operator's expense if it is not removed from the parking

facility. The notice must be:

- (1) delivered in person to the owner or operator of the vehicle; or
- (2) sent by certified mail, return receipt requested, to that owner or operator.

Text of subsection effective on March 1, 2015

(e) A contract provision providing for the removal from a parking facility of a vehicle that does not display an unexpired license plate or registration insignia is valid only if the provision requires the owner or operator of the vehicle to be given at least 10 days' written notice that the vehicle will be towed from the facility at the vehicle owner's or operator's expense if it is not removed from the parking facility. The notice must be:

- (1) delivered in person to the owner or operator of the vehicle; or
- (2) sent by certified mail, return receipt requested, to that owner or operator.

(f) This section may not be construed:

- (1) to authorize the owner or operator of a vehicle to leave an unattended vehicle on property that is not designed or intended for the parking of vehicles; or
- (2) to limit or restrict the enforcement of Chapter 683, Transportation Code, the abandoned motor vehicle law.

(g) A provision of an apartment lease or rental agreement entered into or renewed on or after January 1, 2004, that is in conflict or inconsistent with this section is void and may not be enforced.

Added by Acts 2003, 78th Leg., ch. 442, Sec. 2, eff. Jan. 1, 2004. Renumbered from Transportation Code, Section 684.0125 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.03, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 9, eff. March 1, 2015.

Sec. 2308.254. LIMITATION ON PARKING FACILITY OWNER'S AUTHORITY TO REMOVE UNAUTHORIZED VEHICLE. A parking facility owner may not have an unauthorized vehicle removed from the facility except:

(1) as provided by this chapter or a municipal ordinance that complies with Section 2308.208; or

(2) under the direction of a peace officer or the owner or operator of the vehicle.

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

Renumbered from Transportation Code, Section 684.013 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.03, eff. September 1, 2007.

Sec. 2308.255. TOWING COMPANY'S OR BOOT OPERATOR'S AUTHORITY TO REMOVE AND STORE OR BOOT UNAUTHORIZED VEHICLE. (a) A towing company that is insured as provided by Subsection (c) may, without the consent of an owner or operator of an unauthorized vehicle, remove and store the vehicle at a vehicle storage facility at the expense of the owner or operator of the vehicle if:

(1) the towing company has received written verification from the parking facility owner that:

(A) the parking facility owner has installed the signs required by Section 2308.252(a)(1); or

(B) the owner or operator received notice under Section 2308.252(a)(2) or the parking facility owner gave notice complying with Section 2308.252(a)(3); or

(2) on request the parking facility owner provides to the owner or operator of the vehicle information on the name of the towing company and vehicle storage facility that will be used to remove and store the vehicle and the vehicle is:

(A) left in violation of Section 2308.251;

(B) in or obstructing a portion of a paved driveway; or

(C) on a public roadway used for entering or exiting the facility and the removal is approved by a peace officer.

(b) A towing company may not remove an unauthorized vehicle except under:

(1) this chapter;

(2) a municipal ordinance that complies with Section 2308.208; or

(3) the direction of a peace officer or the owner or operator of the vehicle.

(c) Only a towing company that is insured against liability for



property damage incurred in towing a vehicle may remove and store an unauthorized vehicle under this section.

(d) A towing company may remove and store a vehicle under Subsection (a) and a boot operator may boot a vehicle under Section 2308.257 only if the parking facility owner:

(1) requests that the towing company remove and store or that the boot operator boot the specific vehicle; or

(2) has a standing written agreement with the towing company or boot operator to enforce parking restrictions in the parking facility.

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

Amended by:

Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 7, eff. September 1, 2005.

Renumbered from Transportation Code, Section 684.014 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.03, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 10, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 8, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 9, eff. September 1, 2011.

Sec. 2308.2555. REMOVAL OF CERTAIN UNAUTHORIZED VEHICLES IN RURAL AREAS. (a) This section applies only to an abandoned vehicle that has damaged a fence on private property in a rural area.

(b) A law enforcement agency directing a towing company or tow operator to remove an abandoned vehicle that is located on private property shall provide the towing company or tow operator with the name and telephone number of the property owner or the owner's agent if the owner or agent has provided the information to the law enforcement agency.

(c) A towing company or tow operator provided with information under Subsection (b) shall contact the property owner or the owner's agent before entering private property to tow a vehicle described by Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 12, eff. September 1, 2009.

Redesignated from Occupations Code, Section 2308.257 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(49), eff. September 1, 2011.

Redesignated from Occupations Code, Section 2308.257 by Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 10, eff. September 1, 2011.

Sec. 2308.2565. VEHICLE STORAGE FACILITY DUTY TO REPORT AFTER ACCEPTING UNAUTHORIZED VEHICLE. (a) Except for an incident management tow requested by a law enforcement agency, a vehicle storage facility accepting a vehicle that is towed under this chapter shall within two hours after receiving the vehicle report to the police department of the municipality from which the vehicle was towed or, if the vehicle was towed from a location that is not in a municipality with a police department, to the sheriff of the county from which the vehicle was towed:

- (1) a general description of the vehicle;
- (2) the state and number of the vehicle's license plate, if any;
- (3) the vehicle identification number of the vehicle, if it can be ascertained;
- (4) the location from which the vehicle was towed; and
- (5) the name and location of the vehicle storage facility in which the vehicle is being stored.

(b) A law enforcement agency may request a vehicle storage facility to provide a report, in a manner prescribed by the law enforcement agency, of incident management tows within the jurisdiction of the agency. A vehicle storage facility must provide the report not later than 48 hours after the time the facility receives the request.

Added by Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 11, eff. September 1, 2011.

Sec. 2308.257. BOOTING OF UNAUTHORIZED VEHICLE. (a) A parking facility owner may, without the consent of the owner or operator of an unauthorized vehicle, cause a boot to be installed on the vehicle

in the parking facility if signs that comply with Subchapter G prohibiting unauthorized vehicles are located on the parking facility at the time of the booting and for the preceding 24 hours and remain installed at the time of the booting.

(b) A boot operator that installs a boot on a vehicle must affix a conspicuous notice to the vehicle's front windshield or driver's side window stating:

- (1) that the vehicle has been booted and damage may occur if the vehicle is moved;
- (2) the date and time the boot was installed;
- (3) the name, address, and telephone number of the booting company;
- (4) a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to arrange for removal of the boot;
- (5) the amount of the fee for removal of the boot and any associated parking fees; and
- (6) notice of the right of a vehicle owner or vehicle operator to a hearing under Subchapter J.

(c) On removal of a boot, the boot operator shall provide a receipt to the vehicle owner or operator stating:

- (1) the name of the person who removed the boot;
- (2) the date and time the boot was removed;
- (3) the name of the person to whom the vehicle was released;
- (4) the amount of fees paid for removal of the boot and any associated parking fees; and
- (5) the right of the vehicle owner or operator to a hearing under Subchapter J.

(d) The booting company shall maintain a copy of the receipt at its place of business for a period of three years. A peace officer has the right, on request, to inspect and copy the records to determine compliance with the requirements of this section.

(e) A booting company shall accept payment by an electronic check, debit card, or credit card for any fee or charge associated with the removal of a boot. A booting company may not collect a fee for any charge associated with the removal of a boot from a person who offers to pay the charge with an electronic check, debit card, or credit card form of payment that the booting company is not equipped to accept.

Added by Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 12, eff. September 1, 2009.

**SUBCHAPTER G. SIGNS PROHIBITING UNAUTHORIZED VEHICLES AND DESIGNATING RESTRICTED AREAS**

Sec. 2308.301. GENERAL REQUIREMENTS FOR SIGN PROHIBITING UNAUTHORIZED VEHICLES. (a) Except as provided by Subsection (a)(2)(B) and Section 2308.304 or 2308.305, an unauthorized vehicle may not be towed under Section 2308.252(a)(1) or booted under Section 2308.257 unless a sign prohibiting unauthorized vehicles on a parking facility is:

- (1) facing and conspicuously visible to the driver of a vehicle that enters the facility;
- (2) located:
  - (A) on the right or left side of each driveway or curb-cut through which a vehicle can enter the facility, including an entry from an alley abutting the facility; or
  - (B) at intervals along the entrance so that no entrance is farther than 25 feet from a sign if:
    - (i) curbs, access barriers, landscaping, or driveways do not establish definite vehicle entrances onto a parking facility from a public roadway other than an alley; and
    - (ii) the width of an entrance exceeds 35 feet;
- (3) permanently mounted on a pole, post, permanent wall, or permanent barrier;
- (4) installed on the parking facility; and
- (5) installed so that the bottom edge of the sign is no lower than five feet and no higher than eight feet above ground level.

(b) Except as provided by Section 2308.305, an unauthorized vehicle may be towed under Section 2308.252(a)(1) or booted under Section 2308.257 only if each sign prohibiting unauthorized vehicles:

- (1) is made of weather-resistant material;
- (2) is at least 18 inches wide and 24 inches tall;
- (3) contains the international symbol for towing vehicles;
- (4) contains a statement describing who may park in the parking facility and prohibiting all others;
- (5) bears the words, as applicable:
  - (A) "Unauthorized Vehicles Will Be Towed or Booted at

Owner's or Operator's Expense";

(B) "Unauthorized Vehicles Will Be Towed at Owner's or Operator's Expense"; or

(C) "Unauthorized Vehicles Will Be Booted at Owner's or Operator's Expense";

(6) contains a statement of the days and hours of towing and booting enforcement; and

(7) contains a number, including the area code, of a telephone that is answered 24 hours a day to enable an owner or operator of a vehicle to locate a towed vehicle or to arrange for removal of a boot from a vehicle.

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

Renumbered from Transportation Code, Section 684.031 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.04, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 13, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 12, eff. September 1, 2011.

Sec. 2308.302. COLOR, LAYOUT, AND LETTERING HEIGHT REQUIREMENTS. (a) Except as provided by Section 2308.305, each sign required by this chapter must comply with the color, layout, and lettering height requirements of this section.

(b) A bright red international towing symbol, which is a solid silhouette of a tow truck towing a vehicle on a generally rectangular white background, at least four inches in height, must be on the uppermost portion of a sign or on a separate sign placed immediately above the sign.

(c) The portion of the sign immediately below the international towing symbol must:

(1) in lettering at least two inches in height, contain the words, as applicable:

(A) "Towing and Booting Enforced";

(B) "Towing Enforced"; or

(C) "Booting Enforced"; and

(2) consist of white letters on a bright red background.

(d) Except as provided by Subsection (e), the next lower portion of the sign must contain the remaining information required by Section 2308.301(b) displayed in bright red letters at least one inch in height on a white background.

(e) The bottommost portion of the sign must contain the telephone numbers required by Section 2308.301(b), in lettering at least one inch in height and may, if the facility owner chooses or if an applicable municipal ordinance requires, include the name and address of the storage facility to which an unauthorized vehicle will be removed. The lettering on this portion of the sign must consist of white letters on a bright red background.

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

Renumbered from Transportation Code, Section 684.032 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.04, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 14, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 13, eff. September 1, 2011.

Sec. 2308.303. TELEPHONE NUMBER FOR LOCATING TOWED VEHICLE REQUIRED. If a parking facility owner posts a sign described by Sections 2308.301 and 2308.302, the owner of a vehicle that is towed from the facility under this chapter must be able to locate the vehicle by calling the telephone number on the sign.

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

Renumbered from Transportation Code, Section 684.033 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.04, eff. September 1, 2007.

Sec. 2308.304. DESIGNATION OF RESTRICTED PARKING SPACES ON OTHERWISE UNRESTRICTED PARKING FACILITY. A parking facility owner may designate one or more spaces as restricted parking spaces on a portion of an otherwise unrestricted parking facility. Instead of installing a sign at each entrance to the parking facility as provided by Section 2308.301(a)(2), an owner may place a sign that

prohibits unauthorized vehicles from parking in designated spaces and that otherwise complies with Sections 2308.301 and 2308.302:

(1) at the right or left side of each entrance to a designated area or group of parking spaces located on the restricted portion of the parking facility; or

(2) at the end of a restricted parking space so that the sign, the top of which must not be higher than seven feet above the ground, is in front of a vehicle that is parked in the space and the rear of which is at the entrance of the space.

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

Renumbered from Transportation Code, Section 684.034 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.04, eff. September 1, 2007.

Sec. 2308.305. INDIVIDUAL PARKING RESTRICTIONS IN RESTRICTED AREA. (a) A parking facility owner who complies with Sections 2308.301 and 2308.302 may impose further specific parking restrictions in an area to which the signs apply for individual spaces by installing or painting a weather-resistant sign or notice on a curb, pole, post, permanent wall, or permanent barrier so that the sign is in front of a vehicle that is parked in the space and the rear of which is at the entrance of the space.

(b) The top of the sign or notice may not be higher than seven feet above the ground.

(c) The sign or notice must include an indication that the space is reserved for a particular unit number, person, or type of person.

(d) The letters on the sign or notice must be at least two inches in height and must contrast to the color of the curb, wall, or barrier so they can be read during the day and at night. The letters are not required to be illuminated or made of reflective material.

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

Renumbered from Transportation Code, Section 684.035 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.04, eff. September 1, 2007.

#### **SUBCHAPTER H. REGULATION OF PARKING ON CERTAIN PUBLIC ROADWAY AREAS**

Sec. 2308.351. REMOVAL OF UNAUTHORIZED VEHICLE FROM LEASED RIGHT-OF-WAY. Unless prohibited by the lease, a parking facility owner or towing company may remove an unauthorized vehicle parked in a leased area described by Section 2308.002(7)(B)(i) if the owner or towing company gives notice under Section 2308.252(a)(1), (2), or (3) and otherwise complies with this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.  
Renumbered from Transportation Code, Section 684.051 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.05, eff. September 1, 2007.

Sec. 2308.352. REMOVAL OF UNAUTHORIZED VEHICLE FROM AREA BETWEEN PARKING FACILITY AND PUBLIC ROADWAY. Unless prohibited by a municipal ordinance, a parking facility owner or towing company may remove an unauthorized vehicle any part of which is in an area described by Section 2308.002(7)(B)(ii) if notice provided by Section 2308.252(a)(2) or (3) is given and the owner or towing company has otherwise complied with this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.  
Renumbered from Transportation Code, Section 684.052 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.05, eff. September 1, 2007.

Sec. 2308.353. REMOVAL UNDER GOVERNMENTAL ENTITY'S AUTHORITY OF UNAUTHORIZED VEHICLE PARKED IN RIGHT-OF-WAY. (a) A governmental entity that has jurisdiction over a public roadway and that has posted one or more signs in the right-of-way stating that parking is prohibited in the right-of-way may:

(1) remove or contract with a towing company to remove an unauthorized vehicle parked in the right-of-way of the public roadway; or

(2) grant written permission to an abutting parking facility owner to:

(A) post one or more "No parking in R.O.W." signs along a common property line of the facility and the roadway; and

(B) remove vehicles from the right-of-way of the public roadway under this chapter.



(b) A sign under Subsection (a)(2) must:

(1) state that a vehicle parked in the right-of-way may be towed at the expense of the owner or operator of the vehicle;

(2) be placed facing the public roadway:

(A) on the parking facility owner's property not more than two feet from the common boundary line; and

(B) at intervals so that no point in the boundary line is less than 25 feet from a sign posted under this subsection; and

(3) in all other respects comply with Subchapter G.

(c) After signs have been posted under Subsection (b), the parking facility owner or a towing company may remove an unauthorized vehicle from the right-of-way subject to the governmental entity's written permission given under Subsection (a)(2).

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

Renumbered from Transportation Code, Section 684.053 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.05, eff. September 1, 2007.

Sec. 2308.354. AUTHORITY FOR REMOVAL OF VEHICLE FROM PUBLIC ROADWAY. (a) Under an ordinance of a municipality regulating the parking of vehicles in the municipality, to aid in the enforcement of the ordinance, an employee designated by the municipality may be authorized to:

(1) immobilize a vehicle parked in the municipality; and

(2) remove an immobilized vehicle from a public roadway in the municipality.

(b) A parking facility owner or towing company may not remove a vehicle from a public roadway except under:

(1) this chapter or a municipal ordinance that complies with Section 2308.208; or

(2) the direction of a peace officer or the owner or operator of the vehicle.

(c) In addition to the authority granted under Subsection (a) and to aid in the enforcement of an ordinance regulating the parking of vehicles, a municipality with a population of 1.9 million or more may authorize a designated employee to request the removal of a vehicle parked illegally in an area designated as a tow-away zone in a residential area where on-street parking is regulated by the

ordinance.

(d) Subsections (a) and (c) do not apply to a vehicle owned by an electric, gas, water, or telecommunications utility while the vehicle is parked for the purpose of conducting work on a facility of the utility that is located below, above, or adjacent to the street.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 301, Sec. 1, eff. Sept. 1, 2001.

Renumbered from Transportation Code, Section 684.054 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.05, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1298 (H.B. 2346), Sec. 1, eff. September 1, 2009.

**SUBCHAPTER I. REGULATION OF TOWING COMPANIES, BOOTING COMPANIES, AND PARKING FACILITY OWNERS**

Sec. 2308.401. PARKING FACILITY OWNER PROHIBITED FROM RECEIVING FINANCIAL GAIN FROM TOWING COMPANY OR BOOTING COMPANY. (a) A parking facility owner may not directly or indirectly accept anything of value from:

(1) a towing company in connection with the removal of a vehicle from a parking facility; or

(2) a booting company in connection with booting a vehicle in a parking facility.

(b) A parking facility owner may not have a direct or indirect monetary interest in:

(1) a towing company that for compensation removes unauthorized vehicles from a parking facility in which the parking facility owner has an interest; or

(2) a booting company that for compensation boots vehicles in a parking facility in which the parking facility owner has an interest.

(c) This section does not apply to a sign required under Section 2308.301 provided by a towing or booting company to a parking facility owner.

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

Renumbered from Transportation Code, Section 684.081 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1,

2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 16, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 14, eff. September 1, 2011.

Sec. 2308.402. TOWING COMPANY AND BOOTING COMPANY PROHIBITED FROM FINANCIAL INVOLVEMENT WITH PARKING FACILITY OWNER. (a) A towing company or booting company may not directly or indirectly give anything of value to a parking facility owner in connection with:

- (1) the removal of a vehicle from a parking facility; or
- (2) the booting of a vehicle in a parking facility.

(b) A towing company or booting company may not have a direct or indirect monetary interest in a parking facility:

- (1) from which the towing company for compensation removes unauthorized vehicles; or
- (2) in which the booting company for compensation installs boots on unauthorized vehicles.

(c) This section does not apply to a sign required under Section 2308.301 provided by a towing or booting company to a parking facility owner.

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

Renumbered from Transportation Code, Section 684.082 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 17, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 15, eff. September 1, 2011.

Sec. 2308.403. LIMITATION ON LIABILITY OF PARKING FACILITY OWNER FOR REMOVAL OR STORAGE OF UNAUTHORIZED VEHICLE. A parking facility owner who causes the removal of an unauthorized vehicle is not liable for damages arising from the removal or storage of the vehicle if the vehicle:

- (1) was removed in compliance with this chapter; and
- (2) is:

- (A) removed by a towing company insured against liability for property damage incurred in towing a vehicle; and

- (B) stored by a vehicle storage facility insured against liability for property damage incurred in storing a vehicle.

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

Renumbered from Transportation Code, Section 684.083 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.

Sec. 2308.404. CIVIL LIABILITY OF TOWING COMPANY, BOOTING COMPANY, OR PARKING FACILITY OWNER FOR VIOLATION OF CHAPTER. (a) A towing company, booting company, or parking facility owner who violates this chapter is liable to the owner or operator of the vehicle that is the subject of the violation for:

- (1) damages arising from the removal, storage, or booting of the vehicle; and

- (2) towing, storage, or booting fees assessed in connection with the vehicle's removal, storage, or booting.

(b) A vehicle's owner or operator is not required to prove negligence of a parking facility owner, towing company, or booting company to recover under Subsection (a).

(c) A towing company, booting company, or parking facility owner who intentionally, knowingly, or recklessly violates this chapter is liable to the owner or operator of the vehicle that is the subject of the violation for \$1,000 plus three times the amount of fees assessed in the vehicle's removal, towing, storage, or booting.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 353, Sec. 19(a)(3), eff. September 1, 2011.

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

Renumbered from Transportation Code, Section 684.084 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 18, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 19, eff.

September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 12, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 19(a)(3), eff. September 1, 2011.

Sec. 2308.405. CRIMINAL PENALTY. A person commits an offense if the person violates this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,500 unless it is shown on trial of the offense that the person knowingly or intentionally violated this chapter, in which event the offense is a Class B misdemeanor.

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

Amended by:

Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 8, eff. September 1, 2005.

Renumbered from Transportation Code, Section 684.085 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 13, eff. September 1, 2009.

Sec. 2308.406. VIOLATION OF CHAPTER; INJUNCTION. A violation of this chapter may be enjoined under Subchapter E, Chapter 17, Business & Commerce Code.

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

Renumbered from Transportation Code, Section 684.086 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.

Sec. 2308.407. MINOR SIGN OR LETTERING HEIGHT VARIATIONS. A minor variation of a required or minimum height of a sign or lettering is not a violation of this chapter.

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

Renumbered from Transportation Code, Section 684.087 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.

**SUBCHAPTER J. RIGHTS OF OWNERS AND OPERATORS OF STORED OR BOOTED VEHICLES**

Sec. 2308.451. PAYMENT OF COST OF REMOVAL, STORAGE, AND BOOTING OF VEHICLE. (a) If in a hearing held under this chapter the court finds that a person or law enforcement agency authorized, with probable cause, the removal and storage in a vehicle storage facility of a vehicle, the person who requested the hearing shall pay the costs of the removal and storage.

(b) If in a hearing held under this chapter the court does not find that a person or law enforcement agency authorized, with probable cause, the removal and storage in a vehicle storage facility of a vehicle, the towing company, vehicle storage facility, or parking facility owner or law enforcement agency that authorized the removal shall:

(1) pay the costs of the removal and storage; or

(2) reimburse the owner or operator for the cost of the removal and storage paid by the owner or operator.

(c) If in a hearing held under this chapter the court finds that a person authorized, with probable cause, the booting of a vehicle in a parking facility, the person who requested the hearing shall pay the costs of the booting.

(c-1) If, in a hearing held under this chapter, regardless of whether the court finds that there was probable cause for the removal and storage of a vehicle, the court finds that the towing charge collected exceeded fees regulated by a political subdivision or authorized by this chapter or Chapter 2303, the towing company shall reimburse the owner or operator of the vehicle an amount equal to the overcharge.

(d) If in a hearing held under this chapter the court does not find that a person authorized, with probable cause, the booting of a vehicle, the person that authorized the booting shall:

(1) pay the costs of the booting and any related parking fees; or

(2) reimburse the owner or operator for the cost of the booting and any related parking fees paid by the owner or operator.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997. Renumbered from Transportation Code, Section 685.002 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 21, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 22, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 14, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(50), eff. September 1, 2011.

Sec. 2308.452. RIGHT OF OWNER OR OPERATOR OF VEHICLE TO HEARING. The owner or operator of a vehicle that has been removed and placed in a vehicle storage facility or booted without the consent of the owner or operator of the vehicle is entitled to a hearing on whether probable cause existed for the removal and placement or booting.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997. Renumbered from Transportation Code, Section 685.003 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 23, eff. September 1, 2009.

Sec. 2308.453. JURISDICTION. A hearing under this chapter shall be in any justice court in:

- (1) the county from which the motor vehicle was towed; or
- (2) for booted vehicles, the county in which the parking facility is located.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997;

Acts 2001, 77th Leg., ch. 669, Sec. 144, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 4, eff. September 1, 2005.

Renumbered from Transportation Code, Section 685.004 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 24, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 15, eff. September 1, 2009.

Reenacted by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 18.006, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 238 (H.B. 338), Sec. 1, eff. June 14, 2013.

Sec. 2308.454. NOTICE TO VEHICLE OWNER OR OPERATOR. (a) If before a hearing held under this chapter the owner or operator of a vehicle pays the costs of the vehicle's removal or storage, the towing company or vehicle storage facility that received the payment shall at the time of payment give the owner or operator written notice of the person's rights under this chapter.

(b) The operator of a vehicle storage facility that sends a notice under Subchapter D, Chapter 2303, shall include with that notice a notice of the person's rights under this chapter.

(c) If before a hearing held under this chapter the owner or operator of a vehicle pays the costs for removal of a boot, the booting company shall at the time of payment give the owner or operator written notice of the person's rights under this chapter.

(d) The booting operator that places a notice on a booted vehicle under Section 2308.257 shall include with that notice a notice of the person's rights under this chapter.

(e) If the towing company or vehicle storage facility that received the payment fails to furnish to the owner or operator of the vehicle the name, address, and telephone number of the parking facility owner or law enforcement agency that authorized the removal of the vehicle, the towing company or vehicle storage facility that



received the payment is liable if the court, after a hearing, does not find probable cause for the removal and storage of the vehicle.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.841, eff. Sept. 1, 2003.

Renumbered from Transportation Code, Section 685.005 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 25, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 16, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(51), eff. September 1, 2011.

Sec. 2308.455. CONTENTS OF NOTICE. The notice under Section 2308.454 must include:

(1) a statement of:

(A) the person's right to submit a request within 14 days for a court hearing to determine whether probable cause existed to remove, or install a boot on, the vehicle;

(B) the information that a request for a hearing must contain;

(C) any filing fee for the hearing; and

(D) the person's right to request a hearing in any justice court in:

(i) the county from which the vehicle was towed; or

(ii) for booted vehicles, the county in which the parking facility is located;

(2) the name, address, and telephone number of the towing company that removed the vehicle or the booting company that booted the vehicle;

(3) the name, address, telephone number, and county of the vehicle storage facility in which the vehicle was placed;

(4) the name, street address including city, state, and zip code, and telephone number of the person, parking facility owner, or law enforcement agency that authorized the removal of the vehicle;

and

(5) the name, address, and telephone number of each justice court in the county from which the vehicle was towed or, for booted vehicles, the county in which the parking facility is located, or the address of an Internet website maintained by the Office of Court Administration of the Texas Judicial System that contains the name, address, and telephone number of each justice court in that county.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 5, eff. September 1, 2005.

Renumbered from Transportation Code, Section 685.006 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 26, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 17, eff. September 1, 2009.

Reenacted by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 18.007, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 238 (H.B. 338), Sec. 2, eff. June 14, 2013.

Sec. 2308.456. REQUEST FOR HEARING. (a) Except as provided by Subsections (c) and (c-1), a person entitled to a hearing under this chapter must deliver a written request for the hearing to the court before the 14th day after the date the vehicle was removed and placed in the vehicle storage facility or booted, excluding Saturdays, Sundays, and legal holidays.

(b) A request for a hearing must contain:

(1) the name, address, and telephone number of the owner or operator of the vehicle;

(2) the location from which the vehicle was removed or in which the vehicle was booted;

(3) the date when the vehicle was removed or booted;

(4) the name, address, and telephone number of the person or law enforcement agency that authorized the removal or booting;

(5) the name, address, and telephone number of the vehicle storage facility in which the vehicle was placed;

(6) the name, address, and telephone number of the towing company that removed the vehicle or of the booting company that installed a boot on the vehicle;

(7) a copy of any receipt or notification that the owner or operator received from the towing company, the booting company, or the vehicle storage facility; and

(8) if the vehicle was removed from or booted in a parking facility:

(A) one or more photographs that show the location and text of any sign posted at the facility restricting parking of vehicles; or

(B) a statement that no sign restricting parking was posted at the parking facility.

(c) If notice was not given under Section 2308.454, the 14-day deadline for requesting a hearing under Subsection (a) does not apply, and the owner or operator of the vehicle may deliver a written request for a hearing at any time.

(c-1) The 14-day period for requesting a hearing under Subsection (a) does not begin until the date on which the towing company or vehicle storage facility provides to the vehicle owner or operator the information necessary for the vehicle owner or operator to complete the material for the request for hearing required under Subsections (b)(2) through (6).

(d) A person who fails to deliver a request in accordance with Subsection (a) waives the right to a hearing.

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

Renumbered from Transportation Code Sec. 685.005 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997.

Renumbered from Transportation Code, Section 685.007 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 27, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 18, eff.

September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 18.008, eff. September 1, 2011.

Sec. 2308.457. FILING FEE AUTHORIZED. The court may charge a filing fee of \$20 for a hearing under this chapter.

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

Renumbered from Transportation Code Sec. 685.006 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 6, eff. September 1, 2005.

Renumbered from Transportation Code, Section 685.008 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Sec. 2308.458. HEARING. (a) A hearing under this chapter shall be held before the 21st calendar day after the date the court receives the request for the hearing.

(b) The court shall notify the person who requested the hearing for a towed vehicle, the parking facility owner or law enforcement agency that authorized the removal of the vehicle, the towing company, and the vehicle storage facility in which the vehicle was placed of the date, time, and place of the hearing in a manner provided by Rule 21a, Texas Rules of Civil Procedure. The notice of the hearing to the towing company and the parking facility owner or law enforcement agency that authorized the removal of the vehicle must include a copy of the request for hearing. Notice to the law enforcement agency that authorized the removal of the vehicle is sufficient as notice to the political subdivision in which the law enforcement agency is located.

(b-1) At a hearing under this section:

(1) the burden of proof is on the person who requested the hearing; and

(2) hearsay evidence is admissible if it is considered otherwise reliable by the justice of the peace.

(b-2) The court shall notify the person who requested the

hearing for a booted vehicle, the parking facility in which the vehicle was booted, and the booting company of the date, time, and place of the hearing in a manner provided by Rule 21a, Texas Rules of Civil Procedure. The notice of hearing to the person that authorized the booting of the vehicle must include a copy of the request for hearing.

(c) The issues in a hearing regarding a towed vehicle under this chapter are:

(1) whether probable cause existed for the removal and placement of the vehicle;

(2) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized by the political subdivision under Section 2308.201 or 2308.202;

(3) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized under Section 2308.203; or

(4) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized under Section 2308.0575.

(c-1) The issues in a hearing regarding a booted vehicle under this chapter are:

(1) whether probable cause existed for the booting of the vehicle; and

(2) whether a boot removal charge imposed or collected in connection with the removal of the boot from the vehicle was greater than the amount authorized by the political subdivision under Section 2308.2085.

(d) The court shall make written findings of fact and a conclusion of law.

(e) The court may award:

(1) court costs and attorney's fees to the prevailing party;

(2) the reasonable cost of photographs submitted under Section 2308.456(b)(8) to a vehicle owner or operator who is the prevailing party;

(3) an amount equal to the amount that the towing charge or booting removal charge and associated parking fees exceeded fees regulated by a political subdivision or authorized by this code or by Chapter 2303; and

(4) reimbursement of fees paid for vehicle towing, storage, or removal of a boot.

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

Renumbered from Transportation Code Sec. 685.007 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1034, Sec. 17, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 7, eff. September 1, 2005.

Renumbered from Transportation Code, Section 685.009 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 28, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 19, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 16, eff. September 1, 2011.

Sec. 2308.459. APPEAL. An appeal from a hearing under this chapter is governed by the rules of procedure applicable to civil cases in justice court, except that no appeal bond may be required by the court.

Added by Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 8, eff. September 1, 2005.

Renumbered from Transportation Code, Section 685.010 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Sec. 2308.460. ENFORCEMENT OF AWARD. (a) An award under this chapter may be enforced by any means available for the enforcement of a judgment for a debt.

(b) The department shall suspend a license holder's license on the license holder's failure to pay a final judgment awarded to an owner or operator of a vehicle before the 60th day after the date of the final judgment. The department must provide notice of the

suspension to the license holder at least 30 days before the date the license is to be suspended.

(c) The owner or operator of the vehicle shall submit a certified copy of the final judgment to the department.

(d) On receipt of the certified copy of the unpaid final judgment, the department shall disqualify a person from renewing a license or permit or deny the person the opportunity of taking a licensing examination on the grounds that the person, towing company, or vehicle storage facility has not paid a final judgment awarded to an owner or operator of a vehicle.

(e) The department shall reinstate the license on submission of evidence satisfactory to the department of payment of the final judgment by the person, towing company, or vehicle storage facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.08, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 20, eff. September 1, 2009.

#### **SUBCHAPTER K. ENFORCEMENT**

Sec. 2308.501. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a registration, permit, or license under this chapter, if the person violates:

- (1) this chapter or a rule adopted under this chapter; or
- (2) a rule or order of the executive director or commission.

(b) An administrative penalty may not be imposed unless the person charged with a violation is provided the opportunity for a hearing.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.09, eff. September 1, 2007.

Sec. 2308.502. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. (a) The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of

this chapter and to protect public health and safety.

(b) The attorney general or executive director may institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.09, eff. September 1, 2007.

Sec. 2308.503. SANCTIONS. The department may impose sanctions as provided by Section 51.353.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.09, eff. September 1, 2007.

Sec. 2308.504. CRIMINAL PENALTY; LICENSING. (a) A person commits an offense if the person:

(1) violates the permitting or licensing requirements of this chapter;

(2) performs towing without a license to perform towing in this state;

(3) employs an individual who does not hold the appropriate license required by this chapter; or

(4) falsifies a certification or training.

(b) An offense under this section is a Class C misdemeanor. An offense under this section is enforceable by law enforcement.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.09, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 17, eff. September 1, 2011.

Sec. 2308.505. CRIMINAL PENALTY; TOWING. (a) A person commits an offense if the person:

(1) violates an ordinance, resolution, order, rule, or regulation of a political subdivision adopted under Section 2308.201, 2308.202, or 2308.2085 for which the political subdivision does not prescribe the penalty;



(2) charges or collects a fee in a political subdivision that regulates the operation of tow trucks under Section 2308.201 or 2308.202 or booting under Section 2308.2085 that is not authorized or is greater than the authorized amount of the fee;

(3) charges or collects a fee greater than the amount authorized under Section 2308.204;

(4) charges or collects a fee in excess of the amount filed with the department under Section 2308.206;

(5) violates Section 2308.205; or

(6) violates a rule of the department applicable to a tow truck, towing company, or booting company.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$200 or more than \$1,000 per violation. An offense under this section is enforceable by law enforcement.

Renumbered from Transportation Code, Section 643.253(d) and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.10, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 29, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 18, eff. September 1, 2011.

## **CHAPTER 2309. USED AUTOMOTIVE PARTS RECYCLERS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2309.001. SHORT TITLE. This chapter may be cited as the Texas Used Automotive Parts Recycling Act.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.002. DEFINITIONS. In this chapter:

(1) "Insurance company," "metal recycler," "motor vehicle," "nonrepairable motor vehicle," "nonrepairable vehicle title," "salvage motor vehicle," "salvage vehicle title," and "salvage vehicle dealer" have the meanings assigned by Section 501.091,

Transportation Code.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Executive director" means the executive director of the department.

(5) "Used automotive part" has the meaning assigned to "used part" by Section 501.091, Transportation Code.

(6) "Used automotive parts recycler" means a person licensed under this chapter to operate a used automotive parts recycling business.

(7) "Used automotive parts recycling" means the dismantling and reuse or resale of used automotive parts and the safe disposal of salvage motor vehicles or nonrepairable motor vehicles, including the resale of those vehicles.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.003. APPLICABILITY OF CHAPTER TO METAL RECYCLERS.

(a) Except as provided by Subsection (b), this chapter does not apply to a transaction to which a metal recycler is a party.

(b) This chapter applies to a transaction in which a motor vehicle:

(1) is sold, transferred, released, or delivered to a metal recycler as a source of used automotive parts; and

(2) is used as a source of used automotive parts.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.004. APPLICABILITY OF CHAPTER TO SALVAGE VEHICLE DEALERS. (a) Except as provided by Subsection (b), this chapter does not apply to a transaction in which a salvage vehicle dealer is

a party.

(b) This chapter applies to a salvage vehicle dealer who deals in used automotive parts as more than an incidental part of the salvage vehicle dealer's primary business.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.005. APPLICABILITY OF CHAPTER TO INSURANCE COMPANIES. This chapter does not apply to an insurance company.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

#### **SUBCHAPTER B. ADVISORY BOARD**

Sec. 2309.051. USED AUTOMOTIVE PARTS RECYCLING ADVISORY BOARD.

(a) The advisory board consists of five members representing the used automotive parts industry in this state appointed by the presiding officer of the commission with the approval of the commission.

(b) The advisory board shall include members who represent used automotive parts businesses owned by domestic entities, as defined by Section 1.002, Business Organizations Code.

(c) The advisory board shall include one member who represents a used automotive parts business owned by a foreign entity, as defined by Section 1.002, Business Organizations Code.

(d) The advisory board may not include more than one member from any one used automotive parts business entity.

(e) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07,

eff. September 1, 2009.

Sec. 2309.052. TERMS; VACANCIES. (a) Advisory board members serve terms of six years, with the terms of one or two members expiring on February 1 of each odd-numbered year.

(b) A member may not serve more than two full consecutive terms.

(c) If a vacancy occurs during a term, the presiding officer of the commission shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.053. PRESIDING OFFICER. The presiding officer of the commission shall appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.054. POWERS AND DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including licensing standards.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.055. COMPENSATION; REIMBURSEMENT OF EXPENSES.

Advisory board members may not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.056. MEETINGS. The advisory board shall meet twice annually and may meet at other times at the call of the presiding officer of the commission or the executive director.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

**SUBCHAPTER C. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT**

Sec. 2309.101. GENERAL POWERS AND DUTIES. The executive director or commission, as appropriate, may take action as necessary to administer and enforce this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.102. RULES. (a) The commission shall adopt rules for licensing used automotive parts recyclers and used automotive parts employees.

(b) The commission by rule shall adopt standards of conduct for license holders under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.103. RULES REGARDING LICENSING AND STANDARDS OF CONDUCT. (a) The commission shall adopt rules for licensing applicants, including rules for denial of an application if the applicant, a partner, principal, officer, or general manager of the applicant, or another license or permit holder with a connection to the applicant, has:

(1) before the application date, been convicted of, pleaded guilty or nolo contendere to, or been placed on deferred adjudication for:

(A) a felony; or

(B) a misdemeanor punishable by confinement in jail or by a fine exceeding \$500;

(2) violated an order of the commission or executive director, including an order for sanctions or administrative penalties; or

(3) knowingly submitted false information on the application.

(b) The commission by rule shall adopt standards of conduct for license holders under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.104. FEES. The commission shall establish and collect reasonable and necessary fees in amounts sufficient to cover the costs of administering this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.105. RULES RESTRICTING ADVERTISING OR COMPETITIVE

BIDDING. (a) The commission may not adopt a rule restricting advertising or competitive bidding by a person who holds a license issued under this chapter except to prohibit false, misleading, or deceptive practices by the person.

(b) The commission may not include in its rules to prohibit false, misleading, or deceptive practices a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the use of a trade name in advertising by the person.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.106. PERIODIC AND RISK-BASED INSPECTIONS. (a) The department shall inspect each used automotive parts recycling facility at least once every two years.

(b) The department may enter and inspect at any time during business hours:

- (1) the place of business of any person regulated under this chapter; or
- (2) any place in which the department has reasonable cause to believe that a license holder is in violation of this chapter or in violation of a rule or order of the commission or executive director.

(c) The department shall conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

- (1) the inspection history;
- (2) any history of complaints involving a used automotive parts recycler; and
- (3) any other factor determined by the commission by rule.

(d) A used automotive parts recycler shall pay a fee for each risk-based inspection performed under this section. The commission by rule shall set the amount of the fee.

(e) In conducting an inspection under this section, the department may inspect a facility, a used automotive part, a business record, or any other place or thing reasonably required to enforce this chapter or a rule or order adopted under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.107. PERSONNEL. The department may employ personnel necessary to administer and enforce this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

#### **SUBCHAPTER D. LICENSE REQUIREMENTS**

Sec. 2309.151. USED AUTOMOTIVE PARTS RECYCLER LICENSE REQUIRED.

(a) Unless the person holds a used automotive parts recycler license issued under this chapter, a person may not own or operate a used automotive parts recycling business or sell used automotive parts.

(b) A used automotive parts recycler license:

(1) is valid only with respect to the person who applied for the license; and

(2) authorizes the license holder to operate a used automotive parts recycling business only at the one facility listed on the license.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2010.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2010.

Sec. 2309.152. GENERAL LICENSE APPLICATION REQUIREMENTS. An applicant for a used automotive parts recycler license under this chapter must submit to the department:



- (1) a completed application on a form prescribed by the executive director;
- (2) the required fees; and
- (3) any other information required by commission rule.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.153. LICENSE REQUIREMENTS. An applicant for a used automotive parts recycler license under this chapter must provide in a manner prescribed by the executive director:

- (1) a federal tax identification number;
- (2) proof of general liability insurance in an amount not less than \$250,000; and
- (3) proof of a storm water permit if the applicant is required by the Texas Commission on Environmental Quality to obtain a permit.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.154. USED AUTOMOTIVE PARTS EMPLOYEE LICENSE REQUIRED.

(a) A person employed by a used automotive parts recycler may not in the scope of the person's employment acquire a vehicle or used automotive parts and may not sell used automotive parts unless the person holds a used automotive parts employee license issued under this chapter.

(b) The commission by rule shall adopt requirements for the application for and issuance of a used automotive parts employee license under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2010.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2010.

Sec. 2309.155. NONTRANSFERABILITY OF LICENSE. A license issued by the executive director is valid throughout this state and is not transferable.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.156. LICENSE RENEWAL. (a) A license issued under this chapter is valid for one year. The department may adopt a system under which licenses expire at different times during the year.

(b) The department shall notify the license holder at least 30 days before the date a license expires. The notice must be in writing and sent to the license holder's last known address according to the records of the department.

(c) The commission by rule shall adopt requirements to renew a license issued under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

#### **SUBCHAPTER E. LOCAL REGULATION**

Sec. 2309.201. APPLICABILITY OF CERTAIN MUNICIPAL ORDINANCES, LICENSES, AND PERMITS. (a) The requirements of this chapter apply in addition to the requirements of any applicable municipal ordinance relating to the regulation of a person who deals in used automotive parts.

(b) This chapter does not prohibit the enforcement of an applicable municipal license or permit requirement that is related to an activity regulated under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

#### **SUBCHAPTER F. ENFORCEMENT**

Sec. 2309.251. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a license under this chapter, if the person violates:

- (1) this chapter or a rule adopted under this chapter; or
- (2) a rule or order of the executive director or

commission.

(b) An administrative penalty may not be imposed unless the person charged with a violation is provided the opportunity for a hearing.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2010.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2010.

Sec. 2309.252. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. (a) The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) The attorney general or executive director may institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2010.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2010.

Sec. 2309.253. SANCTIONS. The department may impose sanctions as provided by Section 51.353.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff.

September 1, 2010.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2010.

Sec. 2309.254. CRIMINAL PENALTY; LICENSING. (a) A person commits an offense if the person:

- (1) violates the licensing requirements of this chapter;
- (2) deals in used parts without a license required by this chapter; or
- (3) employs an individual who does not hold the appropriate license required by this chapter.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2010.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2010.

#### **SUBCHAPTER G. CONDUCTING BUSINESS**

Sec. 2309.301. DUTIES ON ACQUISITION OF SALVAGE MOTOR VEHICLE.

(a) A used automotive parts recycler who acquires ownership of a salvage motor vehicle shall obtain a properly assigned title from the previous owner of the vehicle.

(b) A used automotive parts recycler who acquires ownership of a motor vehicle, nonrepairable motor vehicle, or salvage motor vehicle for the purpose of dismantling, scrapping, or destroying the motor vehicle, shall, before the 31st day after the date of acquiring the motor vehicle, submit to the Texas Department of Transportation a properly assigned manufacturer's certificate of origin, regular certificate of title, nonrepairable vehicle title, salvage vehicle title, other ownership document, or comparable out-of-state ownership document for the motor vehicle.

(c) After receiving the title or document, the Texas Department of Transportation shall issue the used automotive parts recycler a receipt for the manufacturer's certificate of origin, regular certificate of title, nonrepairable vehicle title, salvage vehicle title, other ownership document, or comparable out-of-state ownership document.

(d) The recycler shall comply with Subchapter E, Chapter 501, Transportation Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.302. RECORDS OF PURCHASES. A used automotive parts recycler shall maintain a record of or sales receipt for each motor vehicle, salvage motor vehicle, nonrepairable motor vehicle, and used automotive part purchased.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.303. REGISTRATION OF NEW BUSINESS LOCATION. Before moving a place of business, a used automotive parts recycler must notify the department of the new location. The used automotive parts recycler shall provide a storm water permit for the location if a permit is required by the Texas Commission on Environmental Quality.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

**SUBCHAPTER H. ADDITIONAL DUTIES OF USED AUTOMOTIVE PARTS RECYCLER IN CONNECTION WITH MOTOR VEHICLE COMPONENT PARTS**

Sec. 2309.351. DEFINITIONS. In this subchapter:

(1) "Component part" means a major component part as defined by Section 501.091, Transportation Code, or a minor component part.

(2) "Interior component part" means a motor vehicle's seat or radio.

(3) "Minor component part" means an interior component

part, a special accessory part, or a motor vehicle part that displays or should display at least one of the following:

- (A) a federal safety certificate;
- (B) a motor number;
- (C) a serial number or a derivative; or
- (D) a manufacturer's permanent vehicle identification number or a derivative.

(4) "Special accessory part" means a motor vehicle's tire, wheel, tailgate, or removable glass top.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.352. REMOVAL OF LICENSE PLATES. Immediately on receipt of a motor vehicle, a used automotive parts recycler shall:

- (1) remove any unexpired license plates from the vehicle; and
- (2) place the license plates in a secure place until destroyed by the used automotive parts recycler.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.353. DISMANTLEMENT OR DISPOSITION OF MOTOR VEHICLE. A used automotive parts recycler may not dismantle or dispose of a motor vehicle unless the recycler first obtains:

- (1) a certificate of authority to dispose of the vehicle, a sales receipt, or a transfer document for the vehicle issued under Chapter 683, Transportation Code; or
- (2) a certificate of title showing that there are no liens on the vehicle or that all recorded liens have been released.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07,

eff. September 1, 2009.

Sec. 2309.354. RECORD OF PURCHASE; INVENTORY OF PARTS. (a) A used automotive parts recycler shall keep an accurate and legible record of each used component part purchased by or delivered to the recycler. The record must include:

- (1) the date of purchase or delivery;
- (2) the driver's license number of the seller and a legible photocopy of the seller's driver's license; and
- (3) a description of the part and, if applicable, the make and model of the part.

(b) As an alternative to the information required by Subsection (a), a used automotive parts recycler may record:

- (1) the name of the person who sold the part or the motor vehicle from which the part was obtained; and
- (2) the Texas certificate of inventory number or the federal taxpayer identification number of the person.

(c) The department shall prescribe the form of the record required by Subsection (a) and shall make the form available to used automotive parts recyclers.

(d) This section does not apply to:

- (1) an interior component part or special accessory part from a motor vehicle more than 10 years old; or
- (2) a part delivered to a used automotive parts recycler by a commercial freight line, commercial carrier, or licensed used automotive parts recycler.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.355. RETENTION OF COMPONENT PARTS. (a) A used automotive parts recycler shall retain each component part in its original condition on the business premises of the recycler for at least three calendar days, excluding Sundays, after the date the recycler obtains the part.

(b) This section does not apply to the purchase by a used

automotive parts recycler of a nonoperational engine, transmission, or rear axle assembly from another used automotive parts recycler or an automotive-related business.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.356. MAINTENANCE OF RECORDS. A used automotive parts recycler shall maintain copies of each record required under this subchapter until the first anniversary of the purchase date of the item for which the record is maintained.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.357. SURRENDER OF CERTAIN DOCUMENTS OR LICENSE PLATES. (a) A used automotive parts recycler shall surrender to the Texas Department of Transportation for cancellation a certificate of title or authority, sales receipt, or transfer document, as required by the department.

(b) The Texas Department of Transportation shall provide a signed receipt for a surrendered certificate of title.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.358. INSPECTION OF RECORDS. (a) A peace officer at any reasonable time may inspect a record required to be maintained under this subchapter, including an inventory record.

(b) On demand by a peace officer, a used automotive parts recycler shall provide to the officer a copy of a record required to be maintained under this subchapter.



(c) A peace officer may inspect the inventory on the premises of a used automotive parts recycler at any reasonable time to verify, check, or audit the records required to be maintained under this subchapter.

(d) A used automotive parts recycler or an employee of the recycler shall allow and may not interfere with a peace officer's inspection of the recycler's inventory, premises, or required inventory records.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

#### **SUBCHAPTER I. MOTOR VEHICLE SALVAGE YARDS IN CERTAIN COUNTIES**

Sec. 2309.401. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a used automotive parts facility located in a county with a population of 2.8 million or more.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.402. LIMITS ON OPERATION OF HEAVY MACHINERY. (a) A used automotive parts recycler may not operate heavy machinery in a used automotive parts recycling facility between the hours of 7 p.m. of one day and 7 a.m. of the following day.

(b) This section does not apply to conduct necessary to a sale or purchase by the recycler.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

#### **SUBTITLE B. REGULATIONS RELATED TO VESSELS CHAPTER 2351. STEVEDORES**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2351.001. DEFINITION. In this chapter, "contracting stevedore" means a person, firm or association of persons, or corporation that contracts with another person or corporation, including an agent, owner, master, manager, or captain of a vessel, to load or unload a vessel.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

**SUBCHAPTER B. BOND AND LICENSE REQUIREMENTS**

Sec. 2351.051. BOND AND LICENSE REQUIRED. A contracting stevedore must execute a bond and obtain a license in each county in which the contracting stevedore engages in business as a contracting stevedore.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2351.052. BOND TERMS AND CONDITIONS. (a) A bond executed under this subchapter must:

- (1) be in the amount of \$5,000;
- (2) be conditioned that the contracting stevedore will:
  - (A) on Saturday of each week pay wages promptly according to the agreed wage scale to each laborer who engaged in loading and unloading a vessel; and
  - (B) perform each agreement the contracting stevedore enters into with a laborer with respect to the loading and unloading of a vessel; and
- (3) be payable to the county judge of the county in which the contracting stevedore does business as trustee for any person who may be entitled to recover under the bond.

(b) The bond must be made with:

- (1) a surety company authorized to do business in this state; or
- (2) two or more good and sufficient sureties, each of whom is a resident of this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2351.053. APPROVAL AND RECORDING OF BOND. (a) The bond must be approved by the county clerk of the county in which the contracting stevedore engages in business.

(b) The county clerk shall file and record the bond.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2351.054. LICENSE APPLICATION AND ISSUANCE. (a) Before engaging in business as a contracting stevedore in any county, the contracting stevedore must file a written application for a license with the county clerk.

(b) The county clerk shall issue the license on:

(1) approval of the bond executed under this subchapter;

and

(2) receipt of a \$5 license fee.

(c) The county clerk shall deposit the license fee into the general fund of the county.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2351.055. ANNUAL RENEWAL. A contracting stevedore must execute a new bond and obtain a new license on each anniversary of the date the former license is issued.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

#### **SUBCHAPTER C. ENFORCEMENT PROVISIONS**

Sec. 2351.101. CRIMINAL PENALTY. (a) A contracting stevedore commits an offense if the contracting stevedore engages in business as a contracting stevedore without first executing the bond and obtaining the license required by Section 2351.051.

(b) An offense under this section is punishable by a fine of not less than \$100 or more than \$500.

(c) Each day of violation is a separate offense.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2351.102. SUIT ON BOND. (a) A person to whom wages are not paid as required by Section 2351.052(a)(2) may bring suit and recover under the bond executed under Subchapter B.

(b) The bond may be sued on until:

- (1) the full amount of the bond is exhausted; or
- (2) suits sufficient to exhaust the bond are pending.

(c) If a bond is exhausted under this section, the contracting stevedore shall execute and file a new bond that meets the requirements of Subchapter B.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

## **CHAPTER 2352. BOAT MANUFACTURERS, DISTRIBUTORS, AND DEALERS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2352.001. DEFINITIONS. In this chapter:

(1) "Agreement" means a written agreement between a manufacturer or distributor and a dealer for the purchase and sale of new boats or new boat motors.

(2) "Boat" means:

- (A) a motorboat; or
- (B) any other vessel that is more than 14 feet in length and is designed to be propelled by a sail.

(2-a) "Boat motor" means a mechanical form of propulsion for a vessel, including an inboard or outboard motor.

(3) "Dealer" means a person engaged in the business of buying, selling, selling on consignment, displaying for sale, or exchanging at least five vessels, motorboats, or boat motors during a calendar year.

(4) "Distributor" means a person who:

- (A) offers for sale, sells, or distributes new boats or new boat motors to dealers; or
- (B) controls a person described by Paragraph (A).

(5) "Manufacturer" means a person engaged in the business of manufacturing new and unused vessels or boat motors for the purpose of sale or trade.

(5-a) "Marketing standards" means mutually agreed standards in a manufacturer's marketing or promotional activities.

(6) "Motorboat" has the meaning assigned by Section 31.003, Parks and Wildlife Code.

(7) "New" has the meaning assigned by Section 31.003, Parks and Wildlife Code.

(8) "Outboard motor" has the meaning assigned by Section 31.003, Parks and Wildlife Code.

(8-a) "Performance standards" means reasonable standards that are mutually developed and agreed to by a manufacturer and a dealer relating to:

(A) achievement of market share by a dealer for manufacturer products sold in a territory;

(B) achievement of a level of performance in a manufacturer's certified dealer program, if any; and

(C) participation in a plan that addresses improvement, if needed, in dealer performance.

(8-b) "Territory" means:

(A) for the sale of a manufacturer's boats, a defined geographical area within which a dealer is appointed by the manufacturer as the sole authorized dealer; or

(B) for the sale of all other manufacturer products, a market area within which a dealer is appointed by the manufacturer as an authorized dealer.

(9) "Vessel" has the meaning assigned by Section 31.003, Parks and Wildlife Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 1, eff. September 1, 2011.

#### **SUBCHAPTER B. DEALER AGREEMENTS**

Sec. 2352.051. AGREEMENT REQUIRED. A manufacturer or distributor contracting with a dealer may not sell or offer for sale, and a dealer may not purchase or offer to purchase, a new boat or a new boat motor unless the manufacturer or distributor and the dealer enter into an agreement that complies with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 2, eff. September 1, 2011.

Sec. 2352.052. TERMS OF AGREEMENT. (a) An agreement under this chapter must include:

- (1) the dealer's territory and dealership locations;
- (2) the length of the agreement, which must be not less than three years;
- (3) performance standards or marketing standards, if any;
- (4) working capital, inventory, facility, equipment, or tool standards, including mutually agreed minimum product stocking requirements, if any;
- (5) provisions for termination or nonrenewal of the agreement and the designation of a successor dealer in the event of the dealer's death or disability;
- (6) the obligations of the manufacturer, distributor, and dealer in the preparation and delivery of and warranty service on new boats and new boat motors;
- (7) the obligations of the manufacturer, distributor, and dealer on termination of the agreement, including inventory of new boats and new boat motors, parts inventory, equipment, furnishings, special tools, and required signs;
- (8) mutually agreed standards for maintenance of:
  - (A) a dedicated or self-funded line of credit, if any;and
  - (B) a trade-in line of credit or self-funded trade-in line of credit, if any; and
- (9) dispute resolution procedures.

(b) At the end of the first year of an agreement, a dealer and manufacturer shall evaluate the dealer's progress in meeting the agreement's performance standards, marketing standards, and line of credit standards, to determine whether to enter into a new three-year agreement.

(c) If the dealer and manufacturer enter into a new agreement, the initial agreement is void. If the dealer and manufacturer do not enter into a new agreement, the dealer and manufacturer are bound by the terms and conditions of the initial agreement.

(d) Notwithstanding the terms of a dealer agreement, a dealer agreement and any transaction subject to this chapter must comply with the requirements of this chapter.

(e) Notwithstanding Subsection (a)(2), an initial agreement between a dealer and a manufacturer may have a term of less than three years. An extension or renewal of the initial agreement or a

subsequent agreement under this chapter between the same dealer and manufacturer must be for a term of not less than three years.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 3, eff. September 1, 2011.

Sec. 2352.0521. PERFORMANCE STANDARDS. (a) A manufacturer shall make reasonable efforts to provide a dealer with information regarding the dealer's compliance with performance standards.

(b) Performance standards must be evaluated on an annual basis and, if a dealer and manufacturer agree, may be adjusted to promote the sale of the manufacturer's products.

(c) If revised performance standards are not agreeable, the initial performance standards remain in place until the expiration of the agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 4, eff. September 1, 2011.

Sec. 2352.0522. DEALER TERRITORY. (a) During the term of an agreement, a manufacturer may not appoint another authorized dealer for the sale of the manufacturer's boats in a dealer's territory.

(b) Except for purposes of advertising without an advertised price or with a manufacturer's suggested retail price, a dealer may not advertise or promote the sale of the manufacturer's boats outside the dealer's territory, including through the Internet.

(c) A dealer may not use a broker in another dealer's territory to sell a manufacturer's boat.

(d) This chapter does not prohibit a dealer from selling a boat to a customer residing outside of the dealer's territory who independently visits the dealership and seeks to purchase a boat from the dealer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 4, eff. September 1, 2011.

Sec. 2352.0523. DEFAULT. (a) A default under an agreement under this chapter by a manufacturer, distributor, or dealer is:

(1) a material failure to meet minimum product stocking requirements as specified by the agreement;

(2) a material failure to make timely payment of any material obligation as specified by the agreement;

(3) a material failure to substantially comply with a federal, state, or local law, rule, regulation, ordinance, or order applicable to the agreement; or

(4) an act of material fraud relating to the performance of a right or obligation under the agreement.

(b) A default by a dealer under an agreement under this chapter is:

(1) a material failure to meet applicable performance standards as specified by the agreement for a defined one model year marketing cycle;

(2) a material failure to meet applicable marketing standards as specified by the agreement;

(3) a material failure to meet applicable standards for a dedicated or self-funded line of credit or a trade-in or self-funded trade-in line of credit as specified by the agreement; or

(4) the marketing of the manufacturer's boats by the dealer outside of the dealer's territory in violation of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 4, eff. September 1, 2011.

Sec. 2352.0524. CURE OF DEFAULT. (a) Except as provided by Section 2352.053(d)(3), (8), or (9), a manufacturer or distributor must give a dealer written notice of a default under Section 2352.0523 and allow the dealer to cure the default within a cure period as provided by Subsection (b).

(b) A dealer must cure a default not later than the:

(1) 30th day after the date of receipt of notice of a default under Section 2352.0523(a)(2) or (b)(4);

(2) 60th day after the date of receipt of notice of a default under Section 2352.0523(b)(2) or (3);

(3) 90th day after the date of receipt of notice of a default under Section 2352.0523(a)(1); or



(4) 180th day after the date of receipt of notice of a default under Section 2352.0523(b)(1).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 4, eff. September 1, 2011.

Sec. 2352.053. TERMINATION OR NONRENEWAL OF AGREEMENT; NOTICE.

(a) Except as provided by Subsection (d), a manufacturer or distributor may not terminate an agreement unless the dealer defaults under Section 2352.0523 and:

(1) the manufacturer or distributor gives the dealer written notice of the default and possible termination in clear and concise terms;

(2) the notice states the default;

(3) the dealer has been given the applicable cure period to make a good faith effort to cure the default stated in the notice; and

(4) the dealer fails to cure the default.

(b) Good cause is not required for the nonrenewal of an agreement.

(c) The fact that a dealer holds an agreement involving another line, make, or brand of new boat or new boat motor does not constitute a default or grounds for termination of an agreement.

(d) A manufacturer or distributor may terminate an agreement on written notice, without a cure period, if the dealer:

(1) financially defaults to the manufacturer, the distributor, or a financing source;

(2) becomes subject to an order for relief, as that term is used in Title 11, United States Code;

(3) engages in an act of material fraud relating to the performance of a right or obligation under the agreement;

(4) is a corporation that ceases to exist;

(5) becomes insolvent or takes or fails to take any action that constitutes an admission of inability to pay debts as the debts mature;

(6) makes a general assignment for the benefit of creditors to an agent authorized to liquidate any substantial amount of assets;

(7) applies to a court for the appointment of a receiver for any assets or properties;

(8) fails to substantially comply with a federal, state, or local law, rule, regulation, ordinance, or order applicable to the agreement; or

(9) receives three valid notices of a default under Section 2352.0523 for the same default, whether cured or not, within a 12-month period.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 5, eff. September 1, 2011.

### **SUBCHAPTER C. REGULATION OF MANUFACTURERS, DISTRIBUTORS, AND DEALERS**

Sec. 2352.101. DELIVERY REQUIREMENTS. (a) A manufacturer or distributor who publicly advertises a new boat, new boat motor, or part as available for immediate delivery shall deliver the boat, boat motor, or part in reasonable quantities and within a reasonable time after receipt of an order from a dealer who has an agreement with the manufacturer or distributor applicable to the advertised boat, boat motor, or part.

(b) Subsection (a) does not apply if circumstances beyond the control of the manufacturer or distributor prevent the delivery.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 6, eff. September 1, 2011.

Sec. 2352.102. SALE, TRANSFER, OR PASSAGE OF TITLE. A manufacturer or distributor may not unreasonably withhold approval of a sale, transfer, or passage of title of a dealer, agreement, management of the dealer, or designation of a successor dealer if:

- (1) the dealer complies with any provisions in the agreement for the sale, transfer, or passage of title;
- (2) the transferee meets the criteria:
  - (A) stated in the agreement; or
  - (B) generally applied by the manufacturer or distributor in similar situations; and
- (3) the transferee agrees to be bound by the terms and

conditions of the manufacturer's or distributor's standard agreement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2352.103. FINANCING. (a) A manufacturer or distributor may not require a dealer to finance through a particular financing source a new boat or new boat motor sold by the dealer.

(b) A manufacturer or distributor may not require a dealer to act as the manufacturer's or distributor's agent in securing:

(1) a promissory note and security agreement in connection with the sale or purchase of a new boat or new boat motor; or

(2) an insurance policy on the operation of a new boat or new boat motor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 7, eff. September 1, 2011.

Sec. 2352.104. SALE OF PARTS AND ACCESSORIES AND SERVICE AFTER TERMINATION OR NONRENEWAL OF AGREEMENT. (a) After a manufacturer or distributor terminates or does not renew an agreement, the former dealer may continue to purchase parts and accessories to service the products covered by the agreement until the first anniversary of the date of termination or nonrenewal. The manufacturer or distributor shall sell parts and accessories under this subsection at the same price offered to a current dealer.

(b) Until the first anniversary of the date of termination or nonrenewal of an agreement, a dealer shall continue to perform warranty work for the manufacturer's products, unless otherwise specified by the manufacturer in the termination notice.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 8, eff. September 1, 2011.

Sec. 2352.105. COMPENSATION FOR WARRANTY SERVICE. (a) A

manufacturer or distributor shall fairly compensate a dealer for the work and services the dealer performs and for expenses the dealer incurs to comply with a manufacturer's or distributor's warranty.

(b) Except as provided by Subsection (c), a manufacturer or distributor may not pay a dealer a labor rate for warranty work that is less than the rate the dealer charges retail customers for nonwarranty work of the same kind by similar technicians.

(c) A manufacturer or distributor who has a warranty program that reimburses a dealer at 100 percent of the dealer's retail labor rate if the dealer complies with reasonable and objective criteria shall pay the dealer the labor rate provided by the terms of the program or a rate equal to 80 percent of the dealer's retail labor rate, whichever rate is higher.

(d) A manufacturer or distributor shall approve or disapprove a dealer's written claim for warranty work not later than the second business day after the date of receipt of the claim. If the claim is approved, the manufacturer or distributor shall pay the claim not later than the 30th day after the date of receipt of the dealer's written invoice or written proof of completion of the warranty work. If the claim is disapproved, the manufacturer or distributor shall notify the dealer of the grounds for disapproval.

(e) A manufacturer or distributor may not audit a claim filed for warranty work after the first anniversary of the date the claim is submitted.

(f) A manufacturer must act as the single source of contact for the dealer for the manufacturer's component part product warranties, other than engine-related product warranties.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 9, eff. September 1, 2011.

Sec. 2352.1051. DELIVERY OF PARTS. On signing an agreement, a manufacturer shall provide the dealer with a written statement of the approximate amount of time the manufacturer takes to deliver a part to the dealer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 10, eff. September 1, 2011.

Sec. 2352.106. REFUNDS, REBATES, AND DISCOUNTS. A dealer may not pay or assume a part of a refund, rebate, discount, or other financial adjustment made by the manufacturer or distributor to a customer or a dealer unless the dealer voluntarily agrees to make the payment or assumption.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2352.107. REPURCHASE BY MANUFACTURER OR DISTRIBUTOR. (a) A manufacturer or distributor who terminates an agreement shall repurchase on demand from the dealer any of the following items, purchased by the dealer from the manufacturer or distributor, that are free and clear of a lien or encumbrance:

(1) a new, unsold, and complete boat, with accessories and packaged trailers sold with the boat, and any boat motor that:

(A) is in the dealer's inventory; and

(B) was purchased during the two years preceding the date of the termination; and

(2) any new, current, unsold, undamaged, and unused parts or accessories for boats or boat motors in the original resalable merchandising package.

(b) A demand for repurchase must be made in writing not later than the 90th day after the date the manufacturer or distributor terminates the agreement. The dealer must provide the manufacturer or distributor with a complete list of the items to be repurchased. The manufacturer or distributor shall complete the repurchase not later than the 30th day after the date the dealer demands the repurchase.

(c) The manufacturer or distributor shall:

(1) repurchase an item described by Subsection (a)(1) at the dealer's invoiced cost, less any allowance paid to the dealer;

(2) repurchase an item described by Subsection (a)(2) at the dealer's invoiced cost; and

(3) pay the cost incurred by the dealer to transport an item described by Subsection (a) to the manufacturer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 11, eff. September 1, 2011.

#### **SUBCHAPTER D. ENFORCEMENT PROVISIONS**

Sec. 2352.201. CIVIL LIABILITY. A person who violates this chapter or an agreement regulated by this chapter is liable to an injured party for:

- (1) the actual damages caused by the violation; and
- (2) reasonable legal fees and court costs if litigation is commenced in connection with the violation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2352.202. VENUE FOR DISPUTE. Venue for a dispute under an agreement is in the county of the dealer's principal place of business as stated in the agreement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2352.203. ARBITRATION. A dealer may not be required to submit to arbitration on an issue between the dealer and the manufacturer or distributor at a location that is out of state or an unreasonable distance from the dealer's principal place of business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2352.204. CIVIL PENALTY. (a) A manufacturer or distributor who violates this chapter is liable to this state for a civil penalty. The amount of the penalty may not exceed \$500 for each violation.

(b) Each sale of a new boat or boat motor by a manufacturer or distributor in violation of Section 2352.051 is a separate violation.

(c) The attorney general may sue to collect a civil penalty under this section. The attorney general may recover, on behalf of the state, the reasonable expenses incurred in obtaining the penalty, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 12, eff. September 1, 2011.

**SUBTITLE C. REGULATION OF TRANSPORTATION SERVICES**

**CHAPTER 2401. TRANSPORTATION SERVICE PROVIDERS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2401.001. DEFINITIONS. In this chapter:

- (1) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 17.006(1); Acts 2003, 78th Leg., ch. 1276, Sec. 14A.651.
- (2) "Department" means the Department of Public Safety.
- (2-a) "Executive director" means the executive director of the department.
- (3) "Motor carrier" has the meaning assigned by 49 U.S. C. Section 13102.
- (4) "Person" means an individual, corporation, partnership, or association.
- (5) "Transportation service provider" or "freight forwarder" means a person, other than a motor carrier, who:
  - (A) represents to the public that the person provides transportation in this state only of property for compensation; and
  - (B) in the ordinary course of business:
    - (i) assembles and consolidates, or provides for assembling and consolidating, a shipment;
    - (ii) performs or provides for break-bulk and distribution operations of a shipment;
    - (iii) assumes responsibility for the land transportation of property at any place from origin to destination; and
    - (iv) uses a motor or rail carrier at any time during the transportation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 17.001, 17.006(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.651(a), (b), eff. Sept. 1, 2003.

Sec. 2401.002. APPLICATION OF CHAPTER. This chapter does not apply to a person who:

(1) acts as a customs broker as defined by 19 U.S.C. Section 1641;

(2) operates trucks and delivery vehicles in the wholesale distribution of alcoholic beverages under Chapter 19, 20, 21, 64, or 65, Alcoholic Beverage Code; or

(3) acts as an ocean freight forwarder as defined by 46 U.S.C. Section 1702.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

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

Sec. 2401.052. EXAMINATION OR AUDIT. (a) To administer this chapter, the department may:

(1) examine:

(A) a record maintained under Section 2401.152; or

(B) a record or object the department determines is necessary to conduct a complete examination; or

(2) question under oath any person who is associated with the business of a transportation service provider.

(b) The department may periodically audit the business records of a transportation service provider.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 17.003, eff. Sept. 1, 2003.

#### **SUBCHAPTER D. PRACTICE BY TRANSPORTATION SERVICE PROVIDER**

Sec. 2401.152. RECORDS. (a) A transportation service provider shall maintain a record for each shipment of property the transportation service provider assumes responsibility for transporting. The record must include:

(1) the name of the shipper of the property;

(2) the type of property being transported;

(3) the destination of the property;

(4) the name of the person receiving the property; and

(5) the name of the person transporting the property.

(b) The transportation service provider shall keep a copy of the record until at least the fourth anniversary of the date the



property is transported.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

**SUBCHAPTER F. PENALTIES AND OTHER ENFORCEMENT PROVISIONS**

Sec. 2401.251. CIVIL PENALTY. A transportation service provider who knowingly violates this chapter is liable for a civil penalty of not less than \$100 or more than \$500 for each violation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 17.004, eff. Sept. 1, 2003.

Sec. 2401.252. CRIMINAL PENALTY. (a) A transportation service provider commits an offense if the transportation service provider knowingly violates this chapter.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2401.253. AUTHORITY TO INVESTIGATE AND FILE COMPLAINT.

(a) The department may investigate a violation of this chapter.

(b) Any law enforcement agency may file a complaint with:

(1) the district attorney of Travis County; or

(2) the prosecuting attorney of the county in which a violation is alleged to have occurred.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 17.005, eff. Sept. 1, 2003.

**TITLE 15. OCCUPATIONS RELATED TO EMPLOYMENT**

**CHAPTER 2501. PERSONNEL SERVICES**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2501.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person who:

(A) engages the services of a personnel service to

secure employment; or

(B) is placed with an employer by a personnel service.

(2) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 102, Sec. 2(1), eff. May 20, 2011.

(3) "Counselor" means a person who:

(A) interviews and refers an applicant to a prospective employer; or

(B) solicits job orders from an employer.

(3-a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 102, Sec. 2(1), eff. May 20, 2011.

(4) "Employer" means a person who employs or seeks to employ an employee.

(4-a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 102, Sec. 2(1), eff. May 20, 2011.

(5) "Fee" means anything of value, including valuable consideration or a service or the promise of valuable consideration or a service, directly or indirectly received by a personnel service as payment from a person seeking employment.

(6) "Job order" means a verbal or written notice of a job opening from an employer.

(7) "Owner" means a person who possesses a proprietary interest in a personnel service.

(8) "Person" means an individual, partnership, association, corporation, legal representative, trustee in bankruptcy, or receiver.

(9) "Personnel service" means a person who, regardless of whether for a fee, directly or indirectly offers or attempts to obtain permanent employment for an applicant or obtains or attempts to obtain a permanent employee for an employer. The term does not include a newspaper of general circulation or other publication that primarily communicates information, other than information relating to employment positions, and that does not claim to adapt the information provided to the needs or desires of an individual applicant. The term includes a person who offers the facilities of or advertises as:

(A) an executive search or consulting service;

(B) an out-placement service;

(C) an overseas placement service;

(D) a job listing service;

(E) a personnel consulting service; or

(F) a resume service that provides job market investigation, research, or evaluation.

(10) "Service file" means a job order, resume, application, workpaper, or other record containing information relating to:

- (A) an applicant;
- (B) an employer;
- (C) an employment position; or
- (D) the operation of a personnel service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 11.001, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 102 (S.B. 1168), Sec. 2(1), eff. May 20, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 565 (H.B. 3167), Sec. 2.02(1), eff. September 1, 2011.

Sec. 2501.002. EXCEPTION. This chapter does not apply to:

- (1) a personnel service operated by the United States, this state, or a municipality of this state;
- (2) a personnel service operated by a person who does not assess a fee if the personnel service is operated in conjunction with the person's own business exclusively to employ help for that business;
- (3) a labor union; or
- (4) a professional counselor licensed under Chapter 503.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

### **SUBCHAPTER C. PROHIBITED PRACTICES**

Sec. 2501.101. PROHIBITED PRACTICES. (a) An owner, operator, counselor, agent, or employee of a personnel service may not:

- (1) share or attempt to share a fee paid by a person seeking employment or an employer with an employer or an agent or employee of an employer or another person provided services by the personnel service;
- (2) make or cause to be made a false promise, misrepresentation, or misleading statement or give or cause to be

given misleading information to an applicant;

(3) refer an applicant to an employer unless the personnel service has a job order for the referral;

(4) advertise a position unless the personnel service has a job order verifiable by the employer;

(5) procure or attempt to procure the discharge of a person from the person's current employment;

(6) induce, solicit, or attempt to induce or solicit an employee to terminate current employment in order to obtain new employment if the current employment was obtained through that personnel service or a personnel service that has a common ownership with that personnel service unless the employee initiates the new contact;

(7) deliver, disclose, distribute, or otherwise communicate to or receive from a person a service file or information contained in a service file, except as authorized by the personnel service that owns the file;

(8) advertise in any medium, including a newspaper, trade publication, billboard, radio, television, card, printed notice, circular, contract, letterhead, or any other material made for public distribution, except an envelope, without clearly stating that the advertisement is by a firm providing a private personnel service;

(9) refer an applicant to a place where the personnel service has knowledge of the existence of a strike or lockout unless the personnel service informs the applicant in writing of the strike or lockout before the referral is made; or

(10) refer an applicant to employment harmful to the applicant's health or morals if the personnel service has knowledge of the harmful condition.

(b) An employer or a person seeking employment may not:

(1) make a false statement or conceal any material fact to obtain an employee or employment by or through a personnel service; or

(2) share or attempt to share with a person subject to this chapter a fee paid or another payment made for the services of a personnel service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Sec. 2501.102. IMPOSITION OF FEE PROHIBITED BEFORE EMPLOYMENT OFFER ACCEPTED. Notwithstanding any refund policy, an owner, operator, counselor, agent, or employee of a personnel service may not impose a fee on an applicant until the applicant accepts an offer of employment resulting from an employment referral made by the personnel service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Sec. 2501.103. CHARGING OF FEE IN EXCESS OF CERTAIN AMOUNT PROHIBITED IF EMPLOYMENT TERMINATED. An owner, operator, counselor, agent, or employee of a personnel service may not charge an applicant a fee that exceeds 20 percent of the applicant's gross wages if:

- (1) the employment accepted by the applicant as a result of a referral by the personnel service lasts less than 30 days; and
- (2) the applicant terminates the employment for good cause.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

#### **SUBCHAPTER E. CIVIL LIABILITY**

Sec. 2501.201. LIABILITY FOR DAMAGES. (a) In this section, "knowingly" means actual awareness of the act or practice that is the alleged violation. Actual awareness may be inferred if any objective manifestation indicates that the person acted with actual awareness.

(b) A person who violates this chapter is liable to a person adversely affected by the violation for:

- (1) actual damages; or
- (2) if the person adversely affected establishes that the violation was committed knowingly, three times the amount of actual damages.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 102, Sec. 2(2), eff. May 20, 2011.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 102 (S.B. [1168](#)), Sec. 2(2), eff. May 20, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 565 (H.B. [3167](#)), Sec. 2.02(2), eff. September 1, 2011.

Sec. 2501.202. INJUNCTION AND OTHER REMEDIES. A plaintiff in an action filed under Section 2501.201 may obtain:

- (1) an order enjoining the defendant from violating this chapter;
- (2) any order necessary to restore to the plaintiff any property acquired by the defendant in violation of this chapter; or
- (3) other relief the court considers proper, including:
  - (A) the appointment of a receiver if the judgment against the defendant is not satisfied within three months after the date of the final judgment; or
  - (B) an order enjoining the defendant from acting as a personnel service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 102 (S.B. 1168), Sec. 1, eff. May 20, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 565 (H.B. 3167), Sec. 2.01, eff. September 1, 2011.

Sec. 2501.203. AWARD OF ATTORNEY'S FEES. (a) A plaintiff who prevails in an action filed under Section 2501.201 is entitled to receive court costs and reasonable and necessary attorney's fees.

(b) On finding that an action filed under Section 2501.201 is groundless and was brought in bad faith or for the purpose of harassment, the court may award court costs and reasonable attorney's fees to the defendant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Sec. 2501.204. DECEPTIVE TRADE PRACTICE. A violation of this chapter is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and any public or private right or remedy authorized by Subchapter E, Chapter 17, Business & Commerce Code, may be used to enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

**SUBCHAPTER F. PENALTIES**

Sec. 2501.251. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates this chapter.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Sec. 2501.252. TRADE SECRET. A service file is a trade secret for purposes of Section 31.05, Penal Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Sec. 2501.254. EFFECT ON OTHER REMEDIES AND ENFORCEMENT POWERS. This chapter does not affect a public or private remedy or enforcement power available under other law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.