

# TEXAS UNEMPLOYMENT COMPENSATION ACT

AND RELATED PORTIONS OF THE LABOR CODE

83<sup>RD</sup> LEGISLATURE

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TEXAS WORKFORCE COMMISSION  
101 EAST 15<sup>TH</sup> STREET  
AUSTIN, TEXAS 78778-0001

HOPE ANDRADE  
Commissioner  
Representing Employers

ANDRES ALCANTAR  
Chairman and Commissioner  
Representing the Public

RONALD G. CONGLETON  
Commissioner  
Representing Labor

LARRY E. TEMPLE  
Executive Director



# TABLE OF CONTENTS

<b>TITLE 4. EMPLOYMENT SERVICES AND UNEMPLOYMENT .....</b>	<b>13</b>
<b>SUBTITLE A. TEXAS UNEMPLOYMENT COMPENSATION ACT .....</b>	<b>13</b>
CHAPTER 201. UNEMPLOYMENT COMPENSATION ACT -- GENERAL PROVISIONS .....	13
<i>Subchapter A. Short Title; Application of Sunset Act.....</i>	<i>13</i>
Sec. 201.001. Short Title .....	13
<i>Subchapter B. General Definitions .....</i>	<i>13</i>
Sec. 201.011. General Definitions in This Subtitle .....	13
Sec. 201.012. Definition of Misconduct.....	15
<i>Subchapter C. Definition of Employer.....</i>	<i>16</i>
Sec. 201.021. General Definition of Employer .....	16
Sec. 201.022. Effect of Business Acquisition.....	16
Sec. 201.023. Tax-Exempt Nonprofit Organization .....	16
Sec. 201.024. Election to be Employer .....	17
Sec. 201.025. Employer Under Federal Law.....	17
Sec. 201.026. State; Political Subdivision .....	17
Sec. 201.027. Employer of Domestic Service Worker .....	17
Sec. 201.028. Employer of Farm and Ranch Laborer.....	18
Sec. 201.029. Temporary Help Firm .....	18
Sec. 201.030. Professional Employer Organization .....	19
<i>Subchapter D. Definition of Employment .....</i>	<i>19</i>
Sec. 201.041. General Definition of Employment.....	19
Sec. 201.042. Service of Driver or Salesman .....	19
Sec. 201.043. Location of Service.....	20
Sec. 201.044. Service Under Reciprocal Agreement.....	22
Sec. 201.045. Service on Vessel or Aircraft.....	22
Sec. 201.046. Employment to Assist Employee or Agent.....	22
Sec. 201.047. Farm and Ranch Labor as Employment.....	22
Sec. 201.048. Service for Indian Tribe .....	23
<i>Subchapter E. Exceptions to Employment.....</i>	<i>23</i>
Sec. 201.061. Service Eligible Under Act of Congress .....	23
Sec. 201.062. Service Under Arrangement with Agency .....	23
Sec. 201.063. Certain Government Service.....	23
Sec. 201.064. Domestic Service.....	24
Sec. 201.065. Service by Relative .....	25
Sec. 201.066. Religious Service.....	25
Sec. 201.067. Rehabilitative Service; Work Relief; Exception for Services Performed by Certain Blind Individuals .....	25
Sec. 201.068. Service in Hospital.....	26
Sec. 201.069. Service of Student.....	26
Sec. 201.070. Service as Product Demonstrator; Salesman.....	28
Sec. 201.071. Service as Insurance Agent.....	29
Sec. 201.072. Service as Real Estate Broker .....	29
Sec. 201.073. Delivery Service; Newspaper Delivery Service.....	30
Sec. 201.074. Service by Inmate .....	31
Sec. 201.075. Service on Fishing Vessel.....	31
Sec. 201.076. Included and Excluded Service in Pay Period .....	31
Sec. 201.077. Service By Landman.....	31
Sec. 201.078. Service by Nonresident Alien Agricultural Worker.....	32
<i>Subchapter F. Definition of Wages .....</i>	<i>32</i>
Sec. 201.081. General Definition of Wages .....	32
Sec. 201.082. Exceptions to Wages.....	32
<i>Subchapter G. Total and Partial Unemployment.....</i>	<i>33</i>
Sec. 201.091. Total and Partial Unemployment .....	33
<i>Subchapter H. Conformity with Federal Statutes .....</i>	<i>34</i>
Sec. 201.101. Conformity with Federal Statutes .....	34
CHAPTER 203. FINANCING AND FUNDS .....	35
<i>Subchapter A. General Provisions .....</i>	<i>35</i>
Sec. 203.001. Definitions .....	35
Sec. 203.002. Duties of Comptroller .....	35

Sec. 203.003.	Comptroller's Bond Liability.....	35
Sec. 203.004.	Deposit of Funds; Exception.....	35
Sec. 203.005.	Application of Other Law .....	36
Subchapter B.	<i>Unemployment Compensation Fund</i> .....	36
Sec. 203.021.	Unemployment Compensation Fund; Separate Accounts.....	36
Sec. 203.022.	Composition and Use of Clearing Account .....	37
Sec. 203.023.	Requisitions from Federal Trust Fund; Benefit Account .....	37
Sec. 203.024.	Deposits.....	37
Sec. 203.025.	Use of Requisitioned Money .....	37
Sec. 203.026.	Accounts From Which Benefits and Refunds are Paid .....	38
Sec. 203.027.	Unexpended Balance of Benefit Account .....	38
Sec. 203.028.	Solvency of Compensation Fund; Reserve .....	38
Sec. 203.029.	Refund of Contributions to Federal Instrumentality .....	39
Sec. 203.030.	Reimbursement from or to Compensation Fund Under Reciprocal Arrangement .....	39
Sec. 203.031.	Nonliability of State.....	39
Sec. 203.032.	Management of Compensation Fund on Discontinuance of Federal Trust Fund .....	39
Subchapter C.	<i>Advances from Federal Trust Fund and Obligation Assessment</i> .....	40
Sec. 203.101.	Limit on Application for Advance.....	40
Sec. 203.102.	Obligation Trust Fund.....	40
Sec. 203.104.	Limitation on Transfer from Obligation Trust Fund to Compensation Fund .....	40
Sec. 203.105.	Unemployment Obligation Assessment.....	40
Subchapter D.	<i>Administration Fund</i> .....	41
Sec. 203.151.	Administration Fund.....	41
Sec. 203.152.	Use of Administration Fund .....	42
Sec. 203.154.	Reimbursement of Administration Fund.....	42
Subchapter E.	<i>Special Administration Fund</i> .....	43
Sec. 203.201.	Special Administration Fund .....	43
Sec. 203.202.	Use of Special Administration Fund.....	43
Sec. 203.203.	Refund of Penalties.....	44
Subchapter F.	<i>Issuance of Financial Obligations for Unemployment Compensation Fund</i> .....	44
Sec. 203.251.	Findings and Purpose.....	44
Sec. 203.252.	Definitions; General Provision .....	44
Sec. 203.253.	Request for Bond Issuance .....	45
Sec. 203.254.	Issuance of Bonds by Authority.....	46
Sec. 203.255.	Bond Proceeds .....	46
Sec. 203.256.	Repayment of Commission's Financial Obligations.....	47
Sec. 203.257.	Bond Payments .....	47
Sec. 203.258.	Excess Revenue Collections and Investment Earnings .....	48
Sec. 203.259.	State Debt Not Created .....	48
Sec. 203.260.	State Not to Impair Bond Obligations.....	48
Sec. 203.261.	Exemption from Taxation.....	49
Sec. 203.262.	No Personal Liability .....	49
CHAPTER 204.	CONTRIBUTIONS .....	49
Subchapter A.	<i>General Provisions</i> .....	49
Sec. 204.001.	Definition.....	49
Sec. 204.002.	Contribution Required .....	49
Sec. 204.003.	Contribution Not Deducted from Wages .....	49
Sec. 204.004.	Assignment to Major Group .....	49
Sec. 204.005.	Establishment of Major Group Contribution Rate .....	49
Sec. 204.006.	Initial Contribution Rate .....	50
Sec. 204.007.	Special Rate; Certain Employers Engaged in Agriculture .....	50
Sec. 204.008.	Time Benefits Are Paid.....	50
Sec. 204.009.	Application to Labor Agent .....	50
Sec. 204.010.	Payment of Contributions by Indian Tribes .....	51
Subchapter B.	<i>Chargebacks</i> .....	51
Sec. 204.021.	Chargebacks.....	51
Sec. 204.022.	Exclusions from Chargebacks.....	51
Sec. 204.023.	Notice Sent at Time Benefits Paid .....	55
Sec. 204.024.	Protest of Potential Chargebacks .....	55
Sec. 204.025.	Decision and Administrative Review of Protest .....	55
Sec. 204.026.	Judicial Review of Protest .....	55

## TABLE OF CONTENTS

Sec. 204.027.	Notice, Protest, and Appeal--Notice Sent at Time of Claim .....	55
<i>Subchapter C.</i>	<i>General Tax Rate for Experience-Rated Employers</i> .....	56
Sec. 204.041.	Tax on Experience-Rated Employers .....	56
Sec. 204.042.	Tax Rate Table.....	57
Sec. 204.043.	Extension of Tax Rate Table Up to Six Percent.....	58
Sec. 204.044.	Benefit Ratio.....	58
Sec. 204.045.	Replenishment Ratio.....	58
Sec. 204.046.	Effectively Charged Benefits.....	59
Sec. 204.047.	Tax Rate Computation Date for Experience Tax Rate .....	59
Sec. 204.048.	Voluntary Contributions .....	59
<i>Subchapter D.</i>	<i>Adjustments to Tax Rate for Experience-Rated Employers</i> .....	60
Sec. 204.061.	Ceiling and Floor of Compensation Fund .....	60
Sec. 204.062.	Replenishment Tax .....	61
Sec. 204.0625.	Adjustment to Replenishment Tax Rate .....	61
Sec. 204.063.	Deficit Assessment .....	61
Sec. 204.064.	Deficit Ratio .....	61
Sec. 204.065.	Use of Surplus .....	62
Sec. 204.0651.	Surplus Credit.....	62
Sec. 204.0652.	Surplus Credit Rate.....	63
Sec. 204.066.	Surplus Ratio .....	63
Sec. 204.067.	Adjustments to Rate.....	63
<i>Subchapter E.</i>	<i>Acquisition of Experience-Rated Employer</i> .....	64
Sec. 204.081.	Definitions .....	64
Sec. 204.082.	Effective Date of Acquisition .....	65
Sec. 204.083.	Acquisition of All or Part of Experience-Rated Organization, Trade, or Business; Transfer of Compensation Experience .....	65
Sec. 204.084.	Acquisition of Part of Experience-Rated Organization, Trade, or Business: Approval of Transfer of Compensation Experience Without Substantially Common Management or Control or Substantially Common Ownership; Contribution Rate .....	65
Sec. 204.085.	Contribution Rate for Successor Employers When Substantially Common Management or Control or Substantially Common Ownership Exists; Certain Partial Acquisitions .....	67
Sec. 204.0851.	Contribution Rate for Successor Employers When Substantially Common Management or Control or Substantially Common Ownership Exists; Other Acquisitions. ....	67
Sec. 204.086.	Collection of Contribution, Penalty, or Interest from Successor Employer .....	68
Sec. 204.0861.	Surplus Credit for Successor Employing Units.....	69
Sec. 204.087.	Offense; Criminal and Civil Penalties .....	69
Sec. 204.088.	Procedures to Identify Experience-Rating Transfers .....	70
Sec. 204.089.	Conformity with Federal Regulations.....	70
<i>Subchapter F.</i>	<i>Special Contributions for Governmental Employers</i> .....	70
Sec. 204.101.	Contribution from Governmental Employer .....	70
Sec. 204.102.	Contribution Not Deduction from Wages .....	70
Sec. 204.103.	Rate of Contributions for Governmental Employers .....	70
Sec. 204.104.	Accounting for Governmental Employers .....	71
Sec. 204.105.	Past Due Contributions .....	71
Sec. 204.106.	Reports and Records .....	71
<i>Subchapter G.</i>	<i>Employment and Training Investment Assessment; Funds</i> .....	71
Sec. 204.121.	Employment and Training Investment Assessment .....	71
Sec. 204.122.	Holding Fund.....	72
Sec. 204.123.	Transfer to Skills Development Fund, Training Stabilization Fund, and Compensation Fund .....	72
CHAPTER 205.	REIMBURSEMENTS .....	73
<i>Subchapter A.</i>	<i>Election to Become Reimbursing Employer</i> .....	73
Sec. 205.001.	Reimbursements or Contributions by Governmental Entity .....	73
Sec. 205.002.	Election by Nonprofit Organization.....	73
Sec. 205.003.	Commission Termination of Election .....	74
Sec. 205.004.	Election by Indian Tribe .....	74
<i>Subchapter B.</i>	<i>General Provisions</i> .....	74
Sec. 205.011.	Applicability of Subtitle; Waiver by Reimbursing Employer .....	74
Sec. 205.012.	Payment of Reimbursement.....	75
Sec. 205.013.	Billing; Amount of Reimbursements .....	75
Sec. 205.014.	Proportionate Allocation of Benefit Costs – More Than One Employer and at Least One Reimbursing Employer .....	75

Sec. 205.015.	Continued Liability for Reimbursement .....	76
Sec. 205.016.	Collection of Delinquent Reimbursement; Effect of Failure to Submit Certain Reports .....	76
Sec. 205.017.	Delinquent Governmental Employers.....	76
Sec. 205.018.	Payment of Benefits from Compensation Fund; No Effect on Replenishment Ratio .....	76
Sec. 205.019.	Reimbursement From Non-Treasury Funds.....	76
<i>Subchapter C.</i>	<i>Group Account</i> .....	77
Sec. 205.021.	Approval of Group Account; Effective Date .....	77
Sec. 205.022.	Duration and Termination of Group Account.....	77
Sec. 205.023.	Group Member's Reimbursement Amount .....	77
Sec. 205.024.	Reports and Records .....	77
Sec. 205.025.	Commission Rules .....	78
<i>Subchapter D.</i>	<i>Bonds and Other Safeguards</i> .....	78
Sec. 205.031.	Bond .....	78
Sec. 205.032.	Additional Safeguards .....	78
<i>Subchapter E.</i>	<i>State Elections</i> .....	79
Sec. 205.041.	State Election to be Reimbursing Employer .....	79
Sec. 205.042.	Coverage of State Employees Working Outside State .....	79
CHAPTER 206.	UNEMPLOYMENT INSURANCE COVERAGE .....	79
Sec. 206.001.	Yearly Coverage .....	79
Sec. 206.002.	Election of Coverage as Employer.....	79
Sec. 206.003.	Election of Coverage Regarding Services Not Constituting Employment.....	80
Sec. 206.004.	Termination of Coverage.....	80
Sec. 206.005.	Previous Rights Lost by Cessation of Coverage .....	80
CHAPTER 207.	BENEFITS .....	81
<i>Subchapter A.</i>	<i>Payment of Benefits</i> .....	81
Sec. 207.001.	Payment of Benefits.....	81
Sec. 207.002.	Benefits for Total Unemployment .....	81
Sec. 207.003.	Benefits for Partial Unemployment .....	82
Sec. 207.004.	Benefit Wage Credits.....	82
Sec. 207.005.	Maximum Amount of Benefits .....	83
Sec. 207.006.	Adjustment of Benefits .....	83
Sec. 207.007.	Fees Limitation; Legal Representation; Criminal Offense; Penalty .....	84
Sec. 207.008.	Suitable Work.....	84
Sec. 207.009.	Payment of Benefits by Indian Tribe .....	85
<i>Subchapter B.</i>	<i>Benefit Eligibility</i> .....	85
Sec. 207.021.	Benefit Eligibility Conditions .....	85
Sec. 207.021.1.	Eligibility of Certain Disabled Persons.....	87
Sec. 207.021.2.	Eligibility of Certain Persons Unemployed Because of Disaster .....	87
Sec. 207.022.	Commission-Approved Training .....	87
Sec. 207.023.	Training Under the Trade Act of 1974.....	88
Sec. 207.024.	Claim Filed or Residence in Another State or Country.....	88
Sec. 207.025.	Pregnancy or Termination of Pregnancy.....	89
Sec. 207.026.	Drug Screening or Testing as Condition of Benefit Eligibility for Certain Applicants and Recipients.....	89
<i>Subchapter C.</i>	<i>Exceptions to and Disqualification for Benefits</i> .....	91
Sec. 207.041.	Services in Educational Institutions .....	91
Sec. 207.042.	Athletes.....	92
Sec. 207.043.	Aliens.....	92
Sec. 207.044.	Discharge for Misconduct.....	93
Sec. 207.045.	Voluntarily Leaving Work.....	93
Sec. 207.046.	Involuntary Separation.....	95
Sec. 207.047.	Failure to Apply for, Accept, or Return to Work .....	96
Sec. 207.048.	Labor Disputes.....	97
Sec. 207.049.	Receipt of Remuneration .....	98
Sec. 207.050.	Receipt of Pension or Annuity .....	99
Sec. 207.051.	Sale of Business.....	99
Sec. 207.053.	Refusal to Treat Communicable Disease .....	100
<i>Subchapter D.</i>	<i>Protection of Benefit Rights</i> .....	100
Sec. 207.071.	Waiver, Release, or Commutation Agreement Invalid .....	100
Sec. 207.072.	Acceptance or Requirement of Waiver Prohibited.....	101
Sec. 207.073.	Prohibited Deduction from Wages.....	101

# TABLE OF CONTENTS

Sec. 207.074.	Criminal Offense; Penalty .....	101
Sec. 207.075.	Assignment of Benefits Prohibited; Benefit Exemptions .....	101
Sec. 207.076.	Equal Treatment .....	102
<i>Subchapter E.</i>	<i>Child Support Obligations</i> .....	<i>102</i>
Sec. 207.091.	Definitions .....	102
Sec. 207.092.	Disclosure of Child Support Obligations .....	102
Sec. 207.093.	Withholding of Child Support by Commission .....	102
Sec. 207.094.	Federal Law Requirement .....	103
<i>Subchapter F.</i>	<i>Tax Withholding</i> .....	<i>103</i>
Sec. 207.101.	Withholding from Benefits for Federal Income Tax .....	103
<i>Subchapter G.</i>	<i>Withholding from Unemployment Benefits for Uncollected Overissuances of Food Stamps</i> .....	<i>104</i>
Sec. 207.111.	Definitions .....	104
Sec. 207.112.	Application .....	104
Sec. 207.113.	Required Disclosure; Notice to Food Stamp Agency .....	104
Sec. 207.114.	Withholding .....	104
CHAPTER 208.	BENEFIT CLAIMS .....	105
<i>Subchapter A.</i>	<i>Filing of Claim</i> .....	<i>105</i>
Sec. 208.001.	Filing; Information Notices .....	105
Sec. 208.002.	Initial Claim; Last Work .....	105
Sec. 208.003.	Notice to Employer .....	106
Sec. 208.004.	Notification of Adverse Facts Affecting Claim; Waiver .....	106
<i>Subchapter B.</i>	<i>Claim Determination</i> .....	<i>107</i>
Sec. 208.021.	Initial Claim Determination .....	107
Sec. 208.022.	Notice of Initial Claim Determination .....	107
Sec. 208.023.	Request for Redetermination or Appeal by Claimant .....	107
CHAPTER 209.	EXTENDED BENEFITS .....	107
<i>Subchapter A.</i>	<i>General Provisions</i> .....	<i>107</i>
Sec. 209.001.	Definitions .....	107
Sec. 209.002.	Application of Provisions Relating to Regular Benefits .....	108
Sec. 209.003.	Findings .....	108
<i>Subchapter B.</i>	<i>Determination of Extended Benefit Period</i> .....	<i>108</i>
Sec. 209.021.	Beginning and Ending Dates for Extended Benefit Period .....	108
Sec. 209.022.	State "On" and "Off" Indicator Weeks .....	109
Sec. 209.023.	Rate of Insured Unemployment .....	109
Sec. 209.024.	Public Announcement of Extended Benefit Period .....	110
Sec. 209.025.	Federal Funding of Extended Benefits .....	110
<i>Subchapter C.</i>	<i>Eligibility Requirements for Extended Benefits</i> .....	<i>110</i>
Sec. 209.041.	Eligibility for Extended Benefits .....	110
Sec. 209.042.	Exhaustion of Regular Benefits .....	110
Sec. 209.043.	Requirement to Seek Work .....	111
Sec. 209.044.	Requirement to Accept or Apply for Suitable Work .....	111
Sec. 209.045.	Employment Service Referrals to Suitable Work .....	112
Sec. 209.046.	Exceptions to Requirement to Accept or Apply for Suitable Work .....	112
Sec. 209.047.	Suitable Work .....	112
Sec. 209.048.	Duration of Ineligibility; Work Requirements .....	113
Sec. 209.049.	Ineligibility Due to Disqualification .....	113
Sec. 209.050.	Interstate Claim .....	113
<i>Subchapter D.</i>	<i>Amount of Extended Benefits</i> .....	<i>114</i>
Sec. 209.061.	Weekly Extended Benefit Amount .....	114
Sec. 209.062.	Maximum Total Extended Benefit Amount .....	114
Sec. 209.063.	Effect of Trade Readjustment Allowances .....	114
<i>Subchapter E.</i>	<i>Financing of Extended Benefits</i> .....	<i>114</i>
Sec. 209.081.	Unemployment Compensation Fund .....	114
Sec. 209.082.	Charges to Reimbursing Employer .....	115
Sec. 209.083.	Charges to Taxed Employer .....	115
Sec. 209.084.	Charges to Governmental Employer .....	115
Sec. 209.0845.	Charges to Indian Tribe .....	115
Sec. 209.085.	Notice to Taxed Base Period Employer .....	115
CHAPTER 210.	BACK PAY AWARDS; LOST OR MISPLACED WARRANTS .....	116

<i>Subchapter A. Back Pay Awards</i> .....	116
Sec. 210.001. Notice of Back Pay Award Reduction.....	116
Sec. 210.002. Reimbursement by Employer for Reduction of Back Pay Award.....	116
Sec. 210.003. Employee's Liability; Sole Liability of Employer.....	117
<i>Subchapter B. Lost or Misplaced Warrants</i> .....	117
Sec. 210.011. Replacement for Lost or Misplaced Warrant.....	117
Sec. 210.012. Deadline for Payment of Warrant.....	117
Sec. 210.013. Deadline for Issuance of Replacement Warrant.....	117
CHAPTER 211. RECIPROCAL ARRANGEMENTS.....	117
Sec. 211.001. Location of Service for Unemployment Insurance Purposes.....	117
Sec. 211.002. Location of Service of State Employees.....	118
Sec. 211.003. Combination of Wages and Employment.....	118
Sec. 211.004. Offset for Overpayment of Unemployment Benefits.....	118
Sec. 211.005. Interstate or Foreign Commerce.....	119
Sec. 211.006. Reciprocal Treatment by Federal Agency.....	119
CHAPTER 212. DISPUTE RESOLUTION.....	119
<i>Subchapter A. General Provisions</i> .....	119
Sec. 212.001. Procedures.....	119
Sec. 212.002. Record.....	119
Sec. 212.003. Witness Fees.....	119
Sec. 212.004. Payment of Benefits Pending Appeal.....	120
Sec. 212.005. Chargeback on Reversal of Determination or Decision Allowing Benefits Prohibited; Exception	120
Sec. 212.006. Recovery of Benefits Paid.....	121
<i>Subchapter B. Examiners</i> .....	121
Sec. 212.051. Determination by Examiner on Notification.....	121
Sec. 212.052. Determination by Examiner on Examiner's Own Motion.....	122
Sec. 212.053. Determination Final; Appeal.....	122
Sec. 212.054. Redetermination by Examiner.....	122
<i>Subchapter C. Appeal Tribunals</i> .....	123
Sec. 212.101. Establishment of Appeal Tribunals.....	123
Sec. 212.102. Action by Appeal Tribunal.....	123
Sec. 212.103. Notice of Appeal Tribunal Action.....	123
Sec. 212.104. Decision Considered Final Commission Decision.....	123
Sec. 212.105. Removal or Transfer of Claim Pending Before Appeal Tribunal.....	123
Sec. 212.106. Rules Regarding Hearings Conducted by Telephone Conference.....	124
<i>Subchapter D. Commission Review</i> .....	124
Sec. 212.151. Review of Appeal Tribunal Decision.....	124
Sec. 212.152. Notice of Commission Action.....	124
Sec. 212.153. Finality of Commission Decision.....	124
<i>Subchapter E. Judicial Review of Commission Decision</i> .....	124
Sec. 212.201. Commencement of Judicial Review; Defendants.....	124
Sec. 212.202. Standard of Judicial Review; Exceptions Not Necessary.....	125
Sec. 212.203. Exhaustion of Remedies.....	125
Sec. 212.204. Filing of Action.....	125
Sec. 212.205. Petition; Supersedeas.....	125
Sec. 212.206. Commission Considered Party to Judicial Review; Notice of Petition.....	125
Sec. 212.207. Representation of Commission.....	126
Sec. 212.208. Precedence Over Other Civil Actions.....	126
Sec. 212.210. Appeal Bond Not Required.....	126
CHAPTER 213. ENFORCEMENT OF TEXAS UNEMPLOYMENT COMPENSATION ACT.....	126
<i>Subchapter A. General Enforcement Provisions</i> .....	126
Sec. 213.001. Representation in Court.....	126
Sec. 213.002. Prosecution of Criminal Actions.....	127
Sec. 213.003. Admissibility of Certified Copy of Commission Record.....	127
Sec. 213.004. Admissibility of Report or Audit; Prima Facie Evidence.....	127
Sec. 213.005. Costs Adjudged Against State or Commission.....	128
Sec. 213.006. Priority of Claim for Contribution.....	128
Sec. 213.007. Collateral Estoppel Doctrine Inapplicable.....	128
Sec. 213.008. Election of Collection Remedies.....	128
Sec. 213.009. Commission Enforcement of Out-of-State Judgment.....	128
Sec. 213.010. Notice to Indian Tribes.....	129



# TABLE OF CONTENTS

<i>Subchapter B. Employer Penalties and Interest</i> .....	130
Sec. 213.021. Interest On Past Due Contribution .....	130
Sec. 213.022. Penalty for Failure to File Report .....	130
Sec. 213.023. Penalty for Other Violation .....	131
Sec. 213.024. Penalty for Continuing Violation .....	131
Sec. 213.025. Additional Interest on Judgment or Final Assessment for Past Due Contribution .....	131
<i>Subchapter C. Collection of Contribution by Civil Suit or Notice of Assessment</i> .....	131
Sec. 213.031. Collection Required; Methods .....	131
Sec. 213.032. Service of Notice of Assessment; Contents as Prima Facie Evidence; Judicial Review; Effect .....	132
Sec. 213.033. Limitations .....	132
Sec. 213.034. Statement as Evidence in Civil Action; Denial .....	133
Sec. 213.035. Costs .....	133
Sec. 213.036. Abstract of Judgment; Abstract of Assessment; Fee; Release .....	133
<i>Subchapter D. Other Enforcement Remedies Against Employer</i> .....	133
Sec. 213.051. Forfeiture of Right to Employ Individuals in This State; Bond .....	133
Sec. 213.052. Injunction Restraining Certain Violations .....	134
Sec. 213.053. Violation of Injunction; Receiver .....	134
Sec. 213.054. Offset Against State Warrant .....	135
Sec. 213.055. Audit of Employer .....	135
Sec. 213.056. Estimated Taxable Wages if Report Not Filed .....	135
Sec. 213.057. Tax Lien .....	135
Sec. 213.058. Additional Tax Lien Enforced by Commission .....	136
Sec. 213.059. Delinquency; Notice of Levy .....	136
Sec. 213.060. Enforcement Against Indian Tribe .....	138
<i>Subchapter E. Adjustment or Refund for Employer's Overpayment</i> .....	138
Sec. 213.071. Credit or Refund of Overpayment .....	138
Sec. 213.072. Application .....	139
Sec. 213.073. Appeal of Commission Determination .....	139
Sec. 213.074. Interest Not Allowed .....	139
Sec. 213.075. Adjustment or Refund on Commission Initiative .....	139
CHAPTER 214. OFFENSES, PENALTIES, AND SANCTIONS .....	139
Sec. 214.001. Fraudulently Obtaining Benefits or Other Payment .....	139
Sec. 214.002. Liability for Improperly Obtaining Benefits .....	140
Sec. 214.003. Forfeiture or Cancellation of Benefits Paid and Remaining Benefits; Penalty .....	140
Sec. 214.004. Fraudulently Avoiding Contribution or Payment of Benefits .....	141
Sec. 214.005. Failure or Refusal to Make Contribution or Other Payment .....	141
Sec. 214.006. Offenses Regarding Reports and Records .....	141
Sec. 214.007. General Offense .....	142
Sec. 214.008. Misclassification of Certain Workers; Penalty .....	142
CHAPTER 215. SHARED WORK UNEMPLOYMENT COMPENSATION PROGRAM .....	142
<i>Subchapter A. General Provisions</i> .....	142
Sec. 215.001. Definitions .....	142
Sec. 215.002. Shared Work Unemployment Compensation Program .....	143
<i>Subchapter B. Shared Work Plan</i> .....	143
Sec. 215.021. Approval Required for Employer Plan .....	143
Sec. 215.022. Requirements of Shared Work Plan .....	144
Sec. 215.023. Approval or Denial of Shared Work Plan; Notice .....	145
Sec. 215.024. Effective Date of Shared Work Plan; Expiration or Termination .....	145
Sec. 215.025. Modification of Shared Work Plan .....	145
Sec. 215.026. Participating Employer's Report on Plan Operation .....	145
<i>Subchapter C. Shared Work Benefits</i> .....	146
Sec. 215.041. Employee's Eligibility for Shared Work Benefits .....	146
Sec. 215.042. Shared Work Benefits Formula .....	146
Sec. 215.043. Limitations on Benefits .....	146
Sec. 215.044. Extended Benefits .....	147
ILLUSTRATION .....	148
<b>TITLE 4. EMPLOYMENT SERVICES AND UNEMPLOYMENT</b> .....	<b>149</b>
<b>SUBTITLE B. TEXAS WORKFORCE COMMISSION; WORKFORCE DEVELOPMENT; EMPLOYMENT SERVICES</b> .....	<b>149</b>

CHAPTER 301.	TEXAS WORKFORCE COMMISSION.....	149
<i>Subchapter A.</i>	<i>Organization of Commission</i> .....	149
Sec. 301.001.	Purpose; Agency Goals; Definitions.....	149
Sec. 301.0015.	Guidelines Regarding Functions of Commission and Staff.....	150
Sec. 301.002.	Membership Requirements.....	151
Sec. 301.003.	Member Restrictions.....	151
Sec. 301.004.	Effect of Lobbying Activity.....	153
Sec. 301.005.	Terms; Vacancy.....	153
Sec. 301.006.	Chair.....	153
Sec. 301.007.	Removal of Commission Members.....	153
Sec. 301.0075.	Member Training.....	154
Sec. 301.008.	Application of Sunset Act.....	155
Sec. 301.009.	Commission Divisions.....	155
<i>Subchapter B.</i>	<i>Commission Administration</i> .....	155
Sec. 301.021.	Donations.....	155
Sec. 301.022.	Audit.....	156
Sec. 301.023.	Complaints Against Commission.....	156
Sec. 301.024.	Official Seal; Use of Facsimiles.....	157
<i>Subchapter C.</i>	<i>Executive Director; Agency Personnel</i> .....	157
Sec. 301.041.	Executive Director; Agency Personnel.....	157
Sec. 301.042.	Access to Certain Criminal History Record Information.....	157
Sec. 301.043.	Standards of Conduct Information.....	158
Sec. 301.044.	Career Ladder.....	158
Sec. 301.045.	Equal Employment Opportunity Policies.....	158
Sec. 301.047.	Commission Employees Accountable to Executive Director.....	159
<i>Subchapter D.</i>	<i>General Powers and Duties of Commission and Executive Director</i> .....	159
Sec. 301.061.	General Powers and Duties of Commission and Executive Director.....	159
Sec. 301.0611.	Coordination of Certain Awards and Incentives.....	160
Sec. 301.0615.	Application of Administrative Procedure Act.....	160
Sec. 301.062.	Findings.....	160
Sec. 301.063.	State and Federal Cooperation.....	160
Sec. 301.064.	Interpreter Services; Bilingual Forms.....	161
Sec. 301.065.	Annual Report.....	162
Sec. 301.066.	Publications.....	162
Sec. 301.067.	Tax Assistance; Information on Earned Income Tax Credit.....	162
Sec. 301.0671.	Federal Work Opportunity Tax Credit and State Tax Refund for Certain Employers.....	163
Sec. 301.0681.	Policy on Technological Solutions.....	164
Sec. 301.0682.	Negotiated Rulemaking and Alternative Dispute Resolution Policy.....	165
Sec. 301.069.	Partnership with Business Community.....	165
<i>Subchapter E.</i>	<i>Investigative and Subpoena Powers</i> .....	166
Sec. 301.071.	Investigative and Subpoena Powers.....	166
Sec. 301.072.	Enforcement of Subpoena; Offense; Penalties.....	166
Sec. 301.073.	Self-Incrimination.....	167
Sec. 301.074.	Defamation.....	167
<i>Subchapter F.</i>	<i>Records</i> .....	167
Sec. 301.081.	Employee Records of Employing Unit; Offense; Penalty.....	167
Sec. 301.082.	Copies of Records.....	168
Sec. 301.083.	Access to Records by Railroad Retirement Board.....	168
Sec. 301.084.	Destruction of Records.....	168
Sec. 301.085.	Unemployment Compensation and Job Matching Services Information; Offense; Penalty.....	168
Sec. 301.086.	Provision of Certain Information to Comptroller.....	169
<i>Subchapter H.</i>	<i>Tax Refund for Wages Paid to Employee Receiving Financial Assistance</i> .....	170
Sec. 301.101.	Definition.....	170
Sec. 301.102.	Tax Refund Voucher.....	170
Sec. 301.103.	Amount of Refund; Limitation.....	170
Sec. 301.104.	Eligibility.....	170
Sec. 301.105.	Certification.....	171
Sec. 301.106.	Application for Refund; Issuance.....	171
Sec. 301.107.	Rules.....	172
Sec. 301.108.	Limitation on Conveyance, Assignment, or Transfer of Refund.....	172
<i>Subchapter I.</i>	<i>Civil Rights Division</i> .....	172

# TABLE OF CONTENTS

Sec. 301.151.	Definitions .....	172
Sec. 301.152.	General Provisions.....	173
Sec. 301.153.	Human Rights Commission .....	173
Sec. 301.154.	Director.....	174
Sec. 301.155.	Investigator Training Program; Procedures Manual .....	174
Sec. 301.156.	Analysis of Discrimination Complaints; Report .....	174
<i>Subchapter J.</i>	<i>Adult Education and Literacy.....</i>	<i>175</i>
Sec. 301.171.	Cooperation with Texas Education Agency to Improve Adult Education and Literacy Services ..	175
<i>Subchapter K.</i>	<i>Detection and Prevention of Child-Care Fraud, Waste, and Abuse.....</i>	<i>175</i>
CHAPTER 302.	DIVISION OF WORKFORCE DEVELOPMENT.....	177
<i>Subchapter A.</i>	<i>General Provisions .....</i>	<i>177</i>
Sec. 302.001.	Definitions .....	177
Sec. 302.002.	General Workforce Development Powers and Duties of Commission and Executive Director.....	177
Sec. 302.0025.	Employment Plan and Postemployment Strategies.....	179
Sec. 302.0026.	Employment Services Referral Program.....	179
Sec. 302.0027.	Financial Literacy Training .....	180
Sec. 302.003.	Job Retention and Reemployment Assistance .....	180
Sec. 302.0031.	College Credit for Heroes Program .....	180
Sec. 302.0032.	Texas Fast Start Program.....	181
Sec. 302.0034.	Employment Assistance Program for Certain Families of Military Personnel.....	183
Sec. 302.0035.	Employment Assistance Program for Certain Parents .....	183
Sec. 302.0036.	Transportation Assistance.....	183
Sec. 302.0037.	Maximizing Federal Funds for Transportation Assistance .....	183
Sec. 302.0038.	Housing Resources for Certain Recipients of Financial Assistance and Certain Nonrecipient Parents .....	184
Sec. 302.004.	Funds for Job Training, Employment Services, Adult Education and Literacy Activities, and Child Care.....	184
Sec. 302.0041.	Child-Care Demonstration Project Grants .....	185
Sec. 302.0042.	Evaluation of Allocation Formulas for Child Care Development Funds .....	186
Sec. 302.0043.	Evaluation of Effectiveness of Subsidized Child Care Program .....	186
Sec. 302.0044.	Wage Tracking of TANF Choices Program Recipients .....	188
Sec. 302.0045.	Quality Initiatives by Commission .....	188
Sec. 302.0046.	Notice Regarding Termination of Certain Child-Care Services.....	188
Sec. 302.0047.	Electronic Validation of Child-Care Services and Attendance .....	189
Sec. 302.005.	Child-Care Training Center Pilot Programs.....	189
Sec. 302.006.	Professional Child-Care Training Scholarships, Bonuses, and Wage Supplementation .....	190
Sec. 302.007.	Report on Trade Adjustment Programs .....	192
Sec. 302.008.	Statewide Technology Workforce Campaign .....	192
Sec. 302.009.	Job Placement Incentive Program.....	192
Sec. 302.010.	Postemployment Services Guidelines .....	193
Sec. 302.011.	Postemployment Case Management and Mentoring.....	194
Sec. 302.012.	Monitoring of Employment History of Certain Former Recipients of Public Assistance .....	194
Sec. 302.013.	Local Workforce Development Board Advisory Committee.....	195
Sec. 302.014.	Employment Information for Secondary School Students.....	196
Sec. 302.015.	Provision of Employment Services to Certain Nonrecipient Parents .....	196
Sec. 302.016.	Rules Regarding Private Sector Prison Industries Programs .....	196
Sec. 302.017.	Peace Officer Employment Opportunity Internet Website .....	196
Sec. 302.019.	Occupational Shortage Study; Report.....	198
<i>Subchapter B.</i>	<i>Jurisdiction of Division of Workforce Development.....</i>	<i>198</i>
Sec. 302.021.	Consolidation of Workforce Development Programs .....	198
Sec. 302.022.	Client Accessibility.....	200
Sec. 302.023.	Delegation of Functions.....	200
<i>Subchapter C.</i>	<i>State-Local Planning; Local Workforce Development Boards.....</i>	<i>200</i>
Sec. 302.041.	State-Local Planning Process.....	200
Sec. 302.042.	Review of Local Plans; Recommendations.....	201
Sec. 302.043.	Training for Local Workforce Development Board Members .....	201
Sec. 302.044.	Outreach Activities .....	201
Sec. 302.045.	Sanctions Plan.....	201
Sec. 302.046.	Plan Regarding Lack of Service Providers .....	202
Sec. 302.047.	Flexibility Rating System for Commission Directives.....	202

Sec. 302.048.	Assessment of Local Workforce Development Board's Capacity to Oversee and Manage Local Funds and Delivery of Services .....	202
<i>Subchapter D.</i>	<i>Allocation of Funds; Block Grant Program</i> .....	203
Sec. 302.061.	Administration Funding.....	203
Sec. 302.062.	Block Grants to Local Workforce Development Areas .....	203
Sec. 302.063.	Waivers.....	205
Sec. 302.064.	Collaboration with Local Boards .....	205
Sec. 302.065.	Integration of Block Grant Programs and Workforce Services.....	205
<i>Subchapter E.</i>	<i>Workforce Development Evaluation System</i> .....	206
Sec. 302.081.	Maintenance and Operation of Workforce Development Evaluation System.....	206
Sec. 302.082.	Information and Data for Evaluation System.....	207
Sec. 302.083.	Analysis .....	207
Sec. 302.084.	Use by Texas Higher Education Coordinating Board.....	208
Sec. 302.085.	Use by Council and Workforce Development Board.....	208
Sec. 302.086.	Use of Evaluation System.....	208
<i>Subchapter F.</i>	<i>Employment and Training Investment Assessment</i> .....	208
Sec. 302.101.	Training Stabilization Fund .....	208
<i>Subchapter G.</i>	<i>Priority of Service In Job Training and Employment Assistance Programs</i> .....	209
Sec. 302.151.	Definitions .....	209
Sec. 302.152.	Priority Of Service Required .....	209
Sec. 302.153.	Participation In State-Funded Programs .....	209
Sec. 302.154.	Participation In Texas Veterans Commission Programs .....	210
CHAPTER 303.	SKILLS DEVELOPMENT FUND .....	210
Sec. 303.001.	Purpose; Definitions .....	210
Sec. 303.002.	Waiver .....	210
Sec. 303.003.	Skills Development Fund.....	211
Sec. 303.0035.	Use of Money in Holding Fund (General Revenue Account 5069) for Skills Development .....	213
Sec. 303.004.	Fund Review.....	213
Sec. 303.005.	Participation In Additional Programs; Application Requirements; Priority.....	213
Sec. 303.006.	Reporting Requirements .....	213
CHAPTER 304.	COUNSELING FOR DISPLACED HOMEOWNERS OR WORKERS .....	216
Sec. 304.001.	Definition.....	216
Sec. 304.002.	Job Counseling Program.....	216
Sec. 304.003.	Personnel; Office .....	217
Sec. 304.004.	Cooperation by State Agencies and Political Subdivisions.....	217
Sec. 304.005.	Home Ownership Counseling for Displaced Workers .....	217
CHAPTER 305.	TEXAS CAREER OPPORTUNITY GRANT PROGRAM .....	218
<i>Subchapter A.</i>	<i>General Provisions</i> .....	218
Sec. 305.001.	Purpose .....	218
Sec. 305.002.	Definitions .....	218
Sec. 305.003.	Memorandum of Understanding .....	218
<i>Subchapter B.</i>	<i>Grant Program</i> .....	218
Sec. 305.021.	Tuition Assistance Grant; Amount of Grant .....	218
Sec. 305.022.	Limitations on Grant Amount.....	219
Sec. 305.023.	Approval of Institutions.....	220
Sec. 305.024.	Qualified Education Programs .....	220
Sec. 305.025.	Nondiscrimination .....	220
Sec. 305.026.	Application; Eligibility for Grant.....	220
Sec. 305.027.	Payment of Grant.....	221
Sec. 305.028.	Adoption and Distribution of Rules .....	221
Sec. 305.029.	Annual Report.....	221
CHAPTER 306.	PROJECT RIO (REINTEGRATION OF OFFENDERS) .....	222
Sec. 306.001.	Definitions .....	222
Sec. 306.002.	Project RIO .....	222
Sec. 306.003.	Administration.....	222
Sec. 306.004.	Memorandum of Understanding--Adoption.....	222
Sec. 306.005.	Memorandum of Understanding--Contents .....	222
Sec. 306.006.	Project Director.....	223
Sec. 306.007.	Provision of Information on State Services for Ex-Offenders and Employers.....	224
Sec. 306.008.	Data Sharing .....	225
CHAPTER 307.	EMPLOYMENT SERVICE .....	226

## TABLE OF CONTENTS

Sec. 307.001.	Employment Service.....	226
Sec. 307.002.	Employment Services Agreements .....	226
Sec. 307.003.	Employment Service Financing.....	227
<b>CHAPTER 308.</b>	<b>TEXANS WORK PROGRAM .....</b>	<b>227</b>
Sec. 308.001.	Legislative Intent .....	227
Sec. 308.002.	Definitions .....	227
Sec. 308.003.	Texans Work Program .....	228
Sec. 308.004.	Training Courses; Approval.....	228
Sec. 308.005.	Powers and Duties of Commission and Division; Guidelines for Training Course Approval .....	228
Sec. 308.006.	Powers and Duties of Texas Department of Human Services .....	229
Sec. 308.007.	Rights and Duties of Participating Employer.....	229
Sec. 308.008.	Rights of Regular Employees .....	230
Sec. 308.009.	Rights and Duties of Participating Trainees.....	231
Sec. 308.010.	Account.....	231
Sec. 308.011.	Training Stipend .....	231
Sec. 308.012.	Report; Records .....	232
<b>CHAPTER 309.</b>	<b>SELF-SUFFICIENCY FUND .....</b>	<b>232</b>
Sec. 309.001.	Definitions .....	232
Sec. 309.002.	Self-Sufficiency Fund .....	233
Sec. 309.003.	Job-Training Programs .....	233
Sec. 309.004.	Rulemaking Authority .....	234
<b>CHAPTER 310.</b>	<b>CHILD-CARE RESOURCE AND REFERRAL NETWORK .....</b>	<b>234</b>
Sec. 310.001.	Definitions .....	234
Sec. 310.002.	Child-Care Resource and Referral Network .....	234
Sec. 310.003.	Statewide Child-Care Needs Assessment .....	235
Sec. 310.004.	Resource Services .....	235
Sec. 310.005.	Referral Services.....	235
Sec. 310.006.	Advertisement of Services .....	236
Sec. 310.007.	Collection of Child-Care Data .....	237
Sec. 310.008.	Rules .....	237
<b>CHAPTER 311.</b>	<b>VOLUNTARY WORKFORCE TRAINING FOR CERTAIN STUDENTS .....</b>	<b>237</b>
Sec. 311.001.	Definitions .....	237
Sec. 311.002.	Certification Standards .....	238
Sec. 311.003.	Certified Program Agreements .....	238
Sec. 311.004.	Rulemaking.....	240
Sec. 311.005.	Commission Duties; Local Workforce Development Boards .....	240
<b>CHAPTER 313.</b>	<b>REQUIREMENTS FOR PROVIDERS OF RELATIVE CHILDCARE .....</b>	<b>240</b>
Sec. 313.001.	Definitions .....	240
Sec. 313.002.	Location of Care .....	241
Sec. 313.003.	Listing as Family Home.....	242
Sec. 313.004.	Notice of Background and Criminal History Checks.....	242
Sec. 313.005.	Memorandum of Understanding .....	242
<b>CHAPTER 314.</b>	<b>TEXAS BACK TO WORK PROGRAM .....</b>	<b>242</b>
Sec. 314.001.	Definition.....	242
Sec. 314.002.	Initiative Established .....	242
Sec. 314.003.	Rules .....	244
<b>CHAPTER 315.</b>	<b>ADULT EDUCATION AND LITERACY PROGRAMS .....</b>	<b>244</b>
Sec. 315.001.	Definitions .....	244
Sec. 315.002.	Commission Duties.....	244
Sec. 315.003.	Provision of Adult Education Programs .....	245
Sec. 315.004.	Adult Education Assessment .....	245
Sec. 315.005.	Adult Education and Literacy Advisory Committee .....	245
Sec. 315.006.	State Funding.....	246
Sec. 315.007.	Performance Incentive Funding.....	247
Sec. 315.008.	Service Provider Contracts: Competitive Procurement Requirement .....	247



# TITLE 4. EMPLOYMENT SERVICES AND UNEMPLOYMENT

## SUBTITLE A. TEXAS UNEMPLOYMENT COMPENSATION ACT

### CHAPTER 201. UNEMPLOYMENT COMPENSATION ACT -- GENERAL PROVISIONS

#### Subchapter A. Short Title; Application of Sunset Act

##### Sec. 201.001. Short Title

This subtitle may be cited as the "Texas Unemployment Compensation Act."

#### Subchapter B. General Definitions

##### Sec. 201.011. General Definitions in This Subtitle

- (1) **"Base period"** means:
  - (A) the four consecutive completed calendar quarters, prescribed by the commission, in the five consecutive completed calendar quarters preceding the first day of an individual's benefit year; or
  - (B) for an individual precluded because of a medically verifiable injury or illness from working during a major part of a calendar quarter of the period that would otherwise be the individual's base period under Paragraph A, the first four calendar quarters of the five consecutive calendar quarters preceding the calendar quarter in which the illness began or the injury occurred if the individual files an initial claim for benefits not later than 24 months after the date on which the individual's injury or illness began or occurred

(NOTE: See Illustration on Page 148)

- (2) **"Benefit"** means the money payable under this subtitle to an individual because of the individual's unemployment.
- (3) **"Benefit amount"** means benefits an individual is entitled to receive for one benefit period of total unemployment.
- (4) **"Benefit period"** means the seven consecutive calendar days ending at midnight on Saturday and is the period for which entitlement to benefits is determined.
- (5) **"Benefit year"** means the 52 consecutive calendar weeks beginning with the week for which an individual files a valid initial claim for benefits.

- (6) **"Calendar quarter"** means a period of three consecutive calendar months ending on:
- (A) March 31, June 30, September 30, or December 31; or
  - (B) the dates prescribed by rule of the commission.
- (7) **"Chargeback"** means the benefits charged to an employer's account under Section 204.021.
- (8) **"Commission"** means the Texas Workforce Commission.
- (9) **"Compensation fund"** means the unemployment compensation fund.
- (10) **"Contribution"** means a tax payment under this subtitle to the compensation fund.
- (11) **"Employing unit"** means a person who, after January 1, 1936, has employed an individual to perform services for the person in this state.
- (12) **"Employment office"** means a free public employment office operated by this state or maintained as a part of a state-controlled system of public employment offices. The term includes a branch office.
- (13) **"Initial claim"** means a notice filed under Section 208.001(a) to establish a benefit year by an individual who does not have a benefit year in effect at the time the notice was filed.
- (14) **"Institution of higher education"** means:
- (A) a college or university in this state; or
  - (B) a public or other nonprofit educational institution that:
    - (i) admits as regular students only individuals with a certificate of graduation or equivalent credentials;
    - (ii) is legally authorized to provide an educational program beyond high school; and
    - (iii) provides an educational program:
      - (a) for which the institution awards a bachelor's or higher degree;
      - (b) that is acceptable for full credit toward a bachelor's or higher degree; or



- (c) that trains a student for the gainful practice of a recognized occupation.
- (15) **"Mail"** means the United States Postal Service or any other method approved by the commission to provide actual notice, including an electronic transfer system.
- (16) **"Reimbursement"** means a payment made in accordance with Chapter 205.
- (17) **"Reimbursing employer"** means an employer making payments in accordance with Chapter 205.
- (18) **"State"** means a state of the United States, Puerto Rico, the District of Columbia, or the Virgin Islands.
- (19) **"Taxed employer"** means an employer who pays a contribution under this subtitle.
- (20) **"Temporary employee"** means an individual employed by a temporary help firm for the purpose of being assigned to work for the clients of a temporary help firm.
- (21) **"Temporary help firm"** means a person who employs individuals for the purpose of assigning those individuals to work for the clients of the temporary help firm to support or supplement a client's work force during employee absences, temporary skill shortages, seasonal work loads, special assignments and projects, and other similar work situations.
- (22) **"United States"** includes, in a geographic context, each state.
- (23) **"Valid claim"** means a claim filed by an unemployed individual who has received the wages necessary to qualify for benefits.
- (24) **"Warrant"** means a written payment order or an electronic payment order that is a part of an electronic fund transfer system approved by the commission.
- (25) **"Week"** means seven consecutive calendar days as prescribed by the commission.
- (26) **"Indian tribe"** has the meaning assigned by Section 3306(u), Federal Unemployment Tax Act (26 U.S.C. Section 3306), as amended. A reference in this subtitle to an Indian tribe includes a tribal unit, a subdivision or subsidiary of an Indian tribe, and a business wholly owned by an Indian tribe.

**Sec. 201.012. Definition of Misconduct**

- (a) **"Misconduct"** means mismanagement of a position of employment by action or inaction, neglect that jeopardizes the life or property of another, intentional wrongdoing or malfeasance, intentional violation of a law, or violation of a policy or rule adopted to ensure the orderly work and the safety of employees.

- (b) The term "**misconduct**" does not include an act in response to an unconscionable act of an employer or superior.

## **Subchapter C. Definition of Employer**

### **Sec. 201.021. General Definition of Employer**

- (a) In this subtitle, "**employer**" means an employing unit that:
  - (1) paid wages of \$1,500 or more during a calendar quarter in the current or preceding calendar year; or
  - (2) employed at least one individual in employment for a portion of at least one day during 20 or more different calendar weeks of the current or preceding calendar year.
- (b) The definition provided by this section does not apply to an employing unit covered by Section 201.023 or to farm and ranch labor covered by Section 201.028.
- (c) An individual who performs a service in this state for an employing unit that maintains two or more separate establishments in this state is employed by a single employing unit for purposes of this subtitle.

### **Sec. 201.022. Effect of Business Acquisition**

In this subtitle, "**employer**" also means an individual or employing unit that acquires or otherwise receives, through any means, all or part of the organization, trade, business, or workforce of another that was an employer subject to this subtitle at the time of the acquisition.

### **Sec. 201.023. Tax-Exempt Nonprofit Organization**

In this subtitle, "**employer**" also means an employing unit that:

- (1) is a nonprofit organization under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3));
- (2) is exempt from income tax under Section 501(a), Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)); and
- (3) employed at least four individuals in employment for a portion of at least one day during 20 or more different calendar weeks during the current year or during the preceding calendar year.

**Sec. 201.024. Election to be Employer**

In this subtitle, "**employer**" also means an employing unit that has elected to become an employer under Section 205.001, 205.002, 206.002, or 206.003.

**Sec. 201.025. Employer Under Federal Law**

In this subtitle, "**employer**" also means:

- (1) an employing unit that is liable for the payment of taxes under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.) for the current calendar year; or
- (2) an employing unit that the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.) requires to be an employer under this subtitle as a condition for approval of this subtitle for full tax credit against the tax imposed by the Federal Unemployment Tax Act.

**Sec. 201.026. State; Political Subdivision**

In this subtitle, "**employer**" also means a state, a political subdivision of a state, or an instrumentality of a state or political subdivision of a state that is wholly owned by one or more states or political subdivisions of one or more states.

**Sec. 201.027. Employer of Domestic Service Worker**

- (a) In this subtitle, "**employer**" also means an employing unit that paid cash wages of \$1,000 or more during a calendar quarter in the current or preceding calendar year for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.
- (b) An employer subject to this section who is not otherwise considered an employer under this subtitle, annually, may report quarterly wages and pay contributions. An employer who elects to report wages and pay contributions under this section must make the election not later than December 31 of the year before the first calendar year reported.
- (c) Contributions paid as provided by Subsection (b) become due and are required to be reported and paid by each employer not later than January 31 with respect to wages for employment paid in the preceding calendar year. For a rate taking effect under Section 204.041(c) during the preceding calendar year, the commission shall estimate the rate, subject to a correction when a final computation is made as provided by Section 204.047(c).
- (d) An employer who elects to report wages and pay contributions annually shall file, on the request of the commission, reports at other times as necessary to adjudicate a claim or to establish wage credits.

- (e) With respect to an employer who reports wages and pays contributions annually under this section, any penalty or interest imposed on the employer shall be computed in the same manner as for other types of employment.
- (f) An election by an employer under this section is not revocable by the employer before the second anniversary of the date of the election.
- (g) An employer under this section is not an employer for wages paid for a service other than domestic service unless the employer is treated as an employer for that service under another provision of this subtitle.

**Sec. 201.028. Employer of Farm and Ranch Laborer**

- (a) In this subtitle, "**employer**" also means an employing unit that paid wages for, or employed individuals in, farm and ranch labor in accordance with this section, Section 201.047, or Section 204.009.
- (b) In this section, an employer shall not be treated as an employer for wages paid for a service other than service performed by:
  - (1) a seasonal worker employed on a truck farm, orchard, or vineyard;
  - (2) a farm and ranch laborer who is a migrant worker; or
  - (3) a seasonal worker who:
    - (A) works for a farmer, ranch operator, or labor agent who employs migrant workers; and
    - (B) does the same work at the same time and location as migrant workers.
- (c) Subsection (b) does not apply if the employer is an employer with respect to farm and ranch labor performed under Section 201.047(a)(4).

**Sec. 201.029. Temporary Help Firm**

For purposes of this subtitle, a temporary help firm is the employer of an individual employed by the firm as a temporary employee.

## **Sec. 201.030. Professional Employer Organization**

For the purposes of this subtitle, "professional employer organization" has the meaning assigned by Section 91.001.

## **Subchapter D. Definition of Employment**

### **Sec. 201.041. General Definition of Employment**

In this subtitle, "**employment**" means a service, including service in interstate commerce, performed by an individual for wages or under an express or implied contract of hire, unless it is shown to the satisfaction of the commission that the individual's performance of the service has been and will continue to be free from control or direction under the contract and in fact.

### **Sec. 201.042. Service of Driver or Salesman**

In this subtitle, "**employment**" includes service:

- (1) as an agent-driver or commission-driver who delivers a meat product, vegetable product, fruit product, bakery product, laundry, dry cleaning or beverage except milk, if:
  - (A) the service is performed for remuneration;
  - (B) the employment contract provides that the individual personally performs substantially all of the service;
  - (C) the individual performing the service does not have a substantial investment in a facility used in the performance of the service, other than in a facility for transportation; and
  - (D) the service is part of a continuing relationship with the principal and is not a single transaction; or
- (2) of a traveling or city salesman, except as provided in Section 201.070, an agent-driver, or a commission-driver, who, on a full-time basis, obtains for the individual's principal, except for sideline sales activities for another person, orders from a wholesaler, retailer, contractor, or operator of a hotel, restaurant, or similar establishment for merchandise for resale or supplies for use in the business's operation if:
  - (A) the employment contract provides that the individual personally performs substantially all of the service;

- (B) the individual does not have a substantial investment in a facility used in the performance of the service, except a facility for transportation; and
- (C) the service is part of a continuing relationship with the principal and is not a single transaction.

**Sec. 201.043. Location of Service**

- (a) In this subtitle, "**employment**" includes service performed in this state or in and outside this state if:
  - (1) the service is localized in this state; or
  - (2) the service is not localized in any state and some of the service is performed in this state and:
    - (A) the base of operations is in this state, or there is no base of operations, but the service is directed or controlled from this state; or
    - (B) the base of operations or place from which service is directed or controlled is not in a state in which a part of the service is performed, and residence of the person who performs the service is in this state.
- (b) In this subtitle, "**employment**" includes service performed anywhere in the United States, including service performed entirely outside this state, if:
  - (1) the service is not localized in a state;
  - (2) the service is performed by an individual who is one of a class of employees who are required to travel outside this state in performance of their duties; and
  - (3) the individual's base of operations is in this state or, if there is no base of operations, the individual's service is directed or controlled from this state.
- (c) In this subtitle, "**employment**" includes service performed entirely outside this state that is not included as employment under Subsection (b) or Section 201.045 and for which contributions are not required and paid under an unemployment compensation law of another state if:
  - (1) the individual performing the service is a resident of this state; and
  - (2) the commission approves the election of the employing unit for which the individual performs the service that the entire service of the individual is employment under this subtitle.

- (d) In this subtitle, "**employment**" includes service performed after 1971 outside the United States by a citizen of the United States as an employee of an American employer, if:
- (1) the service was not performed in a contiguous country with which the United States has an agreement relating to unemployment compensation;
  - (2) the service is not considered employment under Subsection (b) or (c) or Section 201.044 or 201.045 or the parallel provisions of another state's law; and
  - (3) the employer:
    - (A) has its principal place of business in the United States in this state;
    - (B) does not have a place of business in the United States and is:
      - (i) an individual who is a resident of this state;
      - (ii) a corporation that is organized under the laws of this state; or
      - (iii) a partnership or a trust and the number of partners or trustees who are residents of this state is greater than the number who are residents of any one other state;
    - (C) has elected coverage in this state; or
    - (D) has failed to elect coverage in any state and the individual has filed a claim for benefits based on the service under the laws of this state.
- (e) In this section, "**American employer**" means:
- (1) an individual who is a resident of the United States;
  - (2) a partnership, if two-thirds or more of the partners are residents of the United States;
  - (3) a trust, if all of the trustees are residents of the United States; or
  - (4) a corporation organized under the laws of the United States or of a state.
- (f) For the purposes of Subsection (b), service is localized in a state if the service is performed entirely within the state or the service performed outside the state is incidental to the service performed in the state. In this section, a service that is "**incidental**" includes a service that is temporary or that consists of isolated transactions.
- (g) If this state is the state of jurisdiction for services covered as employment under Subsection (d), the employer shall so notify its employees.

**Sec. 201.044. Service Under Reciprocal Agreement**

In this subtitle, "**employment**" includes service that is performed by an individual and that is covered by a reciprocal agreement under this subtitle between the commission and the agency that administers another state's or a federal unemployment compensation law if:

- (1) under the agreement all service performed by the individual for an employing unit is considered to be performed entirely in this state; and
- (2) the commission approves an election of the employing unit for whom the service is performed under which the entire service of the individual is considered employment subject to this subtitle during the period covered by the election.

**Sec. 201.045. Service on Vessel or Aircraft**

In this subtitle, "**employment**" includes service performed on or in connection with an American vessel or aircraft if:

- (1) the service is employment under Section 3306(c), Internal Revenue Code of 1986 (26 U.S.C. Section 3306(c)); and
- (2) the operating office from which the vessel or aircraft is ordinarily and regularly directed and controlled is in this state.

**Sec. 201.046. Employment to Assist Employee or Agent**

- (a) An individual employed to perform or to assist in performing the work of an employee or agent of an employing unit is employed by that employing unit for purposes of this subtitle if the employing unit has actual or constructive knowledge of the work.
- (b) Subsection (a) applies without regard to whether the individual is hired or paid directly by the employing unit or by the employee or agent.

**Sec. 201.047. Farm and Ranch Labor as Employment**

- (a) Farm and ranch labor is employment for the purposes of this subtitle if the labor:
  - (1) is performed by a seasonal worker employed on a truck farm, orchard, or vineyard;
  - (2) is performed by a migrant worker;
  - (3) is performed by a seasonal worker who:
    - (A) is working for a farmer, ranch operator, or labor agent who employs a migrant worker; and



- (B) is doing the same work at the same time and location as the migrant worker;
- (4) performed after 1986 and the laborer is employed by an employing unit that:
  - (A) pays wages in cash of \$6,250 or more for the labor during a calendar quarter in the calendar year in which the labor is performed or the calendar year preceding that year; or
  - (B) employs three or more individuals in farm and ranch labor for a portion of at least one day during at least 20 different calendar weeks of the calendar year in which the labor is performed or the calendar year preceding that year.
- (b) Wages paid for services described in Subdivision (a)(1), (2), or (3) are included in determining the wages paid for the purpose of Subdivision (a)(4).

**Sec. 201.048. Service for Indian Tribe**

Except as provided by Sections 201.063 and 201.067, in this subtitle, "**employment**" includes service performed in the employ of an Indian tribe if the services are excluded from the definition of employment under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.), as amended, solely because of Section 3306(c)(7) of that Act.

**Subchapter E. Exceptions to Employment**

**Sec. 201.061. Service Eligible Under Act of Congress**

In this subtitle, "**employment**" does not include service for which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress.

**Sec. 201.062. Service Under Arrangement with Agency**

In this subtitle, "**employment**" does not include service under an arrangement that is between the commission and the agency that administers another state's or a federal unemployment compensation law and that considers the service for an employing unit during the period covered by the employing unit's approved election to be performed entirely within the agency's state or under the federal law.

**Sec. 201.063. Certain Government Service**

- (a) In this subtitle, "**employment**" does not include:
  - (1) service in the employ of a political subdivision or of an instrumentality of a political subdivision that is wholly owned by one or more political subdivisions:
    - (A) as an elected official;

- (B) as a member of a legislative body;
  - (C) as a member of the judiciary;
  - (D) as a temporary employee in case of fire, storm, snow, earthquake, flood, or similar emergency;
  - (E) in a position that is designated under law as a major nontenured policy-making or advisory position or a policy-making or advisory position that ordinarily does not require more than eight hours of service each week; or
  - (F) as an election official or worker if the remuneration received by the individual during the calendar year is less than \$1,000;
- (2) service in the employ of a foreign government, including service as a consular or other officer or employee or as a nondiplomatic representative;
  - (3) service in the employ of an instrumentality wholly owned by a foreign government if:
    - (A) the service is similar to service performed in a foreign country by an employee of the United States government or an instrumentality of that government; and
    - (B) the United States secretary of state has certified to the United States secretary of the treasury that the foreign government grants an equivalent exemption for similar services performed in the foreign country by an employee of the United States government or an instrumentality of the United States government;
  - (4) service in the employ of the United States government or an instrumentality of the United States exempt under the United States Constitution from the contributions imposed by this subtitle; or
  - (5) service described by Subdivisions (1)-(3) performed in the employ of an Indian tribe.
- (b) To the extent the United States Congress permits a state to require an instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation law, this subtitle applies to the instrumentality and to the service performed for the instrumentality.

**Sec. 201.064. Domestic Service**

In this subtitle, "**employment**" does not include domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as performed for an employer under Section 201.027.

**Sec. 201.065. Service by Relative**

In this subtitle, "**employment**" does not include:

- (1) service of an individual in the employ of the individual's son, daughter, or spouse; or
- (2) service of an individual younger than 21 years of age in the employ of the individual's father or mother.

**Sec. 201.066. Religious Service**

In this subtitle, "**employment**" does not include:

- (1) service in the employ of:
  - (A) a church;
  - (B) a convention or association of churches; or
  - (C) an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or a convention or association of churches;
- (2) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the individual's ministry; or
- (3) service performed by a member of a religious order as required by the order.

**Sec. 201.067. Rehabilitative Service; Work Relief; Exception for Services Performed by Certain Blind Individuals**

(a) In this subtitle, "**employment**" does not include service performed by an individual who:

- (1) receives rehabilitative work or paying work in the employ of a facility that:
  - (A) is conducted to carry out a program of rehabilitation for individuals whose earning capacity is impaired by:
    - (i) age;
    - (ii) physical impairment, other than blindness; or
    - (iii) mental deficiency or injury; or
  - (B) provides paying work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

- (2) is blind while the individual is in training at a sheltered workshop operated by a charitable organization under a rehabilitation program that includes:
    - (A) an individual plan for employment as required by 29 U.S.C. Section 722, as amended;
    - (B) a timeline for completion of the training; and
    - (C) a planned employment outcome; or
  - (3) receives work relief or work training as a part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, an agency of a state, a political subdivision of a state, or an Indian tribe.
- (b) Notwithstanding Subsection (a), in this subtitle **"employment"** includes service performed by an individual who is blind and who, after training, is working for a sheltered workshop operated by a charitable organization:
- (1) temporarily while awaiting placement in a position of employment in the competitive labor market; or
  - (2) permanently because the individual is unable to compete in the competitive labor market.

**Sec. 201.068. Service in Hospital**

In this subtitle, **"employment"** does not include:

- (1) service as a student nurse who is:
  - (A) employed by a hospital or a nurses' training school; and
  - (B) enrolled and regularly attending classes in a nurses' training school chartered or approved under state law;
- (2) service as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved under state law; or
- (3) service in the employ of a hospital by a patient of the hospital.

**Sec. 201.069. Service of Student**

In this subtitle, **"employment"** does not include:

- (1) service performed in the employ of a school, college, or university by a student who is enrolled and regularly attending classes at the school, college, or university;

- (2) service performed by an individual who is enrolled as a student in a full-time program that combines academic instruction with work experience and that is taken for credit at a nonprofit or public educational institution normally maintaining a regular faculty and curriculum and having a regularly organized body of students in attendance at the place where its educational activities are conducted, if the service is an integral part of the program, and the institution has so certified to the employing unit, except:
  - (A) service performed in a program established for an employer or a group of employers;
  - (B) service in an apprenticeship training program; or
  - (C) service performed by a teaching assistant; or
- (3) service by a student in the employ of an organized camp if:
  - (A) the camp:
    - (i) did not operate for more than seven months in the current calendar year and did not operate for more than seven months in the preceding calendar year; or
    - (ii) had average gross receipts for any six months in the preceding calendar year that were not more than 33-1/3 percent of its average gross receipts for the other six months in the preceding calendar year; and
  - (B) the student performed services for the camp for fewer than 13 calendar weeks in the calendar year and the student:
    - (i) is enrolled as a full-time student at an educational institution; or
    - (ii) is between academic terms or years and:
      - (a) the student was enrolled as a full-time student at an educational institution for the preceding academic term or year; and
      - (b) there is reasonable assurance that the student will be so enrolled for the next academic term or year.

**Sec. 201.070. Service as Product Demonstrator; Salesman**

In this subtitle, "**employment**" does not include:

- (1) service by an individual as a product demonstrator if:
  - (A) the service is performed under a written contract between the individual performing the service and a person whose principal business is obtaining the service of a demonstrator for a third person for product demonstration purposes; and
  - (B) in contract and in fact the individual:
    - (i) is not treated as an employee with respect to that service for federal unemployment tax purposes;
    - (ii) is compensated for each demonstration or is compensated based on factors that relate to the work performed;
    - (iii) determines the method of performing the service;
    - (iv) provides each vehicle used to perform the service;
    - (v) is responsible for the completion of a specific job and is liable for failure to complete the job;
    - (vi) may accept or reject a job from a product demonstrator business;
    - (vii) is free from control by the principal business as to where the individual works;
    - (viii) controls solely opportunity for profit or loss; and
    - (ix) pays all expenses and operating costs, including fuel, repairs, supplies, and motor vehicle insurance;
- (2) service by an individual as a direct seller if:
  - (A) the individual is engaged in the business of:
    - (i) in-person sales of consumer products to a buyer on a buy-sell basis, a deposit-commission basis, or a similar basis for resale in a home or in a place other than, and not affiliated with, a permanent retail establishment; or

- (ii) sales of consumer products in a home or in a place other than, and not affiliated with, a permanent retail establishment;
  - (B) substantially all remuneration for the service, whether in cash or other form of payment, is directly related to sales or other output, including the performance of the service, and not to the number of hours worked; and
  - (C) the service is performed under a written contract between the individual and the person for whom the service is performed, and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes; or
- (3) service performed by an individual at a trade market for a wholesaler or sales representative of a wholesaler or manufacturer of consumer goods under a written contract, or as a salesman for a wholesaler of consumer goods, if the wholesaler or sales representative maintains a regular or seasonal place of business at a trade market facility in a municipality with a population of more than one million.

**Sec. 201.071. Service as Insurance Agent**

In this subtitle, "**employment**" does not include service as an insurance agent for which the only remuneration for the service is a commission.

**Sec. 201.072. Service as Real Estate Broker**

In this subtitle, "**employment**" does not include:

- (1) service performed by an individual as a real estate broker or salesperson if:
  - (A) the individual engages in activity described by the definition of "**broker**" in Section 1101.002, Occupations Code;
  - (B) the individual is licensed as a broker or salesperson by the Texas Real Estate Commission;
  - (C) substantially all remuneration for the service, whether in cash or other form of payment, is directly related to sales or other output, including the performance of the service, and not to the number of hours worked; and
  - (D) the service is performed under a written contract between the individual and the person for whom the service is performed, and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes; or

- (2) service performed by an individual as an instructor of a person licensed or seeking a license as a real estate broker or salesperson if:
  - (A) the individual instructs in an educational program or course approved by the Texas Real Estate Commission; and;
  - (B) the service performed under a written contract between the individual and the person for whom the service is performed and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes.

**Sec. 201.073. Delivery Service; Newspaper Delivery Service**

In this subtitle, "**employment**" does not include:

- (1) service performed for compensation by an individual for a private for-profit delivery service if the individual:
  - (A) may accept or reject a job from the delivery service;
  - (B) is free from control by the delivery service as to when the individual works;
  - (C) is compensated for each delivery or is compensated based on factors relating to the work performed, including receipt of a percentage of a rate schedule;
  - (D) controls solely the opportunity for profit or loss;
  - (E) pays all expenses and operating costs, including fuel, repairs, supplies, and motor vehicle insurance;
  - (F) determines the method of performing the service, including selection of routes and order of deliveries;
  - (G) is responsible for completion of a specific job and is liable for failure to complete the job;
  - (H) enters into a contract that specifies the relationship of the individual to the delivery service to be that of an independent contractor and not an employee; and
  - (I) provides the vehicle used to perform the service; or
- (2) service by an individual younger than 18 years of age in the delivery or distribution of newspapers or shopping news, except delivery or distribution to any location for subsequent delivery or distribution.



**Sec. 201.074. Service by Inmate**

In this subtitle, "**employment**" does not include service performed by an inmate of a custodial or penal institution.

**Sec. 201.075. Service on Fishing Vessel**

In this subtitle, "**employment**" does not include service performed on a fishing vessel normally having a crew of fewer than 10 members if:

- (1) the crew member's payment is a share of the catch; and
- (2) the service is not employment under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.).

**Sec. 201.076. Included and Excluded Service in Pay Period**

- (a) All of the service of an individual performed during a pay period for a person employing the individual is employment if the service performed during one-half or more of the period is employment.
- (b) None of the service of an individual performed during a pay period for a person employing the individual is employment if the service performed during more than one-half of the pay period is not employment.
- (c) This section does not apply to service performed in a pay period by an individual for a person employing the individual that is service that does not constitute employment under Section 201.061.
- (d) In this section, "**pay period**" means the period, not to exceed 31 consecutive days, for which a person employing an individual ordinarily pays wages to the individual.

**Sec. 201.077. Service By Landman**

In this subtitle, "**employment**" does not include service performed for a private for-profit person by an individual as a landman if:

- (1) the individual is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or negotiating business agreements that provide for the exploration for or development of minerals;
- (2) substantially all remuneration, paid in cash or otherwise, for the performance of the service is directly related to the completion by the individual of the specific, contracted-for tasks, rather than to the number of hours worked by the individual; and

- (3) the service performed by the individual is performed under a written contract between the individual and the person for whom the service is performed that provides that the individual is to be treated as an independent contractor and not as an employee with respect to the service provided under the contract.

**Sec. 201.078. Service by Nonresident Alien Agricultural Worker**

In this subtitle, "employment" does not include service performed by a nonresident alien during the period that the alien is temporarily in the United States under an H2-A visa if the service is not defined as employment under the Federal Unemployment Tax Act (26 U.S.C. Section 3306(c)(19)).

**Subchapter F. Definition of Wages**

**Sec. 201.081. General Definition of Wages**

In this subtitle, "wages" means all remuneration for personal services, including:

- (1) the cash value of remuneration paid in a medium other than cash; and
- (2) a gratuity received by an employee in the course of employment to the extent that the gratuity is considered wages in the computation of taxes under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.).

**Sec. 201.082. Exceptions to Wages**

In this subtitle, "wages" does not include:

- (1) that part of the remuneration paid by an employer to an individual for employment during a calendar year that exceeds remuneration to the individual, excluding remuneration under another subdivision of this section, by the employer, of \$9,000;
- (2) a payment, including an amount the employer pays for insurance or an annuity or pays into a fund for the payment of insurance or an annuity, that is made to or for an employee or the employee's dependent under a plan the employer established for employees generally, or a class of employees, including or excluding the employee's dependents, for:
  - (A) retirement;
  - (B) sickness or accident disability;
  - (C) medical or hospitalization expenses in connection with sickness or accident disability; or
  - (D) expenses related to death;

- (3) a payment made to an individual employee for retirement, including an amount an employer pays for insurance or an annuity or pays into a fund for the payment of insurance or an annuity;
- (4) a payment for sickness or accident disability, or medical or hospitalization expenses for sickness or accident disability, an employer makes to or for an individual employee after the expiration of six calendar months after the last calendar month the employee worked for the employer;
- (5) a payment made to or for an employee or the employee's beneficiary:
  - (A) from or to a trust defined by Section 401(a), Internal Revenue Code of 1986 (26 U.S.C. Section 401(a)), that is exempt from tax under Section 501(a), Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)), at the time of payment, unless the payment is made to an employee of the trust as remuneration for service as an employee and not as a beneficiary of the trust; or
  - (B) under or to an annuity plan that, at the time of the payment, is a plan described by Section 403(a), Internal Revenue Code of 1986 (26 U.S.C. Section 403(a));
- (6) a tax an employer pays, without deduction from the remuneration of the employee, that is imposed on the employee under Section 3101, Internal Revenue Code of 1986 (26 U.S.C. Section 3101);
- (7) noncash remuneration paid to an employee for service not in the course of the employer's business;
- (8) a payment, except vacation or sick pay, made to an employee after the month the employee is 65 years of age, if the employee did not work for the employer in the period for which the payment is made; or
- (9) the part of remuneration from a single employer for services in a calendar year that exceeds the amount applicable to the year under Subdivision (1) for which contributions have been paid under a state unemployment law.

## **Subchapter G. Total and Partial Unemployment**

### **Sec. 201.091. Total and Partial Unemployment**

- (a) An individual is totally unemployed in a benefit period during which the individual does not perform services for wages in excess of the greater of:
  - (1) \$5; or

- (2) 25 percent of the benefit amount.
- (b) An individual is partially unemployed in a benefit period of less than full-time work if the individual's wages payable for that benefit period are less than the sum of:
  - (1) the benefit amount the individual would be entitled to receive if the individual was totally unemployed; and
  - (2) the greater of:
    - (A) \$5; or
    - (B) 25 percent of the benefit amount.
- (c) For purposes of this subtitle, an individual is considered unemployed if the individual is:
  - (1) totally unemployed as defined by Subsection (a); or
  - (2) partially unemployed as defined by Subsection (b).
- (d) Notwithstanding Subsection (b), an individual is not partially unemployed for purposes of this subtitle for a benefit period in which the individual's working hours are reduced by the individual's employer as a result of misconduct connected with the work on the part of the individual. Such limitation will be effective for a maximum of four weeks from the effective date of such a reduction in hours.
- (e) For purposes of this subtitle, an individual is not considered unemployed and is not eligible to receive benefits for any benefit period during which the individual works the individual's customary full-time hours, regardless of the amount of wages the individual earns during the benefit period.
- (f) For purposes of this subtitle, an individual who last worked for a temporary help firm is not considered to be unemployed until three business days have passed since the date the individual's last assignment ended.

## **Subchapter H. Conformity with Federal Statutes**

### **Sec. 201.101. Conformity with Federal Statutes**

If the United States secretary of labor holds that a provision of this subtitle does not conform with a federal statute, the commission may administer this subtitle to conform with the federal statute until the legislature meets in its next session and has an opportunity to amend this subtitle.

## CHAPTER 203. FINANCING AND FUNDS

### Subchapter A. General Provisions

#### Sec. 203.001. Definitions

In this chapter:

- (1) **"Administration fund"** means the unemployment compensation administration fund created under Section 203.151.
- (2) **"Federal trust fund"** means the unemployment trust fund created under Section 904, Social Security Act (42 U.S.C. Section 1104).
- (3) **"Special administration fund"** means the unemployment compensation special administration fund created under Section 203.201.

#### Sec. 203.002. Duties of Comptroller

- (a) The comptroller is treasurer and custodian of the compensation fund and the special administration fund and shall administer the funds in accordance with the directions of the commission.
- (b) The comptroller shall issue warrants on the compensation fund in accordance with rules adopted by the commission.
- (c) The comptroller shall issue warrants on the special administration fund in accordance with the directions of the commission.

#### Sec. 203.003. Comptroller's Bond Liability

The comptroller is liable on the comptroller's official bond for the faithful performance of the comptroller's duties under this subtitle in connection with the compensation fund, the administration fund, and the special administration fund. This liability is in addition to liability on any separate bond that the comptroller may give.

#### Sec. 203.004. Deposit of Funds; Exception

All money paid to the commission under this subtitle:

- (1) shall be deposited in the treasury unless:
  - (A) a state or federal law prohibits deposit in the treasury; or
  - (B) the deposit would result in the loss of any federal funds; and

- (2) may be used only for the administration of this subtitle.

**Sec. 203.005. Application of Other Law**

Money in the compensation fund, the administration fund, and the special administration fund shall be deposited, administered, and disbursed in the same manner and under the same requirements as provided by law for other special funds in the state treasury.

**Subchapter B. Unemployment Compensation Fund**

**Sec. 203.021. Unemployment Compensation Fund; Separate Accounts**

- (a) The unemployment compensation fund is a special fund.
- (b) The compensation fund consists of:
  - (1) contributions collected under this subtitle;
  - (2) interest earned on money in the compensation fund;
  - (3) property or securities acquired through the use of money in the compensation fund;
  - (4) earnings of property or securities described by Subdivision (3);
  - (5) amounts recovered for losses sustained by the compensation fund; and
  - (6) other money received for the compensation fund from any other source.
- (c) Money in the compensation fund shall be mingled and undivided.
- (d) The comptroller shall maintain in the compensation fund:
  - (1) a clearing account;
  - (2) a federal trust fund account; and
  - (3) a benefit account.
- (e) Money in the compensation fund may not be transferred to the:
  - (1) Texas Enterprise Fund created under Section 481.078, Government Code; or
  - (2) Texas emerging technology fund established under Section 490.101, Government Code.

**Sec. 203.022. Composition and Use of Clearing Account**

- (a) On receipt of any money payable to the compensation fund, the commission shall forward the money to the comptroller, who shall immediately deposit it in the clearing account.
- (b) Except as provided by Section 203.026, money in the clearing account, after it has cleared, shall be immediately deposited with the United States secretary of the treasury to the credit of this state's account in the federal trust fund. This section prevails over any conflicting state statute relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state.

**Sec. 203.023. Requisitions from Federal Trust Fund; Benefit Account**

- (a) The commission periodically shall requisition from the federal trust fund amounts the commission considers necessary for the payment of benefits and refunds for a reasonable period. The commission may not requisition an amount exceeding the balance of this state's account in the federal trust fund.
- (b) The benefit account is composed of money requisitioned from this state's account in the federal trust fund.
- (c) On receipt of money requisitioned from the federal trust fund, the comptroller shall deposit it in the benefit account.

**Sec. 203.024. Deposits**

- (a) Except as otherwise provided by this subchapter, the comptroller, under the direction of the commission, may deposit money credited to the clearing and benefit accounts in a bank or public depository in which general funds of this state may be deposited.
- (b) A public deposit insurance charge or premium may not be paid out of the compensation fund.

**Sec. 203.025. Use of Requisitioned Money**

- (a) The commission shall direct the administration of the compensation fund exclusively for the purposes of this subtitle.
- (b) Money requisitioned from this state's account in the federal trust fund may be used only for the payment of benefits or for refunds as provided by Sections 203.023, 203.026, 203.027, and 203.203 and by Subchapter B, Chapter 210, and Subchapter E, Chapter 213, except that money credited to this state's account as provided by Section 903, Social Security Act (42 U.S.C. Section 1103), may be requisitioned and used by the commission only to the extent and under the conditions prescribed by that section.

- (c) Notwithstanding Subsections (a) and (b) or any other provision of this subtitle or other law, the commission, under an agreement with or waiver by the United States secretary of labor, may use money requisitioned from this state's account in the federal trust fund to conduct demonstration projects for the reemployment of unemployed individuals in the manner prescribed by that agreement or waiver and consistent with any applicable requirements under federal law. The commission shall provide to the legislative standing committees with primary jurisdiction over the commission any evaluation reports required by the United States Department of Labor for a reemployment demonstration project.

**Sec. 203.026. Accounts From Which Benefits and Refunds are Paid**

- (a) The comptroller may issue a warrant for a benefit only from the benefit account.
- (b) As directed by the commission, the comptroller may issue a warrant for a refund as provided by Subchapter E, Chapter 213, from the benefit account or the clearing account.
- (c) An expenditure from the benefit account or a refund from the clearing account is not subject to a law that requires itemization or other formal release by a state officer of money in the officer's custody.

**Sec. 203.027. Unexpended Balance of Benefit Account**

Money requisitioned from the federal trust fund that remains unclaimed or unpaid in the benefit account after the end of the period for which the money was requisitioned shall be, in the commission's discretion:

- (1) deducted from an estimate for the succeeding periods and used to pay benefits and refunds in those periods; or
- (2) redeposited in the federal trust fund as provided by Section 203.022.

**Sec. 203.028. Solvency of Compensation Fund; Reserve**

- (a) If the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the compensation fund, it shall inform the governor and legislature of its belief and when the change will become necessary and shall make recommendations for the necessary change.
- (b) The commission, if possible, shall maintain in the compensation fund a reserve against the liability to pay benefits in future years in excess of current contributions. The commission shall create the reserve according to accepted actuarial principles using statistics of employment, business activity, and other relevant factors for the longest possible period.



**Sec. 203.029. Refund of Contributions to Federal Instrumentality**

If this state is not certified for any year by the United States secretary of labor as required under Section 3304(c), Internal Revenue Code of 1986 (26 U.S.C. Section 3304(c)), the commission shall refund from the compensation fund a payment required of an instrumentality of the federal government for that year in the same manner and within the same period as provided by Subchapter E, Chapter 213, for contributions erroneously collected.

**Sec. 203.030. Reimbursement from or to Compensation Fund Under Reciprocal Arrangement**

- (a) The commission may reimburse a state or federal agency from the compensation fund or receive a reimbursement from a state or federal agency for the compensation fund under an arrangement under Section 211.003.
- (b) A reimbursement paid from the compensation fund under this section is a benefit for the purposes of this subtitle.

**Sec. 203.031. Nonliability of State**

Benefits are due and payable only to the extent money is available for that purpose in the compensation fund. Neither this state nor the commission is liable for any amount in excess of the amount in that fund.

**Sec. 203.032. Management of Compensation Fund on Discontinuance of Federal Trust Fund**

- (a) To the extent that a provision of this subchapter relates to the federal trust fund, the provision is operative only as long as:
  - (1) the federal trust fund exists; and
  - (2) the United States secretary of the treasury maintains for this state a separate book account of all funds deposited in the federal trust fund by this state for benefit purposes, with this state's proportionate share of the earnings of the federal trust fund, from which no other state is permitted to make withdrawals.
- (b) If the federal trust fund ceases to exist or the secretary of the treasury ceases to maintain a separate book account for this state in the federal trust fund, all money, property, or securities in the federal trust fund that belong to the compensation fund shall be transferred to the comptroller. The comptroller shall hold, invest, transfer, deposit, and release the money, property, or securities in a manner approved by the commission in accordance with this subtitle.
- (c) Money held by the comptroller under Subsection (b) shall be invested in readily marketable bonds or other interest-bearing obligations of the United States of America. The money shall

be invested in such a manner that the assets of the compensation fund are readily convertible at all times into cash as needed for the payment of benefits.

- (d) The comptroller may dispose of securities or other property belonging to the compensation fund only under the direction of the commission.

## **Subchapter C. Advances from Federal Trust Fund and Obligation Assessment**

### **Sec. 203.101. Limit on Application for Advance**

In any application for an advance from the federal trust fund (Section 1201, Social Security Act (42 U.S.C. Section 1321)), the governor shall limit the amount of the application to an amount that, when added to previous advances, does not exceed the amount for which principal and interest may be paid from taxes on employers.

### **Sec. 203.102. Obligation Trust Fund**

- (a) The obligation trust fund is a dedicated trust fund outside of the state treasury in the custody of the comptroller. The obligation trust fund is composed of:
  - (1) revenue received under Section 203.105; and
  - (2) any surplus revenue transferred from the compensation fund under Section 204.065.
- (b) The commission and governor may use money in the obligation trust fund without legislative appropriation to pay:
  - (1) bond obligations and bond administrative expenses; and
  - (2) principal and interest incurred on advances from the federal trust fund.

### **Sec. 203.104. Limitation on Transfer from Obligation Trust Fund to Compensation Fund**

An amount that is attributable to the portion of the unemployment obligation assessment authorized by Section 203.105(a)(2) may not be transferred to the compensation fund unless all bond obligations, including bond administrative expenses, have been fully paid and satisfied. After the obligations have been fully satisfied, the commission shall transfer the balance of the obligation trust fund to the compensation fund.

### **Sec. 203.105. Unemployment Obligation Assessment**

- (a) An unemployment obligation assessment shall be imposed as provided by this section if after January 1 of a year:

- (1) an interest payment on an advance from the federal trust fund will be due and the estimated amount necessary to make the interest payment is not available in the obligation trust fund or available otherwise; or
  - (2) bond obligations are due and the amount necessary to pay in full those obligations, including bond administrative expenses, is not available in the obligation trust fund or available otherwise.
- (b) The unemployment obligation assessment rate is the total of the amounts required to make the payments necessary under Subsections (a)(1) and (2). The commission shall set the unemployment obligation assessment rate in an amount sufficient to ensure timely payment of interest under Subsection (a)(1), but not exceeding two-tenths of one percent. The commission shall set the unemployment obligation assessment rate in an amount sufficient to ensure timely payment of the bond obligations, including administrative expenses, and to provide an amount necessary in the commission's judgment to enhance investor acceptance of the bonds. The rate shall be based on a formula prescribed by commission rule, using the employer's experience rating from the previous year. The unemployment obligation assessment rate applies to the same wage base to which the employer's unemployment tax applies for the year.
- (c) The unemployment obligation assessment is due at the same time, collected in the same manner, and subject to the same penalties and interest as other contributions assessed under this subtitle.
- (d) Revenue from the unemployment obligation assessment under this section shall be deposited to the credit of the obligation trust fund under Section 203.102.

## **Subchapter D. Administration Fund**

### **Sec. 203.151. Administration Fund**

- (a) The unemployment compensation administration fund is a special fund in the state treasury.
- (b) The administration fund consists of money:
- (1) appropriated to the administration fund by this state;
  - (2) received from the United States or any federal agency for the administration of this subtitle;
  - (3) collected by the commission as fees for furnishing photostatic or certified copies of commission records;
  - (4) collected by the commission as fees for conducting audits under the authority granted by this subtitle;

- (5) received from any federal agency or any agency of another state as compensation for services or facilities supplied to the agency;
- (6) received under any surety bond or insurance policy or from other sources:
  - (A) for losses sustained by the administration fund; or
  - (B) by reason of damage to equipment or supplies purchased with money in the administration fund;
- (7) received as proceeds from the sale or disposition of equipment or supplies that are no longer necessary for the proper administration of this subtitle, if the equipment or supplies were purchased with money in the administration fund; and
- (8) received from any other source for the administration of this subtitle.

**Sec. 203.152. Use of Administration Fund**

- (a) Money credited to the administration fund may be used by the commission as provided by this subtitle and may not be transferred to any other fund.
- (b) Money in the administration fund received from the federal government or a federal agency may be spent only for the purposes and in the amounts found necessary by the United States secretary of labor or that secretary's successor for the proper and efficient administration of this subtitle.

**Sec. 203.154. Reimbursement of Administration Fund**

- (a) If the United States secretary of labor or that secretary's successor finds that money received from the secretary or the secretary's successor under Title III of the Social Security Act (42 U.S.C. Section 501 et seq.) or any other federal money granted to the commission for the administration of this subtitle has been lost or spent for a purpose other than, or in an amount in excess of, that found necessary for the proper administration of this subtitle by the secretary or the secretary's successor, the money shall be replaced by money appropriated for that purpose from the general funds of this state to the administration fund for expenditure as provided by Section 203.152.
- (b) On receipt of notice that the secretary or the secretary's successor has made a determination described in Subsection (a), the commission shall promptly report the amount needed for reimbursement to the governor. The governor, at the earliest opportunity, shall submit to the legislature a request for the appropriation of that amount.

## **Subchapter E. Special Administration Fund**

### **Sec. 203.201. Special Administration Fund**

- (a) The unemployment compensation special administration fund is a special fund.
- (b) The special administration fund consists of:
  - (1) all interest and penalties collected under this subtitle, other than a penalty assessed under Section 214.003(a)(2); and
  - (2) any amounts received under any surety bond for losses sustained by the special administration fund.

### **Sec. 203.202. Use of Special Administration Fund**

- (a) Money in the special administration fund may be spent in accordance with this subtitle and may be used:
  - (1) to pay the cost of reimbursing the benefit account in the compensation fund for benefits paid to former employees of this state that are based on service for this state, and the cost of construction and purchase of buildings and land necessary for that administration;
  - (2) in the administration of Chapters 51, 61, and 62;
  - (3) for payment of interest on advances from the federal trust fund;
  - (4) as a revolving fund to cover expenditures that are necessary and proper under this subtitle and for which federal funds have been requested but not received, subject to the charging of the expenditures against the federal funds when received;
  - (5) to refund a penalty as provided by Section 203.203; and
  - (6) subject to the provisions of Chapter 2107, Government Code, to pay persons who contract with the commission to collect delinquent unemployment taxes, penalties, and interest owed under this subtitle.
- (b) Money in the special administration fund may not be spent in any manner that would permit its substitution for, or a corresponding reduction in, federal funds that would, in the absence of that money, be available to finance expenditures for the administration of this subtitle.
- (c) The commission by a resolution entered in its minutes may authorize to be charged against the special administration fund any expenditure the commission considers proper in the interest of good administration of this subtitle if the resolution states that no other funds are available for the expenditure.

### **Sec. 203.203. Refund of Penalties**

A refund under Subchapter E, Chapter 213, of a penalty that has been erroneously collected and deposited to the credit of the special administration fund shall be made, without interest, from the special administration fund.

## **Subchapter F. Issuance of Financial Obligations for Unemployment Compensation Fund**

### **Sec. 203.251. Findings and Purpose**

- (a) The legislature finds that:
- (1) it is an essential governmental function to maintain funds in an amount sufficient to pay unemployment benefits when due;
  - (2) at the time of the enactment of this subchapter, borrowing from the federal government was the only option available to obtain sufficient funds to pay benefits when the balance in the compensation fund is depleted;
  - (3) alternative methods of replenishing the unemployment compensation fund may reduce the costs of providing unemployment benefits and employers' cost of doing business in the state; and
  - (4) funds representing revenues received from the unemployment obligation assessment authorized under this subchapter and any income from the investment of those funds are not state property.
- (b) The purpose of this subchapter is to provide appropriate methods through which the state may continue the unemployment compensation program at the lowest possible cost to the state and employers in the state.

### **Sec. 203.252. Definitions; General Provision**

- (a) In this subchapter:
- (1) **"Authority"** means the Texas Public Finance Authority.
  - (2) **"Bond"** means any type of revenue obligation, including a bond, note, certificate, or other instrument, payable from and secured by a pledge of revenues received from the unemployment obligation assessment and amounts on deposit in the obligation trust fund to the extent provided in the proceedings authorizing the obligation.
  - (3) **"Bond administrative expenses"** means expenses incurred to administer bonds issued under this subchapter, including fees for paying agents, trustees, and

attorneys, and for other professional services necessary to ensure compliance with applicable state or federal law.

- (4) **"Bond obligations"** means the principal of a bond and any premium and interest on a bond issued under this subchapter, together with any amount owed under a related credit agreement.
  - (5) **"Credit agreement"** means a loan agreement, a revolving credit agreement, an agreement establishing a line of credit, a letter of credit, an interest rate swap agreement, an interest rate lock agreement, a currency swap agreement, a forward payment conversion agreement, an agreement to provide payments based on levels of or changes in interest rates or currency exchange rates, an agreement to exchange cash flows or a series of payments, an option, put, or call to hedge payment, currency, interest rate, or other exposure, or another agreement that enhances the marketability, security, or creditworthiness of a bond issued under this subchapter.
- (b) An amount owed by the authority under a credit agreement shall be payable from and secured by a pledge of revenues received from the unemployment obligation assessment and amounts on deposit in the obligation trust fund to the extent provided in the proceedings authorizing the credit agreement.

#### **Sec. 203.253. Request for Bond Issuance**

- (a) If the commission determines that the issuance of bonds is necessary to reduce or avoid the need to borrow or obtain a federal advance under Section 1201, Social Security Act (42 U.S.C. Section 1321), as amended, or any similar federal law, or to refinance a previous loan or advance received by the commission and that bond financing is the most cost-effective method of funding the payment of benefits, the commission may request the authority to issue bonds on its behalf. Before making a request of the authority under this subsection, the commission must by resolution determine that the issuance of bonds for the purposes established by this section will result in a savings to the state and to employers in this state as compared to the cost of borrowing or obtaining an advance under Section 1201, Social Security Act (42 U.S.C. Section 1321), as amended, or any similar federal law.
- (b) The commission shall specify in the commission's request to the authority the maximum principal amount of the bonds, not to exceed \$2 billion for any separate bond issue, and the maximum term of the bonds, not to exceed 10 years.
- (c) The principal amount determined by the commission under Subsection (b) may be increased to include an amount sufficient to:
  - (1) pay the costs of issuance of the authority;
  - (2) provide a bond reserve fund; and

- (3) capitalize interest for the period determined necessary by the commission, not to exceed two years.

**Sec. 203.254. Issuance of Bonds by Authority**

- (a) The authority shall issue bonds on request by the commission, in accordance with the requirements of Chapter 1232, Government Code, and other provisions of Title 9, Government Code, that apply to bond issuance by a state agency.
- (b) The authority shall determine the method of sale, type of bond, bond form, maximum interest rates, and other terms of the bonds that, in the authority's judgment, best achieve the economic goals of the commission and effect the borrowing at the lowest practicable cost.
- (c) The authority may enter into a credit agreement in connection with the bonds.

**Sec. 203.255. Bond Proceeds**

- (a) The proceeds of bonds issued by the authority under this subchapter may be deposited with a trustee selected by the authority and the commission or held by the comptroller in a dedicated trust fund outside the state treasury in the custody of the comptroller.
- (b) Bond proceeds, including investment income, shall be held in trust for the exclusive use and benefit of the commission. The commission may use the proceeds to:
  - (1) repay the principal and interest of previous advances from the federal trust fund;
  - (2) pay unemployment benefits by depositing the proceeds in the unemployment compensation fund, as defined in Subchapter B;
  - (3) pay the costs of issuing the bonds;
  - (4) provide a bond reserve; and
  - (5) pay capitalized interest on the bonds for the period determined necessary by the commission, not to exceed two years.
- (c) Any excess money remaining after the purposes for which the bonds were issued is satisfied may be used to purchase or redeem outstanding bonds.



- (d) If there are no outstanding bonds or bond interest to be paid, the remaining proceeds shall be transferred to the unemployment compensation fund.

**Sec. 203.256. Repayment of Commission's Financial Obligations**

- (a) The commission shall assess an unemployment obligation assessment annually on each employer entitled to an experience rating under Chapter 204 if any bonds issued under this subchapter are outstanding.
- (b) With regard to outstanding bonds issued by the authority under this subchapter, the authority shall notify the commission of the amount of the bond obligations and the estimated amount of bond administrative expenses each year in sufficient time, as determined by the commission, to permit the commission to assess the annual rate of the unemployment obligation assessment, subject to verification by a financial advisor of the commission or as otherwise specified in the proceedings authorizing the bonds.
- (c) The commission shall deposit all revenue collected from the unemployment obligation assessment into the obligation trust fund. Money deposited in the fund may be invested as permitted by general law. Money in the obligation trust fund required to be used to pay bond obligations and bond administrative expenses shall be transferred to the authority or used by the commission in the manner and at the time specified in the resolution adopted in connection with the bond issue to ensure timely payment of obligations and expenses, or as otherwise provided by the bond documents.
- (d) For bonds issued by the authority for the commission, the commission shall provide for the payment of the bond obligations and the bond administrative expenses by irrevocably pledging revenues received from the unemployment obligation assessment and amounts on deposit in the obligation trust fund, together with any bond reserve fund, as provided in the proceedings authorizing the bonds and related credit agreements.

**Sec. 203.257. Bond Payments**

- (a) Revenues received from the unemployment obligation assessment may be applied only as provided by this subchapter.
- (b) The commission may pay bond obligations with other legally available funds.

- (c) Bond obligations are payable only from sources provided for payment in this subchapter.

**Sec. 203.258. Excess Revenue Collections and Investment Earnings**

Revenue collected from the unemployment obligation assessment in any year that exceeds the amount of the bond obligations and bond administrative expenses payable in that year and interest earned on the obligation trust fund may, in the discretion of the commission, be:

- (1) used to pay bond obligations payable in the subsequent year, offsetting the amount of the assessment that would otherwise have to be levied for the year under this subchapter;
- (2) used to redeem or purchase outstanding bonds;
- (3) deposited in the unemployment compensation fund; or
- (4) used to pay principal and interest on advances from the federal trust fund.

**Sec. 203.259. State Debt Not Created**

- (a) A bond issued under this subchapter, and any related credit agreement, is not a debt of the state or any state agency or political subdivision of the state and is not a pledge of the faith and credit of any of them. A bond or credit agreement is payable solely from revenue as provided by this subchapter.
- (b) A bond, and any related credit agreement, issued under this chapter must contain on its face a statement to the effect that:
  - (1) neither the state nor a state agency, political corporation, or political subdivision of the state is obligated to pay the principal of or interest on the bond except as provided by this subchapter; and
  - (2) neither the faith and credit nor the taxing power of the state or any state agency, political corporation, or political subdivision of the state is pledged to the payment of the principal of or interest on the bond.

**Sec. 203.260. State Not to Impair Bond Obligations**

If bonds under this subchapter are outstanding, the state may not:

- (1) take action to limit or restrict the rights of the commission to fulfill its responsibility to pay bond obligations; or
- (2) in any way impair the rights and remedies of the bond owners until the bonds are fully discharged.

**Sec. 203.261. Exemption from Taxation**

A bond issued under this subchapter, any transaction relating to the bond, and profits made from the sale of the bond are exempt from taxation by this state or by a municipality or other political subdivision of this state.

**Sec. 203.262. No Personal Liability**

The members of the commission, commission employees, the board of directors of the authority, and the employees of the authority are not personally liable as a result of exercising the rights and responsibilities granted under this subchapter.

**CHAPTER 204. CONTRIBUTIONS**

**Subchapter A. General Provisions**

**Sec. 204.001. Definition**

In this chapter, "manual" means the North American Industrial Classification System Manual published by the United States Office of Management and Budget.

**Sec. 204.002. Contribution Required**

- (a) An employer shall pay a contribution on wages for employment paid during a calendar year or the portion of the calendar year in which the employer is subject to this subtitle.
- (b) The contribution shall be paid to the commission in accordance with rules adopted by the commission.

**Sec. 204.003. Contribution Not Deducted from Wages**

An employer may not deduct any part of a contribution from the wages of an individual in the employer's employ.

**Sec. 204.004. Assignment to Major Group**

The commission shall assign each employer to a major group in accordance with the definitions contained in the manual.

**Sec. 204.005. Establishment of Major Group Contribution Rate**

- (a) For each calendar year, the commission shall establish by industry an average contribution rate for each major group.

- (b) The commission shall determine the year's contribution rate for an industry by averaging the contribution rates paid by employers in that industry during the preceding year ending on September 30, as shown by the employment records maintained by the commission.

**Sec. 204.006. Initial Contribution Rate**

- (a) A person's contribution rate for the calendar year in which the person becomes an employer is the greater of:
  - (1) the rate established for that year for the major group to which the employer is assigned under Section 204.004, less one-tenth of one percent; or
  - (2) two and six-tenths percent.
- (b) A rate established under Subsection (a) applies to the employer until the date the experience rate computed under Section 204.041 takes effect for the employer.

**Sec. 204.007. Special Rate; Certain Employers Engaged in Agriculture**

- (a) This section applies to an employer identified by the commission as classified in the manual as:
  - (1) Number 115114, crop preparation services for market; or
  - (2) Number 115111, cotton ginning.
- (b) An employer subject to this section shall pay a contribution at the lowest of the following rates:
  - (1) five and four-tenths percent;
  - (2) the general tax rate applicable to that employer, with the deficit tax rate and replenishment tax rate; or
  - (3) any other tax rate applicable to that employer under this subtitle.

**Sec. 204.008. Time Benefits Are Paid**

For the purpose of this chapter, benefits are paid at the time the claim for the benefits is certified by the commission to the comptroller for payment.

**Sec. 204.009. Application to Labor Agent**

- (a) A labor agent who furnishes a farm and ranch laborer is liable for the payment of a tax under this subtitle as if the labor agent were the employer of the laborer, without regard to any factor used to determine an employer-employee relationship, including the right of control.

- (b) If a labor agent does not pay the tax in accordance with this subtitle, a person who contracts with the labor agent for the services of a farm and ranch laborer is jointly and severally liable with the labor agent for payment of the tax under this subtitle as an employer.
- (c) A labor agent shall notify each person with whom the labor agent contracts whether the labor agent pays the tax under this subtitle.
- (d) A labor agent who pays the tax shall present evidence of payment to each person with whom the labor agent contracts.
- (e) In this section, "**labor agent**" means a person who is a farm labor contractor under the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Section 1801 et seq.).

#### **Sec. 204.010. Payment of Contributions by Indian Tribes**

An Indian tribe that is subject to this subtitle shall pay contributions under the same terms and conditions as any other subject employer unless the Indian tribe elects under Chapter 205 to make reimbursements for benefits instead of contributions.

### **Subchapter B. Chargebacks**

#### **Sec. 204.021. Chargebacks**

- (a) The amount of benefits paid to a claimant for a benefit year shall be charged to the accounts of each of the claimant's employers during the claimant's base period. The chargebacks of an employer for a calendar quarter are the benefits paid to all of the employer's employees or former employees during that quarter.
- (b) The chargeback of benefits of a claimant who has two or more employers during the claimant's base period is allocated among those employers according to the proportion of the total of the claimant's benefit wage credits paid during the base period by each employer.

#### **Sec. 204.022. Exclusions from Chargebacks**

- (a) Benefits computed on benefit wage credits of an employee or former employee may not be charged to the account of an employer if the employee's last separation from the employer's employment before the employee's benefit year:
  - (1) was required by a federal statute;
  - (2) was required by a statute of this state or an ordinance of a municipality of this state;
  - (3) would have disqualified the employee under Section 207.044, 207.045, 207.051, or 207.053 if the employment had been the employee's last work;
  - (4) imposes a disqualification under Section 207.044, 207.045, 207.051, or 207.053;

- (5) was caused by a medically verifiable illness of the employee or the employee's minor child;
- (6) was based on a natural disaster that results in a disaster declaration by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.), if the employee would have been entitled to unemployment assistance benefits under Section 410 of that act (42 U.S.C. Section 5177) had the employee not received state unemployment compensation benefits;
- (7) was caused by a natural disaster, fire, flood, or explosion that causes employees to be separated from one employer's employment;
- (8) was based on a disaster that results in a disaster declaration by the governor under Section 418.014, Government Code;
- (9) resulted from the employee's resigning from partial employment to accept other employment that the employee reasonably believed would increase the employee's weekly wage;
- (10) was caused by the employer being called to active military service in any branch of the United States armed forces on or after January 1, 2003;
- (11) resulted from the employee leaving the employee's workplace to protect the employee from family violence or stalking or the employee or a member of the employee's immediate family from violence related to a sexual assault as evidenced by:
  - (A) an active or recently issued protective order documenting sexual assault of the employee or a member of the employee's immediate family or family violence against, or the stalking of, the employee or the potential for family violence against, or the stalking of, the employee;
  - (B) a police record documenting sexual assault of the employee or a member of the employee's immediate family or family violence against, or the stalking of, the employee;
  - (C) a physician's statement or other medical documentation that describes the sexual assault of the employee or a member of the employee's immediate family or family violence against the employee that:
    - (i) is recorded in any form or medium that identifies the employee or member of the employee's family, as applicable, as the patient; and

- (ii) relates to the history, diagnosis, treatment, or prognosis of the patient; or
  - (D) written documentation from a family violence center or rape crisis center that describes the sexual assault of the employee or a member of the employee's immediate family or family violence against the employee;
- (12) resulted from a move from the area of the employee's employment that:
  - (A) was made with the employee's spouse who is a member of the armed forces of the United States; and
  - (B) resulted from the spouse's permanent change of station of longer than 120 days or a tour of duty of longer than one year;
- (13) was caused by the employee being unable to perform the work as a result of a disability for which the employee is receiving disability insurance benefits under 42 U.S.C. Section 423;
- (14) resulted from the employee leaving the employee's workplace to care for the employee's terminally ill spouse as evidenced by a physician's statement or other medical documentation, but only if no reasonable, alternative care was available;
- (15) was caused by the employer's reinstatement of a qualified uniformed service member with reemployment rights and benefits and other employment benefits in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.); or
- (16) was due to a reason that:
  - (A) constitutes an involuntary separation under Section 207.046(a)(1); and
  - (B) does not constitute good cause connected with the employee's work under Section 207.045 for the employee to voluntarily leave the employment.

NOTE: The 83<sup>rd</sup> Legislature enacted two separate provisions (HB 916 and HB 1580) designated as Sec. 204.022(a-1), Subchapter B, Chapter 201, Labor Code. Both provisions are set out below.

- (a-1) Benefits computed on benefit wage credits of an employee may not be charged to the account of an employer if the employee continued to work the employee's customary hours for the employer when the employee's benefit year began. This subsection does not apply to a claim for unemployment benefits made under Chapter 215.

- (a-1) Benefits computed on benefit wage credits of an employee or former employee may not be charged to the account of an employer if:
- (1) the employment did not constitute suitable work for the employee, as determined under Section 207.008; and
  - (2) the employee worked for the employer for less than four weeks.
- (b) For the purpose of this section, if an employee's last separation from the employment of an employer is a separation for which the employee was determined to have been disqualified under Section 207.048, the employee's last separation from the employment of that employer is considered to be the next later separation from the employment of that employer.
- (c) Except as provided by law, evidence regarding an employee described by Subsection (a)(11) may not be disclosed to any person without the consent of the employee.
- (d) For purposes of Subsection (a)(11):
- (1) **"Family violence"** has the meaning assigned by Section 71.004, Family Code.
  - (2) **"Stalking"** means conduct described by Section 42.072, Penal Code.
  - (3) **"Immediate family"** means an individual's parent, spouse, or child under the age of 18.
  - (4) **"Sexual assault"** means conduct described by Section 22.011 or 22.021, Penal Code.
  - (5) **"Family violence center"** has the meaning assigned by Section 51.002, Human Resources Code.
- (e) Benefits may not be charged to the account of an employer, regardless of whether the liability for the chargeback arises in the employee's current benefit year or in a subsequent benefit year, if the employee's last separation from the employer's employment before the employee's benefit year was or would have been excepted from disqualification under Section 207.023(b)(2) or 207.045(j).
- (f) Shared work benefits paid under Chapter 215 may not be charged to the account of an employer if the benefits are reimbursed by the federal government under the federal Layoff Prevention Act of 2012 (Pub. L. No. 112-96, Subtitle D, Title II).



**Sec. 204.023. Notice Sent at Time Benefits Paid**

The commission shall mail to an employer a notice of the employer's maximum potential chargebacks when benefits are first paid if:

- (1) notice of an initial claim has not already been mailed to the employer under Section 208.002; and
- (2) the employer's account is potentially chargeable with benefits as a result of the initial claim and payment of benefits.

**Sec. 204.024. Protest of Potential Chargebacks**

To protest a potential chargeback, an employer to whom notice is mailed under Section 204.023 must mail to the commission at Austin a protest not later than the 30th day after the date the notice was mailed or the right to protest the chargeback is waived. The protest must include a statement of the facts supporting the grounds of the protest.

**Sec. 204.025. Decision and Administrative Review of Protest**

- (a) An examiner promptly shall decide the issues involved in a timely protest filed under Section 204.024 and shall mail a notice of the decision to the protesting employer.
- (b) The examiner's decision becomes final 14 days from the date the examiner mails the notice unless before that date the employer mails to the commission at Austin a written appeal from the examiner's decision.
- (c) Administrative review under this section must be in accordance with the rules of the commission.

**Sec. 204.026. Judicial Review of Protest**

- (a) An employer may appeal an administrative determination made under Section 204.025 after the employer has exhausted the employer's administrative remedies, not including a motion for rehearing, before the commission. An appeal must be filed within the time prescribed by Sections 212.153 and 212.201 for commission decisions on benefits.
- (b) An appeal to a court relating to a chargeback has the same venue and jurisdiction as a suit to collect contributions and penalties under this subtitle.

**Sec. 204.027. Notice, Protest, and Appeal--Notice Sent at Time of Claim**

- (a) If notice of the claim was sent to an employer under Section 208.002, the commission shall mail the employer a notice of the employer's potential chargeback resulting from the claim.

- (b) The employer may protest a clerical or machine error relating to the amount of the chargeback not later than the 14th day after the date the notice was mailed.
- (c) The commission shall mail a decision on the protest to the employer.
- (d) An employer may appeal the decision on the protest not later than the 14th day after the date notice of the decision is mailed to the employer.

## **Subchapter C. General Tax Rate for Experience-Rated Employers**

### **Sec. 204.041. Tax on Experience-Rated Employers**

- (a) Each employer whose account has been chargeable with benefits throughout four or more consecutive calendar quarters shall pay contributions at the rate prescribed by the table in Section 204.042 or a table extended under Section 204.043.
- (b) Except as provided by Subsection (c), a change in the rate applicable to an employer takes effect on January 1.
- (c) The rate for an employer who becomes subject to contributions under Subsection (a) for the first time at the close of a calendar quarter takes effect on the first day of the next calendar quarter and continues in effect until the January 1 of the next calendar year.

**Sec. 204.042. Tax Rate Table**

If the  
replenishment and the employer's benefit ratio  
is: does not exceed:

1.00		0.00	0.10	0.20	0.30	0.40	0.50	0.60	0.70	0.80	0.90
...											
1.20		0.00	0.08	0.16	0.25	0.33	0.41	0.50	0.58	0.66	0.75
1.21		0.00	0.08	0.16	0.24	0.33	0.41	0.49	0.57	0.66	0.74
1.22		0.00	0.08	0.16	0.24	0.32	0.40	0.49	0.57	0.65	0.73
1.23		0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.65	0.73
1.24		0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.64	0.72
1.25		0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.64	0.72
1.26		0.00	0.07	0.15	0.23	0.31	0.39	0.47	0.55	0.63	0.71
1.27		0.00	0.07	0.15	0.23	0.31	0.39	0.47	0.55	0.62	0.70
1.28		0.00	0.07	0.15	0.23	0.31	0.39	0.46	0.54	0.62	0.70
1.29		0.00	0.07	0.15	0.23	0.31	0.38	0.46	0.54	0.62	0.69
1.30		0.00	0.07	0.15	0.23	0.30	0.38	0.46	0.53	0.61	0.69
1.31		0.00	0.07	0.15	0.22	0.30	0.38	0.45	0.53	0.61	0.68
1.32		0.00	0.07	0.15	0.22	0.30	0.37	0.45	0.53	0.60	0.68
1.33		0.00	0.07	0.15	0.22	0.30	0.37	0.45	0.53	0.60	0.67
1.34		0.00	0.07	0.14	0.22	0.29	0.37	0.44	0.52	0.59	0.67
1.35		0.00	0.07	0.14	0.22	0.29	0.37	0.44	0.51	0.59	0.66
1.36		0.00	0.07	0.14	0.22	0.29	0.36	0.44	0.51	0.58	0.66
1.37		0.00	0.07	0.14	0.21	0.29	0.36	0.43	0.51	0.58	0.65
1.38		0.00	0.07	0.14	0.21	0.28	0.36	0.43	0.50	0.57	0.65
1.39		0.00	0.07	0.14	0.21	0.28	0.35	0.43	0.50	0.57	0.64
1.40		0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.50	0.57	0.64
1.41		0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.49	0.56	0.63
1.42		0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.49	0.56	0.63
1.43		0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62
1.44		0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62
1.45		0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62
1.46		0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.47	0.54	0.62
1.47		0.00	0.06	0.13	0.20	0.27	0.34	0.40	0.47	0.54	0.61
1.48		0.00	0.06	0.13	0.20	0.27	0.33	0.40	0.47	0.54	0.60
1.49		0.00	0.06	0.13	0.20	0.26	0.33	0.40	0.46	0.53	0.60
1.50		0.00	0.06	0.13	0.20	0.26	0.33	0.40	0.46	0.53	0.60
1.51		0.00	0.06	0.13	0.19	0.26	0.33	0.39	0.46	0.52	0.59
1.52		0.00	0.06	0.13	0.19	0.26	0.32	0.39	0.46	0.52	0.59
1.53		0.00	0.06	0.13	0.19	0.26	0.32	0.39	0.45	0.52	0.58
1.54		0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.45	0.51	0.58
1.55		0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.45	0.51	0.58
1.56		0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.44	0.51	0.57
1.57		0.00	0.06	0.12	0.19	0.25	0.31	0.38	0.44	0.50	0.57
1.58		0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.44	0.50	0.56
1.59		0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.44	0.50	0.56
1.60		0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.43	0.50	0.56

The employer's tax rate is:

		0.00%	0.1%	0.2%	0.3%	0.4%	0.5%	0.6%	0.7%	0.8%	0.9%
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**Sec. 204.043. Extension of Tax Rate Table Up to Six Percent**

- (a) The commission shall extend the table in Section 204.042 by providing additional replenishment ratios, benefit ratios, and tax rates up to six percent.
- (b) In extending the table in Section 204.042, the commission shall use the same mathematical principles used in constructing the table.

**Sec. 204.044. Benefit Ratio**

- (a) The benefit ratio for an employer is equal to the total amounts of the employer's chargebacks for the 36 consecutive months preceding the tax rate computation date divided by the total of the employer's taxable wages for the same months.
- (b) The benefit ratio of an employer whose account has been chargeable with benefits for less than 36 consecutive months but throughout each month of at least four calendar quarters is equal to the total amount of the employer's chargebacks for those months preceding the tax rate computation date divided by the total of the employer's taxable wages for those months.
- (c) In computing the benefit ratio, only taxable wages on which contributions have been paid to the commission not later than the last day of the month in which the computation date occurs may be used.
- (d) In computing the benefit ratio for employers who are subject only to Section 201.027 and who have elected under that section to file reports annually, only taxable wages for which contributions have been paid to the commission on or before January 31 may be used.
- (e) The benefit ratio is expressed as a percentage.

**Sec. 204.045. Replenishment Ratio**

- (a) The replenishment ratio for a calendar year is computed by:
  - (1) dividing the numerator described in Subsection (b) by the denominator described in Subsection (c); and
  - (2) rounding the result to the nearest hundredth.
- (b) The numerator is equal to the amount of benefits paid during the 12 months ending September 30 of the preceding year that are effectively charged to employers' accounts, plus one-half of the amount of benefits paid during that period that are not effectively charged to employers' accounts. In computing the amount of benefits charged or paid, the commission shall not include the amount of:
  - (1) a canceled benefit warrant;

- (2) that part of a benefit that has been overpaid and been repaid; or
  - (3) benefits paid that are repayable from a reimbursing employer, the federal government, or another governmental entity.
- (c) The denominator is the total amount of benefits paid during the 12 months ending September 30 of the preceding year that are effectively charged to employers' accounts.
- (d) The commission shall compute the replenishment ratio for each calendar year before the date the first contribution payment with respect to wages for employment paid in that year is due. Once computed for the year, the replenishment ratio may not be adjusted.

**Sec. 204.046. Effectively Charged Benefits**

- (a) A benefit is not effectively charged if it is:
- (1) not charged to an employer's account;
  - (2) charged to an employer's account after the employer has reached maximum liability because of the maximum tax rate; or
  - (3) charged to an employer's account but considered not collectible.
- (b) A benefit not described in Subsection (a) is effectively charged.

**Sec. 204.047. Tax Rate Computation Date for Experience Tax Rate**

- (a) The computation date for the tax rate for the contribution under Section 204.041 is October 1 of the year preceding the calendar year for which the rate takes effect, except as provided by Subsections (b) and (c).
- (b) The computation date for the tax rate for the contribution under Section 204.041(a) for an employer who becomes subject to that tax rate for the first time is the date on which the rate takes effect under Section 204.041(c).
- (c) An employer who reports annually under Section 201.027 has the same computation date as other employers, but the final computation of a rate for the employer may not occur before February 1 of the year following the computation date.

**Sec. 204.048. Voluntary Contributions**

- (a) Notwithstanding any other provision of this subtitle, an employer for whom the commission has computed an experience rate as of October 1 of a calendar year that is effective for the succeeding calendar year, as provided by Section 204.047(a), may elect to make a voluntary payment of contributions to the commission.

- (b) The amount of a voluntary contribution may be equal to all or part of the employer's chargebacks during the period ending September 30 that are used in computing the employer's experience rate for the succeeding calendar year. The commission shall allocate a voluntary contribution of less than the full amount of the employer's chargebacks first to the employer's most recent chargebacks.
- (c) On receipt of a voluntary contribution during the period prescribed by Subsection (d), the commission shall reduce the employer's chargebacks by an amount equal to the contribution and shall recompute the experience rate applicable to that employer for the succeeding calendar year.
- (d) An employer who elects to make a voluntary contribution for the recomputation of the employer's experience rate must make the contribution as prescribed by rules adopted by the commission. The employer may not revoke the contribution after the date on which the commission uses the contribution to recompute the employer's experience rate.
- (e) Notwithstanding Subsection (a), the commission may not compute a new experience rate for an employer or reduce an employer's experience rate based on a voluntary contribution made by the employer after the expiration of the 120th day of the calendar year for which the rate is effective.
- (f) The commission shall deposit a voluntary contribution made under this section to the credit of the compensation fund.

## **Subchapter D. Adjustments to Tax Rate for Experience-Rated Employers**

### **Sec. 204.061. Ceiling and Floor of Compensation Fund**

In computing the tax rates under this subchapter:

- (1) the ceiling of the compensation fund is two percent of the total taxable wages for the four calendar quarters ending the preceding June 30; and
- (2) the floor of the compensation fund is equal to the greater of:
  - (A) \$400 million; or
  - (B) one percent of the total taxable wages for the four calendar quarters ending the preceding June 30.

**Sec. 204.062. Replenishment Tax**

- (a) In addition to the general tax computed under Subchapter C, an employer entitled to an experience rate shall pay a replenishment tax at the rate computed by:
  - (1) dividing the numerator described by Subsection (b) by the denominator described by Subsection (c);
  - (2) multiplying that result by 100 to obtain a percentage; and
  - (3) rounding that result to the nearest hundredth.
- (b) The numerator is an amount equal to one-half of the amount of benefits paid by all employers during the 12 months ending the preceding September 30 that are not effectively charged.
- (c) The denominator is an amount equal to the taxable wages paid by all employers during the four quarters ending the preceding June 30.

**Sec. 204.0625. Adjustment to Replenishment Tax Rate**

On and after January 1, 2006, the replenishment tax rate computed under Section 204.062 shall be adjusted to a rate computed by subtracting one-tenth of one percent from the percentage computed under Section 204.062(a).

**Sec. 204.063. Deficit Assessment**

- (a) If the amount of money in the compensation fund on a tax rate computation date is less than the floor of the compensation fund, a deficit tax rate is added for the next calendar year to the general tax rate for each employer entitled to an experience rate for that year.
- (b) The deficit tax rate for a calendar year is the lesser of:
  - (1) the rate computed by multiplying the deficit ratio, as computed under Section 204.064, by the sum of the employer's general tax rate, the replenishment tax rate, and the deficit tax rate for the previous calendar year; or
  - (2) two percent.

**Sec. 204.064. Deficit Ratio**

- (a) The deficit ratio is computed by:
  - (1) dividing the numerator computed under Subsection (b) by the denominator described by Subsection (c); and
  - (2) rounding that result to the nearest hundredth.

- (b) The numerator is computed by subtracting the balance of the compensation fund, considering any federal advance, from the floor of the compensation fund.
- (c) The denominator is the amount of contributions due under the general tax rate and the replenishment rate for the four calendar quarters ending the preceding September 30 from employers entitled to an experience rate on the tax rate computation date.

**Sec. 204.065. Use of Surplus**

- (a) If the amount in the compensation fund on a tax rate computation date is more than the ceiling of the compensation fund, the commission may use all or part of that surplus to pay outstanding bond obligations as provided by this section or to provide a surplus credit or a surplus credit rate as provided by Sections 204.0651 and 204.0652 to an employer entitled to an experience rate on the computation date.
- (b) If, on the tax rate computation date, there are outstanding bond obligations as described by Subchapter C, Chapter 203, including bond administrative expenses, the commission may transfer all or part of the surplus described by Subsection (a) to the obligation trust fund under Section 203.102 for payment of those obligations. The amount transferred under this subsection may not exceed any amount transferred to the unemployment compensation fund under Section 203.255(b)(2).
- (c) To the extent that any portion of the surplus is not used to pay bond obligations, the commission shall use that amount to compute:
  - (1) a surplus credit under Section 204.0651; or
  - (2) an annual surplus credit rate under Section 205.0652.
- (d) In determining the use of any surplus, the commission shall exercise the options that the commission determines to be in the best interests of the state's employers and workers.

**Sec. 204.0651. Surplus Credit**

- (a) The commission may use any portion of the surplus under Section 204.065 that is not used to pay bond obligations to compute a surplus credit for an employer entitled to an experience rate on the computation date, to be applied beginning with contributions for the first quarter of the following year.
- (b) The amount of the surplus credit is computed by multiplying the surplus ratio computed under Section 204.066 by the employer's contributions due for the four calendar quarters ending the preceding September 30.
- (c) An employer may not apply a surplus credit against delinquent contributions. A surplus credit may not be applied until the employer has paid any delinquent contributions.



**Sec. 204.0652. Surplus Credit Rate**

- (a) If the commission does not compute a surplus credit under Section 204.0651, the commission may use any portion of the surplus under Section 204.065 that is not used to pay bond obligations to compute an annual surplus credit rate for an employer entitled to an experience rate on the computation date.
- (b) The surplus credit rate is computed by multiplying the surplus ratio computed under Section 204.066 by the employer's general and replenishment tax rates for the preceding year.
- (c) The surplus credit rate shall be subtracted from the sum of the general and replenishment tax rates. The remainder may not be less than zero. The results shall be rounded to the nearest hundredth.
- (d) An employer may not receive a surplus credit rate if any delinquent contributions are due on the contribution date, but is eligible for a surplus credit rate beginning on the calendar quarter following the quarter in which the delinquent contributions are paid.

**Sec. 204.066. Surplus Ratio**

- (a) The surplus ratio is computed by:
  - (1) dividing the numerator computed under Subsection (b) by the denominator described by Subsection (c); and
  - (2) rounding that result to the nearest hundredth.
- (b) The numerator is computed by subtracting the ceiling of the compensation fund from the balance of the compensation fund and subtracting from that amount any amount used to pay bond obligations under Section 204.065(b).
- (c) The denominator is the amount of contributions due for the four calendar quarters ending the preceding September 30 from employers entitled to an experience rate on the tax rate computation date.

**Sec. 204.067. Adjustments to Rate**

The commission, at its own discretion, may adjust a rate under this subchapter.

## Subchapter E. Acquisition of Experience-Rated Employer

### Sec. 204.081. Definitions

In this subchapter:

- (1) **"Compensation experience"** includes the period that benefit wage credits or benefits have been chargeable and any other factor under Subchapter A, B, C, or D necessary to the computation of experience rating under those subchapters.
- (2) **"Person"** means an individual, trust, estate, partnership, association, company, or corporation.
- (3) **"Substantially common management or control"** exists if, after the acquisition of the organization, trade, or business of an employing unit, the predecessor employing unit continues to:
  - (A) own or manage the organization that conducts the organization, trade, or business;
  - (B) own or manage the assets necessary to conduct the organization, trade, or business;
  - (C) control through security or lease arrangements the assets necessary to conduct the organization, trade, or business; or
  - (D) direct the internal affairs or conduct of the organization, trade, or business.
- (4) **"Substantially common ownership"** exists if, on the date of an acquisition of the organization, trade, or business of an employing unit, a shareholder, officer, or other owner of a legal or equitable interest in the predecessor employing unit, or the spouse or a person within the first degree of consanguinity or affinity, as determined under Chapter 573, Government Code, of the shareholder, officer, or other owner:
  - (A) is a shareholder, officer, or other owner of a legal or equitable interest in the successor employing unit; or
  - (B) holds an option to purchase a legal or equitable interest in the successor employing unit.
- (5) **"Transfer of trade or business"** includes the transfer of part or all of an employer's workforce to another employer if, as the result of the transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce and the employer to whom the workforce is transferred performs trade or business with respect to the workforce.

- (6) **"Knowingly"** means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved.

**Sec. 204.082. Effective Date of Acquisition**

For purposes of this subchapter, an acquisition is effective on the first day of the calendar quarter in which the acquisition occurs.

**Sec. 204.083. Acquisition of All or Part of Experience-Rated Organization, Trade, or Business; Transfer of Compensation Experience**

The transfer of the predecessor employer's compensation experience to the successor employer is required if the predecessor employing unit transfers, through any means, all or part of the organization, trade, or business, to the successor employer and there is substantially common management or control or substantially common ownership of the entities.

**Sec. 204.084. Acquisition of Part of Experience-Rated Organization, Trade, or Business: Approval of Transfer of Compensation Experience Without Substantially Common Management or Control or Substantially Common Ownership; Contribution Rate**

- (a) If an employing unit acquires or otherwise receives, through any means, part of the organization, trade, or business of an employer, and transfer of compensation experience is not required by Section 204.083, the successor employing unit and the predecessor employer may jointly make a written application to the commission to transfer the compensation experience of the predecessor employer that is attributable to the part of the organization, trade, or business acquired to the successor employing unit.
- (b) If the acquisition results from the death of the predecessor employer, the requirement that the predecessor employer join in the application for transfer of the compensation experience does not apply.
- (c) Except as provided by Subsection (d), the commission shall approve an application if:
- (1) immediately after the acquisition the successor employing unit continues operation of substantially the same part of the organization, trade, or business acquired;
  - (2) the predecessor employer waives in writing all rights to an experience rating computed on the compensation experience attributable to the part of the organization, trade, or business acquired by the successor employing unit, unless the acquisition results from the death of the predecessor employer;
  - (3) a definitely identifiable and segregable part of the predecessor employer's compensation experience is attributable to the part of the organization, trade, or business acquired; and

- (4) for a successor employing unit that is not an employer at the time of the acquisition, the successor employing unit elects to become an employer on the date of the acquisition or otherwise becomes an employer during the year in which the acquisition occurs;
- (5) the application was filed with the commission not later than the first anniversary of the effective date of the acquisition; and
- (6) the applicants have shown that:
  - (A) the acquired part of the organization, trade, or business is capable of operating independently and separately from the predecessor employer; and
  - (B) the wages attributable to the acquired part of the organization, trade, or business are solely attributable to services provided on behalf of the acquired part of the organization, trade, or business.
- (d) The commission shall deny a transfer of compensation experience under this section if the commission determines that the transfer was done primarily to qualify for a reduced compensation experience rating by either:
  - (1) circumventing the experience rating system; or
  - (2) manipulating the experience rating system by minimizing the impact of chargebacks to the predecessor's or successor's tax account.
- (e) A successor employing unit that acquires compensation experience under this section and that is an experience-rated employer on the date of and during the period preceding the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at the rate applicable to the successor employing unit on the date of acquisition.
- (f) A successor employing unit that acquires compensation experience under this section and that is not an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the next contribution rate computation date at the highest rate applicable at the time of the acquisition to any predecessor employing unit that is a party to the acquisition. If the commission determines that the transfer was accomplished solely or primarily for the purpose of obtaining a lower contribution rate, the successor employing unit's contribution rate must be determined under Section 204.006.

**Sec. 204.085. Contribution Rate for Successor Employers When Substantially Common Management or Control or Substantially Common Ownership Exists; Certain Partial Acquisitions**

- (a) Except as provided by Subsection (d), in the case of a partial acquisition for which the transfer of compensation experience is required under Section 204.083, if the commission determines that the part of the organization, trade, or business transferred is definitely identifiable and segregable and that compensation experience can be specifically attributed to that part of the organization, trade or business, the contribution rate of the successor must be computed:
  - (1) based on the successor employing unit's experience for the part of the organization, trade, or business that was not acquired by the transfer; and
  - (2) as provided by this section for the part of the organization, trade, or business acquired through the transfer.
- (b) A successor employing unit that acquires compensation experience under Section 204.083 and is an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at a rate computed by using the compensation experience transferred from the predecessor employer and that of the successor employing unit.
- (c) A successor employing unit that acquires compensation experience under Section 204.083 and is not an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year at the highest rate applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition.
- (d) If the commission determines that the transfer was accomplished solely or primarily for the purpose of obtaining a lower contribution rate, the successor's contribution rate must be determined under Section 204.006.

**Sec. 204.0851. Contribution Rate for Successor Employers When Substantially Common Management or Control or Substantially Common Ownership Exists; Other Acquisitions.**

- (a) For a transfer of compensation experience required by Section 204.083 other than a transfer described by Section 204.085(a), the contribution rate shall be computed as provided by this section.
- (b) A successor employing unit that acquires compensation experience under Section 204.083 and is an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at the rate computed by using the prior 36-month combined compensation

experience of the predecessor employing unit and the successor employing unit on the date of the acquisition.

- (c) A successor employing unit that acquires compensation experience under Section 204.083 and is not an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year at the highest rate applicable at the time of the acquisition to any predecessor employing unit that is a party to the acquisition.
- (d) The contribution rate for experience-rated and nonexperience-rated successor employing units shall, for the years following the year of acquisition, be computed as follows:
  - (1) for the first year following acquisition, the successor employing unit's compensation experience plus the predecessor employing unit's 24-month compensation experience ending on September 30 preceding the year of acquisition, combined with the predecessor employing unit's compensation experience from that date to the date of the acquisition;
  - (2) for the second year following acquisition, the successor employing unit's compensation experience plus the predecessor employing unit's 12-month compensation experience ending on September 30 preceding the year of acquisition, combined with the predecessor employing unit's compensation experience from that date to the date of the acquisition;
  - (3) for the third year following acquisition, compensation experience available to the successor employing unit plus the predecessor employing unit's compensation experience from September 30 preceding the year of acquisition to the date of the acquisition; and
  - (4) for years subsequent to the acquisition and to the transfer of compensation experience required under Section 204.083, the predecessor employing unit's contribution rate is computed without regard to any transfer of compensation experience required by that section.

**Sec. 204.086. Collection of Contribution, Penalty, or Interest from Successor Employer**

- (a) An individual or employing unit that acquires the organization, trade, or business or substantially all of the assets of an organization, trade, or business of an employer who, at the time of the acquisition, is indebted to the commission for a contribution, a penalty, or interest, is liable to the commission for prompt payment of the contribution, penalty, or interest.
- (b) If not paid, the commission may bring an action under Chapter 213 for the collection of a contribution, a penalty, or interest as though the contribution, penalty, or interest had been incurred by the successor employer.

**Sec. 204.0861. Surplus Credit for Successor Employing Units**

- (a) In this section, "surplus credit" means a credit described by Section 204.0651.
- (b) A successor employing unit to which compensation experience is transferred under Section 204.083 is entitled to a surplus credit attributable to, but not applied or received by, the predecessor employing unit.
- (c) A successor employing unit to which compensation experience is transferred under Section 204.084 is entitled to a surplus credit attributable to, but not applied or received by, the predecessor employing unit if the commission determines that the requirement described by Section 204.084(c)(3) is satisfied.
- (d) If the commission determines that a transfer of compensation experience was accomplished solely or primarily for the purpose of obtaining a lower contribution rate, a successor employing unit is not entitled to, and may not apply or receive, a surplus credit under Subsection (b) or (c).
- (e) A predecessor employing unit is not entitled to, and may not apply or receive, all or any portion of a surplus credit that is based on compensation experience that is transferred to a successor employing unit under this subchapter.
- (f) The commission shall adopt rules necessary to implement and enforce this section, including rules that ensure that only a successor employing unit applies or receives all or part of a surplus credit previously attributable to a predecessor employing unit.

**Sec. 204.087. Offense; Criminal and Civil Penalties**

- (a) A person commits an offense if the person recklessly, knowingly, or intentionally defeats, evades, or circumvents a provision of this subchapter or if the person recklessly, knowingly, or intentionally attempts, aids and abets an attempt, or advises another to defeat, evade, or circumvent a provision of this subchapter.
- (b) An employer who commits an offense under this section may be assessed a civil penalty in an amount equal to two percent of wages as defined in Subchapter F, Chapter 201, for the year during which the violation occurred and for the three years following that year.
- (c) A person, other than the employer, who commits an offense under this section may be assessed a civil penalty of not more than \$5,000 for a first offense and not more than \$5,000 for each subsequent offense.
- (d) A civil penalty assessed under Subsection (b) and (c) shall be deposited in the special administration fund established under Section 203.201.
- (e) An offense under this section is a Class A misdemeanor.

**Sec. 204.088. Procedures to Identify Experience-Rating Transfers**

The commission by rule shall establish procedures to identify the transfer or acquisition of a business for the purposes of this subchapter.

**Sec. 204.089. Conformity with Federal Regulations**

The commission shall administer this subchapter in conformity with any regulations prescribed by the United States Secretary of Labor relating to experience-rating transfers.

**Subchapter F. Special Contributions for Governmental Employers**

**Sec. 204.101. Contribution from Governmental Employer**

A governmental employer shall pay a contribution in accordance with this subchapter and rules adopted by the commission on wages paid for employment during each year or portion of the year in which the governmental employer is subject to this subtitle.

**Sec. 204.102. Contribution Not Deduction from Wages**

A contribution paid by a governmental employer may not be deducted from the wages of individuals in the employer's employ.

**Sec. 204.103. Rate of Contributions for Governmental Employers**

- (a) The rate of the contribution required under Section 204.101 for each calendar year is equal to the greater of:
  - (1) one-tenth of one percent; or
  - (2) the percentage, adjusted to the next higher one-tenth of one percent, computed by dividing the numerator described by Subsection (b) by the denominator described by Subsection (c).
  
- (b) The numerator is the amount of all benefits paid during the preceding calendar year based on wage credits earned from employers that pay contributions under this subchapter, not including benefit payments that are reimbursable from any other source. If the amount of benefits paid during the period used for determining the rate is greater than the contributions paid by the same employers for the same period, the amount of the benefits paid in excess of the amount of contributions collected shall be added to the numerator in determining the contribution rate. If the amount of benefits paid for the period used for determining the rate is less than the contributions paid by the same employers for the same period, that amount shall be deducted from the numerator in computing the rate.



- (c) The denominator is the amount of the total wages paid during the preceding calendar year by all employers that pay contributions under this subchapter.

**Sec. 204.104. Accounting for Governmental Employers**

The commission shall account separately for benefits paid and contributions collected under this subchapter, and these benefits and contributions may not be used in determining contribution rates under Subchapters A, B, C, and D.

**Sec. 204.105. Past Due Contributions**

- (a) A governmental employer that fails to pay a contribution due under this subchapter on the date it is due as prescribed by the commission is subject to the same penalties as provided for other employers under Section 213.021.
- (b) The provisions for collecting delinquent contributions under Chapter 213 apply to a governmental employer.
- (c) The commission shall notify the comptroller in writing of the name of each governmental employer that is delinquent in payment of contributions under this subtitle and the amount of the delinquency. On receipt of the notice, the comptroller shall pay the amount of the delinquency to the commission from any funds that otherwise would be due from the state to the delinquent governmental employer.

**Sec. 204.106. Reports and Records**

- (a) A governmental employer shall keep records and file reports with the commission relating to individuals in its employ as required by rules adopted by the commission.
- (b) A governmental employer that does not keep the records or file the reports when due is subject to the same penalties provided for other employers under Sections 213.022, 213.023, 213.024, and 213.056.

**Subchapter G. Employment and Training Investment Assessment; Funds**

**Sec. 204.121. Employment and Training Investment Assessment.**

- (a) In addition to any other taxes imposed under this subtitle, an employment and training investment assessment is imposed on or after January 1, 2006, on each employer paying contributions under this subtitle as a separate assessment of one-tenth of one percent of wages paid by the employer.
- (b) The commission shall deposit the revenue from the employment and training investment assessment to the credit of the holding fund created under Section 204.122.

- (c) The employment and training investment assessment is due at the same time, collected in the same manner, and subject to the same penalties and interest as other contributions assessed under this subtitle.

**Sec. 204.122. Holding Fund**

- (a) The employment and training investment holding fund is a special trust fund outside of the state treasury in the custody of the comptroller separate and apart from all public money or funds of this state.
- (b) The comptroller shall administer the holding fund in accordance with the directions of the commission. Interest accruing on amounts in the holding fund shall be deposited quarterly to the credit of the compensation fund.

**Sec. 204.123. Transfer to Skills Development Fund, Training Stabilization Fund, and Compensation Fund**

- (a) If, on September 1 of a year, the commission determines that the amount in the compensation fund will exceed 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer from the holding fund created under Section 204.122:
  - (1) during any state fiscal biennium beginning on or after September 1, 2007, 100 percent to the skills development fund created under Section 303.003, except that the amount transferred under this subdivision may not exceed the amount appropriated by the legislature to the skills development program strategies and activities in that biennium; and
  - (2) any remaining amount in the holding fund after the distribution under Subdivision (1) to the training stabilization fund created under Section 302.101.
- (b) If, on September 1 of a year, the commission determines that the amount in the compensation fund will be at or below 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer to the compensation fund as much of the amount in the holding fund as is necessary to raise the amount in the compensation fund to 100 percent of its floor, up to and including the entire amount in the holding fund. The commission shall transfer any remaining balance in the holding fund to the skills development fund and the training stabilization fund in the manner prescribed by Subsection (a).

## CHAPTER 205. REIMBURSEMENTS

### Subchapter A. Election to Become Reimbursing Employer

#### Sec. 205.001. Reimbursements or Contributions by Governmental Entity

- (a) A state, a political subdivision of a state, an Indian tribe, or an instrumentality of a state, political subdivision of a state, or Indian tribe may elect to pay reimbursements for benefits instead of contributions.
- (b) The election must be made not later than the 45th day after the date on which notice that an employer is subject to this subtitle is mailed to the employer.
- (c) The election is effective January 1 of the year in which the employer becomes subject to this subtitle.
- (d) An election is effective for at least two calendar years and may be terminated after the minimum period by filing with the commission not later than December 1 a written request for termination. The termination is effective January 1 of the following year.

#### Sec. 205.002. Election by Nonprofit Organization

- (a) A nonprofit organization that is described by Section 201.023 or a group of those organizations subject to this subtitle may elect to pay reimbursements for benefits instead of contributions.
- (b) An election under this section must be made not later than the 45th day after the date on which notice that the employer is subject to this subtitle is mailed to the employer.
- (c) The election is effective January 1 of the year in which the employer becomes subject to this subtitle.
- (d) The election is effective for at least two calendar years and may not be terminated before the expiration of that period, except as provided in Sections 205.003 and 205.031.
- (e) An election may be withdrawn by written application by the employer filed with the commission not later than December 1 before the year for which the employer wishes to change the employer's method of payment. The method of payment may be changed again if a timely application is filed after a minimum of two calendar years.
- (f) An election to pay reimbursements terminates at any time coverage terminates under this subtitle. An employer whose election terminates because of termination of coverage, on again becoming an employer subject to this subtitle, may reelect to pay reimbursements.

**Sec. 205.003. Commission Termination of Election**

- (a) The commission may terminate an employer's election to make reimbursements if the employer is delinquent in making reimbursements under this chapter.
- (b) A termination under this section takes effect at the beginning of the next tax year and remains in effect for that tax year and the following tax year.

**Sec. 205.004. Election by Indian Tribe**

- (a) An Indian tribe that elects to make reimbursements for benefits instead of contributions shall make the election under this chapter in the same manner and subject to the same conditions as the state or a political subdivision of the state.
- (b) An Indian tribe that makes an election under this chapter shall determine whether the election is for the tribe as a whole, individual tribal units, or a combination of individual tribal units.
- (c) An Indian tribe that makes an election under this chapter shall pay the full amount of benefits attributable to service performed in the employ of the Indian tribe on the same schedule as other employing units that have elected to make reimbursements for benefits instead of contributions.
- (d) An Indian tribe that fails to make a required payment, including payment of a penalty and interest, before the 91st day after receiving notice of the payment loses the option to pay reimbursements instead of contributions for the following tax year unless the commission receives payment in full before the date contribution rates for that tax year are computed
- (e) An Indian tribe that loses the option to pay reimbursements instead of contributions due to late payments under Subsection (d) may resume that option if, after the expiration of one year following the date of losing the option, the Indian tribe has timely paid all contributions and no contributions, payments instead of contributions for benefits paid, penalties, or interest remain outstanding.

**Subchapter B. General Provisions**

**Sec. 205.011. Applicability of Subtitle; Waiver by Reimbursing Employer**

- (a) A reimbursing employer is entitled to the rights and privileges and subject to the duties and responsibilities of all provisions of this subtitle other than the following provisions of Chapter 204, which do not apply to a reimbursing employer:
  - (1) Sections 204.001-204.008;
  - (2) Subchapters B, C, and D of Chapter 204; and

(3) Sections 204.081-204.085.

- (b) An election to become a reimbursing employer is a waiver of the rights afforded under Chapter 204 that did not apply to a reimbursing employer.

**Sec. 205.012. Payment of Reimbursement**

A reimbursing employer shall pay a reimbursement to the commission in accordance with this chapter and rules adopted by the commission.

**Sec. 205.013. Billing; Amount of Reimbursements**

- (a) A reimbursing employer shall pay to the commission an amount equal to the regular benefits plus, except as provided by Subsection (c), one-half of the extended benefits paid during that quarter that are attributable to service in the employ of the employer.
- (b) At the end of each calendar quarter the commission shall bill each reimbursing employer for the amount described under Subsection (a).
- (c) A state, a political subdivision of a state, or any instrumentality of any one or more states or political subdivisions of a state that is wholly owned by one or more states or political subdivisions of a state that is a reimbursing employer shall pay 100 percent of the extended benefits paid on benefit wage credits earned from that employer.
- (d) If a reimbursing employer pays a reimbursement to the commission for benefits paid to a claimant that are not in accordance with the final determination or decision under this subtitle, the employer is not entitled to a refund of, or credit for, the amount paid by the employer to the commission unless the employer has complied with the requirements of Section 208.004 with respect to the claimant.

**Sec. 205.014. Proportionate Allocation of Benefit Costs – More Than One Employer and at Least One Reimbursing Employer**

If benefits to an individual are computed on benefit wage credits earned from more than one employer, at least one of whom is a reimbursing employer, the amount payable to the compensation fund by each reimbursing employer is the amount that bears the same ratio to the total benefits paid to the individual as the total base period benefit wage credits for the individual from that employer bears to the total base period benefit wage credits for the individual from all employers.

**Sec. 205.015. Continued Liability for Reimbursement**

An employer who has elected reimbursement under Section 205.001 or 205.002 shall pay reimbursements for benefits that are attributable to service in the employ of the employer during the period of the election, even if the employer is no longer a reimbursing employer when the benefits are paid.

**Sec. 205.016. Collection of Delinquent Reimbursement; Effect of Failure to Submit Certain Reports**

A reimbursing employer who fails to pay a reimbursement on the date on which the reimbursement is due, or who fails to submit records and reports, as prescribed by the commission, is subject to the following in the same manner as an employer who does not pay a contribution when due:

- (1) Sections 213.004, 213.005, 213.006, 213.008, and 213.009;
- (2) Subchapters B, C, D, and E of Chapter 213, other than Section 213.058; and
- (3) Section 204.086.

**Sec. 205.017. Delinquent Governmental Employers**

The commission shall notify the comptroller in writing of the name of a governmental employer that is delinquent in payment of reimbursements under this subtitle and the amount of the delinquency. On receipt of the notice, the comptroller shall pay the amount of the delinquency to the commission from any funds that otherwise would be due from the state to the delinquent governmental employer.

**Sec. 205.018. Payment of Benefits from Compensation Fund; No Effect on Replenishment Ratio**

Benefits computed on wages earned from a reimbursing employer and reimbursements for the benefits may not be used in computing the replenishment ratio under Section 204.045.

**Sec. 205.019. Reimbursement From Non-Treasury Funds**

- (a) A branch, department or other instrumentality of this state that reimburses the commission with funds that are held outside the state treasury shall reimburse the commission by writing a check to the commission for deposit into the appropriate unemployment compensation account. A deposit under this section shall be made not later than the 30th day after the date the instrumentality receives the commission's statement of amounts due.

[NOTE: S.B. 59, 83<sup>rd</sup> Legislature, repealed Subsection 205.019(b)]

- (c) A branch, department, or other instrumentality affected by this section may allocate appropriate funds to a revolving account on its books to receive contributions from funds other than general revenue funds, based on an assessment it determines to be appropriate

for the purpose of reimbursing the appropriate unemployment compensation account for benefits paid.

- (d) The state auditor may review the reimbursement of funds for compliance by the affected entities with this section, subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, Government Code.

## **Subchapter C. Group Account**

### **Sec. 205.021. Approval of Group Account; Effective Date**

- (a) On approval of an application submitted by two or more reimbursing employers, the commission shall establish a group account for the employers to share the cost of benefits that are attributable to service in the employ of the employers.
- (b) The application must identify and authorize a group representative to act as the group's agent for the purpose of this subchapter.
- (c) The group account takes effect at the beginning of the calendar quarter in which the commission received the application. The commission shall notify the group's representative of the effective date of the account.

### **Sec. 205.022. Duration and Termination of Group Account**

- (a) A group account must remain in effect for not less than two years.
- (b) After two years, the account may be terminated at the discretion of the commission or on application by the group. The termination is effective January 1 of the next year.

### **Sec. 205.023. Group Member's Reimbursement Amount**

On establishment of a group account, each member of the group is liable for reimbursements for each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter attributable to service in the employ of all members of the group as the total wages paid for service in employment in the quarter by the member bears to the total wages paid in the quarter by all members of the group.

### **Sec. 205.024. Reports and Records**

Each member of a group shall keep accurate employment records and submit reports as required by the commission relating to persons employed by the member.

### **Sec. 205.025. Commission Rules**

The commission shall as necessary adopt rules on:

- (1) an application for the establishment, maintenance, and termination of a group account authorized by this subchapter;
- (2) the type of records to be kept and reports to be submitted by a group of employers;
- (3) the addition of a new member to a group;
- (4) the withdrawal of an active member from a group; and
- (5) the determination of the amount of reimbursements payable under this subchapter by members of a group and the time and manner of those payments.

### **Subchapter D. Bonds and Other Safeguards**

#### **Sec. 205.031. Bond**

- (a) The commission may require a reimbursing employer or group of reimbursing employers to execute and file with the commission a surety bond approved by the commission.
- (b) The amount of the bond shall be determined in accordance with rules adopted by the commission.
- (c) The commission may require adjustments to a filed bond as it considers appropriate.
- (d) If a reimbursing employer covered by a bond fails to pay the full amount of reimbursements when due, together with any applicable interest and penalties required under this subtitle, the surety is liable on the bond, to the extent of the bond, as though the surety were the employer.
- (e) If a reimbursing employer fails to execute and file bond when directed to do so by the commission, the commission may terminate the employer's election to make reimbursements effective at the beginning of the next tax year. The termination remains effective for that tax year and the following tax year.

#### **Sec. 205.032. Additional Safeguards**

The commission may provide additional safeguards as necessary to ensure that a reimbursing employer pays the reimbursements required under Subchapters B and C.



## **Subchapter E. State Elections**

### **Sec. 205.041. State Election to be Reimbursing Employer**

- (a) This state is a reimbursing employer subject to this subtitle for all services performed in the employ of:
  - (1) this state;
  - (2) a branch or department of this state; or
  - (3) an instrumentality of this state that is not otherwise an employer.
- (b) All services performed in the employ of this state, a branch or department of this state, or an instrumentality of this state are employment.
- (c) Subsection (a) does not apply to a political subdivision of this state.
- (d) The commission shall provide to each state agency an annual statement showing the benefits paid by the commission during the year that are attributable to that agency.

### **Sec. 205.042. Coverage of State Employees Working Outside State**

If the commission is unable to execute a reciprocal agreement under Chapter 211 to cover an employee of this state who works outside the state, the employing agency shall become a reimbursing employer if permitted by the law of the state in which the employee works. If the agency is not permitted to be a reimbursing employer, the agency may pay the required contribution for that employee from funds available for that purpose.

## **CHAPTER 206. UNEMPLOYMENT INSURANCE COVERAGE**

### **Sec. 206.001. Yearly Coverage**

An employing unit that is or becomes an employer in a calendar year is subject to this subtitle during that entire calendar year.

### **Sec. 206.002. Election of Coverage as Employer**

- (a) An employing unit that is not otherwise subject to this subtitle may elect coverage as an employer for not less than two calendar years.
- (b) Subsection (a) does not apply to an employing unit to which Section 205.001 or 205.002 applies.

- (c) On written approval by the commission of an election under Subsection (a), the employing unit making the election becomes an employer to the same extent as all other employers beginning on the date stated in the approval.

**Sec. 206.003. Election of Coverage Regarding Services Not Constituting Employment**

- (a) An employing unit may elect for not less than two calendar years that all services that do not constitute employment and that are performed by individuals in its employ in one or more distinct establishments or places of business are to be considered employment for all purposes of this subtitle.
- (b) An election under Subsection (a) must be in writing and be filed with the commission.
- (c) On written approval by the commission of an election under Subsection (a), the services constitute employment during the period elected, beginning on the date stated in the approval.

**Sec. 206.004. Termination of Coverage**

- (a) An employing unit may cease to be an employer only on January 1 of a year and only if the commission finds that:
  - (1) the employing unit was not an employer during the preceding year; or
  - (2) the employing unit has not had any individuals in employment during the preceding three calendar years.
- (b) The commission may not make a finding under Subsection (a)(1) unless the employing unit files an application for termination of coverage with the commission on or after January 1 but before April 1 of the year for which termination is requested. The commission may make a finding under Subsection (a)(2) without an application having been filed.

**Sec. 206.005. Previous Rights Lost by Cessation of Coverage**

When an employing unit that ceased to be an employer subsequently becomes an employer, the employing unit is considered to be a new employer without regard to the rights that employing unit acquired when previously an employer.

## CHAPTER 207. BENEFITS

### Subchapter A. Payment of Benefits

#### Sec. 207.001. Payment of Benefits

Benefits are paid through the commission in accordance with rules adopted by the commission and are due and payable under this subtitle only to the extent provided by this subtitle.

#### Sec. 207.002. Benefits for Total Unemployment

- (a) An eligible individual who is totally unemployed in a benefit period is entitled to benefits for the benefit period at the rate of 1/25 of the wages received by the individual from employment by employers during that quarter in the individual's base period in which wages were highest. For purposes of this subsection, the wages received by the individual from employment by employers during the individual's base period include wages ordered to be paid to the individual by a final order of the commission under Chapter 61 that:
- (1) were due to be paid to the individual by an employer during the individual's base period; and
  - (2) will be credited to the date or dates on which the payment of those wages was due.
- (a-1) The commission by rule shall determine the method of crediting wages to a particular quarter for purposes of Subsection (a).
- (a-2) The rate of benefits paid under this section may not be more than the maximum weekly benefit amount computed under Subsection (b) or less than the minimum weekly benefit amount computed under Subsection (b) for each benefit period.
- (b) The maximum weekly benefit amount is 47.6 percent of the average weekly wage in covered employment in this state. The minimum weekly benefit amount is 7.6 percent of the average weekly wage in covered employment in this state.
- (c) The commission shall determine the average weekly wage in covered employment and compute the maximum and minimum weekly benefit amount not later than October 1 of each year based on the annual average weekly wage for the preceding year. If a benefit amount computed under this subsection includes cents, the commission shall adjust the benefit amount as follows:
- (1) if the computed benefit amount includes at least one cent but not more than 49 cents, the commission shall round the benefit down to the nearest multiple of \$1; and

- (2) if the computed benefit amount includes at least 50 cents but not more than 99 cents, the commission shall round the benefit amount up to the nearest multiple of \$1.
- (c-1) An increase in the maximum weekly benefit amount may not exceed \$14 in any year. An increase in the minimum weekly benefit amount may not exceed \$1 in any year.
- (d) An increase in maximum and minimum benefit amounts under this section takes effect on October 1.
- (e) The maximum benefit amount payable to an individual for a benefit period under this section on the effective date of a valid claim is the maximum benefit amount payable to that individual until the individual establishes a new benefit year.
- (f) In this section, "**wages**" has the meaning assigned in Subchapter F, Chapter 201, except that the limitation of wages provided in Section 201.082(1) does not apply.

(NOTE: See Illustration on Page 148)

**Sec. 207.003. Benefits for Partial Unemployment**

- (a) An eligible individual who is partially unemployed in a benefit period is entitled to partial benefits for that benefit period.
- (b) The amount of a partial benefit is computed by:
  - (1) adding the individual's benefit amount and the greater of \$5 or 25 percent of the benefit amount; and
  - (2) subtracting the amount of the wages earned by the individual during the benefit period from the amount computed under Subdivision (1).
- (c) In this section "**wages**" has the meaning assigned in Subchapter F, Chapter 201, except that the limitation of wages provided in Section 201.082(1) does not apply.

(NOTE: See Illustration on Page 148)

**Sec. 207.004. Benefit Wage Credits**

- (a) The commission shall credit as benefit wage credits during an individual's base period:
  - (1) wages the individual received for employment from an employer during the individual's base period; and

- (2) wages ordered to be paid by a final order issued by the commission under Chapter 61 that:
  - (A) were due to be paid by an employer during the individual's base period; and
  - (B) will be credited to the date or dates on which the payment of those wages was due.
- (a-1) The commission by rule shall determine the method of crediting wages to an individual's base period for purposes of Subsection (a).
- (b) Wages used to qualify an individual for regular benefits under this subtitle or under any other unemployment compensation law may not be used again to qualify the individual for regular benefits.
- (c) If an employer fails to report, when requested by the commission, wages that were paid to an individual during a base period, the commission may determine the amount of benefit wage credits for the individual for the base period from the best information obtained by the commission.
- (d) In this section:
  - (1) **"Benefit wage credits"** means those wages used to determine an individual's right to benefits.
  - (2) **"Wages"** has the meaning assigned in Subchapter F, Chapter 201, except that the limitation of wages provided in Section 201.082(1) does not apply.

**Sec. 207.005. Maximum Amount of Benefits**

The maximum amount of benefits payable to an eligible individual during a benefit year may not exceed the lesser of:

- (1) 26 times the individual's benefit amount; or
- (2) 27 percent of the individual's benefit wage credits.

(NOTE: See Illustration on Page 148)

**Sec. 207.006. Adjustment of Benefits**

If a benefit rate or benefit payable computed under this chapter is not a multiple of \$1, the benefit rate or benefit payable is increased to the next multiple of \$1.

(NOTE: See Illustration on Page 148)

**Sec. 207.007. Fees Limitation; Legal Representation; Criminal Offense; Penalty**

- (a) An individual claiming benefits under this subtitle may not be charged a fee in a proceeding under this subtitle by:
  - (1) the commission or a representative of the commission; or
  - (2) a court or an officer of a court.
- (b) An individual claiming benefits in a proceeding before the commission or a court may be represented by counsel or another authorized agent. Counsel or an agent representing an individual under this subtitle may charge and collect a fee for the counsel's or agent's services.
- (c) A person who violates this section commits an offense. An offense under this section is punishable by:
  - (1) a fine of not less than \$50 and not more than \$500;
  - (2) imprisonment for not more than six months; or
  - (3) both a fine and imprisonment.

**Sec. 207.008. Suitable Work**

- (a) In determining whether work is suitable for an individual, the commission shall consider:
  - (1) the degree of risk involved to the individual's health, safety, and morals at the place of performance of the work;
  - (2) the individual's physical fitness and previous training;
  - (3) the individual's experience and previous earnings;
  - (4) the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and
  - (5) the distance of the work from the individual's residence.
- (b) Notwithstanding any other provision of this subtitle, work is not suitable and benefits may not be denied under this subtitle to an otherwise eligible individual for refusal to accept new work if:
  - (1) the position offered is vacant directly because of a strike, lockout, or other labor dispute;

- (2) the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or
- (3) as a condition of being employed, the individual is required to join a company union or to resign from or refrain from joining a bona fide labor organization.

**Sec. 207.009. Payment of Benefits by Indian Tribe**

Benefits based on service in the employ of an Indian tribe, as described by Section 201.048, are payable in the same amount, on the same terms, and subject to the same conditions as benefits paid on the basis of other service under this subtitle.

**Subchapter B. Benefit Eligibility**

**Sec. 207.021. Benefit Eligibility Conditions**

- (a) Except as provided by Chapter 215, an unemployed individual is eligible to receive benefits for a benefit period if the individual:
  - (1) has registered for work at an employment office and has continued to report to the employment office as required by rules adopted by the commission;
  - (2) has made a claim for benefits under Section 208.001;
  - (3) is able to work;
  - (4) is available for work;
  - (5) is actively seeking work in accordance with rules adopted by the commission;
  - (6) for the individual's base period, has benefit wage credits:
    - (A) in at least two calendar quarters; and
    - (B) in an amount not less than 37 times the individual's benefit amount;
  - (7) after the beginning date of the individual's most recent prior benefit year, if applicable, earned wages in an amount equal to not less than six times the individual's benefit amount;
  - (8) has been totally or partially unemployed for a waiting period of at least seven consecutive days; and

- (9) participates in reemployment services, such as a job search assistance service, if the individual has been determined, according to a profiling system established by the commission, to be likely to exhaust eligibility for regular benefits and to need those services to obtain new employment, unless:
  - (A) the individual has completed participation in such a service; or
  - (B) there is reasonable cause, as determined by the commission, for the individual's failure to participate in those services.
  
- (b) A week may not be counted as a waiting period week for the purposes of this section:
  - (1) unless the individual has registered for work at an employment office in accordance with Subsection (a)(1);
  - (2) unless it is after the filing of an initial claim;
  - (3) unless the individual reports at an office of the commission and certifies that the individual has met the waiting period requirements;
  - (4) if benefits have been paid or are payable with respect to the week;
  - (5) if the individual does not meet the eligibility requirements of Subsections (a)(3) and (a)(4); and
  - (6) if the individual has been disqualified for benefits for the seven-day period under Section 207.044, 207.045, 207.047, or 207.048.
  
- (b-1) An individual for whom suitable work is available only in an occupation designated by United States Department of Labor regulation as an occupation that regularly conducts preemployment drug testing is available for work for purposes of Subsection (a)(4) only if the individual complies with the applicable requirements of the drug screening and testing program administered by the commission under Section 207.026. The commission shall adopt rules for determining the type of work that is suitable for an individual for purposes of this subsection.
  
- (c) Notwithstanding any other provision of this section, an individual who has been paid benefits in the individual's current benefit year equal to or exceeding three times the individual's benefit amount is eligible to receive benefits on the individual's waiting period claim in accordance with this subtitle.



**Sec. 207.0211. Eligibility of Certain Disabled Persons.**

A permanently disabled individual is considered to be able to work under Section 201.021(a)(3) and available for work for purposes of Section 207.021(a)(4) if, as a result of the individual's disability, the individual:

- (1) is unable to work full-time;
- (2) has worked part-time during a substantial part of the individual's base period;
- (3) is seeking part-time work consistent with the limitations imposed by the individual's disability; and
- (4) is receiving disability insurance benefits under 42 U.S.C. Section 423.

**Sec. 207.0212. Eligibility of Certain Persons Unemployed Because of Disaster.**

- (a) In this section, "disaster unemployment assistance benefits" means benefits authorized under Section 410, Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5177), and rules adopted under that section.
- (b) Notwithstanding Section 207.021, the governor, by executive order, may suspend the waiting period requirement imposed under Section 207.021(a)(8) to authorize an individual to receive benefits for that waiting period if the individual:
  - (1) is unemployed as a direct result of a natural disaster that results in a disaster declaration by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.);
  - (2) is otherwise eligible for unemployment compensation benefits under this subtitle; and
  - (3) is not receiving disaster unemployment assistance benefits for the period included in that waiting period.

**Sec. 207.022. Commission-Approved Training**

- (a) An individual may not be denied benefits because the individual is in training with the approval of the commission.
- (b) An individual may not be denied benefits for a benefit period in which the individual is in training with the approval of the commission because of the provisions of Section 207.021 relating to the individual's:
  - (1) availability for work;
  - (2) active search for work; or

- (3) refusal to apply for or refusal to accept suitable work.
- (c) Approval of training must be obtained as required by rules adopted by the commission.

**Sec. 207.023. Training Under the Trade Act of 1974**

- (a) This section applies only to training approved under Section 236(a)(1) of the Trade Act of 1974 (19 U.S.C. Section 2296(a)(1)).
- (b) An otherwise eligible individual may not be denied benefits for a week:
  - (1) that the individual was in training;
  - (2) that the individual left work to enter training if the work the individual left was not suitable employment; or
  - (3) because of the application to the week in training of a provision of this subtitle or a federal unemployment compensation law relating to the individual's:
    - (A) availability for work;
    - (B) active search for work; or
    - (C) refusal to accept work.
- (c) For the purposes of Subsection (b), "**suitable employment**" means work for an individual that:
  - (1) is of a skill level substantially equal to or higher than that of the individual's past adversely affected employment, as that term is used by the Trade Act of 1974 (19 U.S.C. Section 2101 et seq.); and
  - (2) pays wages that are not less than 80 percent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974 (19 U.S.C. Section 2101 et seq.).

**Sec. 207.024. Claim Filed or Residence in Another State or Country**

An individual's benefits may not be denied or reduced solely because at the time the individual filed the claim for unemployment compensation the individual:

- (1) files a claim in another state or a contiguous country with which the United States has an agreement with respect to unemployment compensation; or
- (2) resides in another state or contiguous country with which the United States has an agreement with respect to unemployment compensation.

**Sec. 207.025. Pregnancy or Termination of Pregnancy**

Benefits may not be denied to an individual solely because of pregnancy or termination of pregnancy.

**Sec. 207.026. Drug Screening or Testing as Condition of Benefit Eligibility for Certain Applicants and Recipients**

- (a) The commission by rule shall adopt a drug screening and testing program as part of the requirements for the receipt of benefits under this subtitle by an individual to whom Section 207.021(b-1) applies. The program must:
  - (1) comply with the drug testing requirements of 49 C.F.R. Part 382 or other similar national requirements for drug testing programs recognized by the commission; and
  - (2) be designed to protect the rights of benefit applicants and recipients.
- (b) Under the program, each individual to whom Section 207.021(b-1) applies who files an initial claim must submit to and pass a drug screening assessment developed and administered by or on behalf of the commission for purposes of this subsection as a prerequisite to receiving benefits under this subtitle. The assessment tool used under this subsection must consist of a written questionnaire to be completed by the individual applying for benefits and must be designed to accurately determine the reasonable likelihood that an individual is using a substance that is subject to regulation under Chapter 481, Health and Safety Code. An individual whose drug screening assessment indicates a reasonable likelihood of use by the individual of a substance subject to regulation under that chapter must submit to and pass a drug test administered by or on behalf of the commission to establish the individual's eligibility for benefits under this subtitle. An individual who fails a drug test required under this subsection under a final determination or decision under this section is not eligible to receive benefits under this subtitle until the individual has passed a subsequent drug test administered by or on behalf of the commission not earlier than four weeks after the date the individual submitted to the failed drug test.
- (c) Notwithstanding Subsection (b), an individual is not ineligible to receive benefits based on the individual's failure to pass a drug test if, on the basis of evidence presented by the individual, the commission determines that, subject to Section 207.021(a)(4):
  - (1) the individual is participating in a treatment program for drug abuse;
  - (2) the individual enrolls in and attends a treatment program for drug abuse not later than the seventh day after the date initial notice of the failed drug test is sent to the individual; or
  - (3) the failure to pass the test is caused by the use of a substance that was prescribed by a health care practitioner as medically necessary for the individual.

- (d) The commission shall prescribe procedures for providing initial notice to an individual who fails a drug test under Subsection (b), for an appeal under Chapter 212, and for the retaking of a failed drug test by an individual under this section. The procedures must provide:
- (1) for prompt initial notice by mail to an individual who fails a drug test under Subsection (b) regarding:
    - (A) the fact of the individual's failure of the drug test;
    - (B) the manner in which the individual may notify the commission that the individual has enrolled in and is attending a treatment program for drug abuse;
    - (C) the manner in which the individual may appeal and retake the failed drug test; and
    - (D) common potential causes of a false positive test result;
  - (2) for privacy with regard to the individual's drug test result until not later than the 14th day after the date the initial notice of the failed drug test was mailed to the individual during which time the individual may appeal and retake the failed drug test; and
  - (3) that a determination or decision that an individual has failed a drug test under this section becomes final on:
    - (A) the 15th day after the date the initial notice of the failed drug test was mailed to the individual if the individual does not appeal and retake the individual's failed drug test as provided by this section; or
    - (B) the date that a retest conducted pursuant to an appeal by the individual as provided by this section confirms the positive drug test result.
- (e) The commission shall administer the program under this section using existing administrative funds and any funds appropriated to the commission for the purposes of this section.

Note: The provisions in Subsection 207.021 (b-1) and Section 207.026 apply only to a claim for unemployment benefits that is filed with the Texas Workforce Commission on or after February 1, 2014.

Note: If before implementing provisions in Subsection 207.021 (b-1) and Section 207.026, the Texas Workforce Commission determines that a waiver or authorization from a federal agency is necessary for implementation of the provisions, the agency shall request the waiver or authorization, and may delay implementing that provision until the waiver or authorization is granted.

## **Subchapter C. Exceptions to and Disqualification for Benefits**

### **Sec. 207.041. Services in Educational Institutions**

- (a) Benefits are not payable to an individual based on services performed in an instructional, research, or principal administrative capacity for an educational institution for a week beginning during the period between two successive academic years or terms or under an agreement providing for a similar period between two regular but not successive terms if:
  - (1) the individual performed the services in the first of the academic years or terms; and
  - (2) there is a contract or reasonable assurance that the individual will perform services in that capacity for any educational institution in the second of the academic years or terms.
  
- (b) Benefits are not payable to an individual based on services performed for an educational institution in a capacity other than a capacity described by Subsection (a) for a week that begins during a period between two successive academic years or terms if:
  - (1) the individual performed the services in the first of the academic years or terms; and
  - (2) there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms.
  
- (c) Notwithstanding Subsection (b), if benefits are denied to an individual for any week under Subsection (b) and the individual is not offered an opportunity to perform services for the educational institution for the second of the academic years or terms, the individual is entitled to a retroactive payment of the benefits for each week that:
  - (1) the individual filed a timely claim for benefits; and
  - (2) the benefits were denied solely because of Subsection (b).
  
- (d) Benefits are not payable to an individual based on services performed for an educational institution for a week that begins during an established and customary vacation period or holiday recess if:
  - (1) the individual performed the services in the period immediately before the vacation period or holiday recess; and
  - (2) there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.
  
- (e) Benefits are not payable as provided under this section to an individual based on services performed in an educational institution if the individual performed the services while employed by an educational service agency. For the purposes of this subsection,

**"educational service agency"** means a governmental agency or other governmental entity that is established and operated exclusively to provide services to one or more educational institutions.

**Sec. 207.042. Athletes**

Benefits are not payable to an individual based on services substantially all of which consist of participating in a sport or athletic event or training or preparing to participate in a sport or athletic event for a week that begins during the period between two successive sport seasons or similar periods if:

- (1) the individual performed the services in the first of the seasons or periods; and
- (2) there is a reasonable assurance that the individual will perform the services in the later of the seasons or periods.

**Sec. 207.043. Aliens**

- (a) Benefits are not payable based on services performed by an alien unless the alien:
  - (1) is an individual who was lawfully admitted for permanent residence at the time the services were performed;
  - (2) was lawfully present for purposes of performing the services; or
  - (3) was permanently residing in the United States under color of law at the time the services were performed, including being lawfully present in the United States as a result of the application of Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. Section 1182(d)(5)).
- (b) Information required of an individual applying for benefits to determine whether benefits are payable to the individual because of the individual's alien status shall be uniformly required from all applicants for benefits.
- (c) A determination that benefits are not payable to an individual whose application for the benefits would otherwise be approved except for the individual's alien status must be made from a preponderance of the evidence.
- (d) A modification of Section 3304(a)(14) of the Federal Unemployment Tax Act (26 U.S.C. Section 3304(a)(14)) that specifies other conditions or another effective date for the denial of benefits based on services performed by aliens that must be implemented under state law as a condition for a full tax credit against the tax imposed by the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.) is applicable under this section.

**Sec. 207.044. Discharge for Misconduct**

- (a) An individual is disqualified for benefits if the individual was discharged for misconduct connected with the individual's last work.
- (b) Disqualification under this section continues until the individual has returned to employment and:
  - (1) worked for six weeks; or
  - (2) earned wages equal to six times the individual's benefit amount.

**Sec. 207.045. Voluntarily Leaving Work**

- (a) An individual is disqualified for benefits if the individual left the individual's last work voluntarily without good cause connected with the individual's work.
- (b) Except as provided by Subsection (c), a disqualification for benefits under this section continues until the individual has returned to employment and:
  - (1) worked for six weeks; or
  - (2) earned wages equal to six times the individual's benefit amount.
- (c) Disqualification for benefits under this section for an individual who left work to move with the individual's spouse from the area where the individual worked continues for not less than six benefit periods and not more than 25 benefit periods following the filing of a valid claim as determined by the commission according to the circumstances of the case.
- (d) Notwithstanding any other provision of this section, an individual who is available to work may not be disqualified for benefits because the individual left work because of:
  - (1) a medically verified illness of the individual or the individual's minor child;
  - (2) injury;
  - (3) disability;
  - (4) pregnancy;
  - (5) an involuntary separation as described by Section 207.046; or
  - (6) a move from the area of the individual's employment that:
    - (A) was made with the individual's spouse who is a member of the armed forces of the United States; and

- (B) resulted from the spouse's permanent change of station of longer than 120 days or a tour of duty of longer than one year.
- (e) For the purposes of Subsection (d), a medically verified illness of a minor child prevents disqualification only if reasonable alternative care was not available to the child and the employer refused to allow the individual a reasonable amount of time off during the illness.
- (f) Military personnel who do not reenlist have not left work voluntarily without good cause connected with work.
- (g) An individual who is partially unemployed and who resigns that employment to accept other employment that the individual reasonably believes will increase the individual's weekly wage is not disqualified for benefits under this section.
- (g-1) An individual who voluntarily leaves the individual's last work is not disqualified for benefits under this section if:
  - (1) at the time the last work began, the individual was receiving benefits under this subtitle;
  - (2) the work did not constitute suitable work for the individual, as determined under Section 207.008; and
  - (3) the individual was employed at the last work for less than four weeks.
- (h) A temporary employee of a temporary help firm is considered to have left the employee's last work voluntarily without good cause connected with the work if the temporary employee does not contact the temporary help firm for reassignment on completion of an assignment. A temporary employee is not considered to have left work voluntarily without good cause connected with the work under this subsection unless the temporary employee has been advised:
  - (1) that the temporary employee is obligated to contact the temporary help firm on completion of assignments; and
  - (2) that unemployment benefits may be denied if the temporary employee fails to do so.
- (i) A covered employee of a professional employer organization is considered to have left the covered employee's last work without good cause if the professional employer organization demonstrates that:
  - (1) at the time the employee's assignment to a client concluded, the professional employer organization, or the client acting on the professional employer organization's behalf, gave written notice and written instructions to the covered



employee to contact the professional employer organization for a new assignment;  
and

- (2) the covered employee did not contact the professional employer organization regarding reassignment or continued employment; provided that the covered employee may show that good cause existed for the covered employee's failure to contact the professional employer organization.

(j) An individual is not disqualified for benefits under this section if:

- (1) the individual left the individual's last work to attend commission-approved training under Section 207.022; and
- (2) the individual's last work did not constitute suitable work for the individual, as determined under section 207.008.

#### **Sec. 207.046. Involuntary Separation**

(a) An individual is not disqualified for benefits under this subchapter if:

- (1) the work-related reason for the individual's separation from employment was urgent, compelling, and necessary so as to make the separation involuntary;
- (2) the individual leaves the workplace to protect the individual from family violence or stalking or the individual or a member of the individual's immediate family from violence related to a sexual assault as evidenced by:
  - (A) an active or recently issued protective order documenting sexual assault of the individual or a member of the individual's immediate family or family violence against, or the stalking of, the individual or the potential for family violence against, or the stalking of, the individual;
  - (B) a police record documenting sexual assault of the individual or a member of the individual's immediate family or family violence against, or the stalking of, the individual;
  - (C) a physician's statement or other medical documentation that describes the sexual assault of the individual or a member of the individual's immediate family or family violence against the individual that:
    - (i) is recorded in any form or medium that identifies the individual or member of the individual's immediate family, as applicable, as the patient; and

- (ii) relates to the history, diagnosis, treatment, or prognosis of the patient; or
  - (D) written documentation from a family violence center or rape crisis center that describes the sexual assault of the individual or a member of the individual's immediate family or family violence against the individual; or
- (3) the individual leaves the workplace to care for the individual's terminally ill spouse as evidenced by a physician's statement or other medical documentation, but only if no reasonable, alternative care was available.
- (b) Except as provided by law, evidence regarding an employee described by Subsection (a)(2) may not be disclosed to any person without the consent of the employee.
- (c) In this section:
  - (1) **"Family violence"** has the meaning assigned by Section 71.004, Family Code.
  - (2) **"Stalking"** means conduct described by Section 42.072, Penal Code.
  - (3) **"Immediate family"** means an individual's parent, spouse, or child under the age of 18.
  - (4) **"Sexual assault"** means conduct described by Section 22.011 or 22.021, Penal Code.
  - (5) **"Family violence center"** has the meaning assigned by Section 51.002, Human Resources Code.

**Sec. 207.047. Failure to Apply for, Accept, or Return to Work**

- (a) An individual is disqualified for benefits if during the individual's current benefit year, the individual failed, without good cause, to:
  - (1) apply for available, suitable work when directed to do so by the commission;
  - (2) accept suitable work offered to the individual; or
  - (3) return to the individual's customary self-employment, if any, when directed to do so by the commission.
- (b) Disqualification for benefits under this section continues until the individual has returned to employment and:
  - (1) worked for six weeks; or

- (2) earned wages equal to six times the individual's benefit amount.

**Sec. 207.048. Labor Disputes**

- (a) An individual is disqualified for benefits for a benefit period in which the individual's total or partial unemployment is caused by:
  - (1) the individual's stoppage of work because of a labor dispute at the factory, establishment, or other premises where the individual is or was last employed; or
  - (2) a labor dispute at another place that:
    - (A) is owned or operated by the same employing unit that owns or operates the premises where the individual is or was last employed; and
    - (B) supplies materials or services necessary to the continued and usual operation of the premises where the individual is or was last employed.
- (b) Disqualification for benefits under this section does not apply to an individual who shows to the satisfaction of the commission that the individual:
  - (1) is not participating in, financing, or directly interested in the labor dispute; and
  - (2) does not belong to a grade or class of workers any members of which were employed at the premises of the labor dispute immediately before the beginning of the labor dispute and any of whom are participating in, financing, or directly interested in the dispute.
- (c) For the purposes of Subsection (b)(1), failure or refusal to cross a picket line or refusal for any reason during the continuance of the labor dispute to accept and perform an individual's available and customary work at the factory, establishment, or other premises where the individual is or was last employed constitutes participation and interest in the labor dispute.
- (d) An individual may not be disqualified for benefits under Subsection (b)(2) if the individual shows that the individual:
  - (1) is not, and at the time of the labor dispute, was not:
    - (A) a member of a labor organization that is the same as, represented by, or directly affiliated, acting in concert, or in sympathy with the labor organization involved in the labor dispute at the premises of the labor dispute; or
    - (B) acting in concert or in sympathy with the labor organization involved in the labor dispute at the premises of the labor dispute; and

- (2) has made an unconditional offer to return to work at the premises where the individual is or was last employed.
- (e) If separate branches of work that are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each department is a separate factory, establishment, or other premises.
- (f) For the purposes of this section, "**premises**" includes a vessel.

**Sec. 207.049. Receipt of Remuneration**

- (a) An individual is disqualified for benefits for a benefit period for which the individual is receiving or has received remuneration in the form of:
  - (1) wages in lieu of notice; or
  - (2) severance pay; or
  - (3) compensation under a state workers' compensation law or a similar law of the United States for:
    - (A) temporary partial disability;
    - (B) temporary total disability; or
    - (C) total and permanent disability.
- (b) In this section, "severance pay" means dismissal or separation income paid on termination of employment in addition to the employee's usual earnings from the employer at the time of termination. The term does not include any remuneration received by an employee under:
  - (1) a release of claims or settlement agreement entered into between the employee and the employer:
    - (A) based on an alleged violation of the Civil Rights Act of 1991 (Pub. L. No. 102-166); or
    - (B) pursuant to a claim or cause of action filed in connection with the employment relationship; or
  - (2) a written contract, including a collective bargaining agreement, negotiated with the employer before the date of separation from employment of the employee.
- (c) The commission may adopt rules as necessary to administer this section.

**Sec. 207.050. Receipt of Pension or Annuity**

- (a) Except as provided by Subsection (b), an individual is disqualified for benefits for a benefit period for which the individual is receiving or has received a governmental or other pension, retirement or retired pay, an annuity, or any other similar periodic payment based on the previous work of the individual and reasonably attributable to the benefit period.
- (b) If a periodic payment described by Subsection (a) is received by an individual under the federal Social Security Act, the commission shall consider the individual's contribution and may not reduce the weekly benefit amount.
- (c) Notwithstanding Subsection (a), if the remuneration received by an individual is less than the benefits that the individual would otherwise be eligible to receive, the individual is entitled to receive benefits for the benefit period that are reduced by the amount of the remuneration, adjusted as provided by Section 207.006.
- (d) This section is enacted because Section 3304(a)(15) of the Federal Unemployment Tax Act (26 U.S.C. Section 3304(a)(15)) requires that this provision be enacted in state law as of January 1, 1978, as a condition for full tax credit against the tax imposed by that Act. If Section 3304(a)(15) of the Federal Unemployment Tax Act (26 U.S.C. Section 3304(a)(15)) is amended to modify these federal requirements, the modified requirements are applicable under this section to the extent required for full tax credit rather than this section.

**Sec. 207.051. Sale of Business**

- (a) An individual is disqualified for benefits if the individual left the individual's last work because of the sale of:
  - (1) a corporation and the individual was:
    - (A) an officer of the corporation;
    - (B) a majority or controlling shareholder in the corporation; and
    - (C) involved in the sale of the corporation;
  - (2) a limited or general partnership and the individual was a limited or general partner who was involved in the sale of the partnership; or
  - (3) a sole proprietorship and the individual was the proprietor who sold the business.
- (b) The disqualification under this section continues until the individual has returned to employment and:
  - (1) worked for six weeks; or

- (2) earned wages equal to six times the individual's benefit amount.

[NOTE: H.B. 2034, 83<sup>rd</sup> Legislature, repealed Section 207.052]

**Sec. 207.053. Refusal to Treat Communicable Disease**

- (a) An individual is disqualified for benefits if the individual:
  - (1) left the individual's last work voluntarily rather than provide services included within the course and scope of the individual's employment to an individual infected with a communicable disease; or
  - (2) was discharged from the individual's last work because the individual refused to provide services included within the course and scope of the individual's employment to an individual infected with a communicable disease.
- (b) An individual is not disqualified under this section unless the person for whom the individual last worked made available to the individual the facilities, equipment, training, and supplies necessary to permit the individual to take reasonable precautions to preclude the infection of the individual with the communicable disease.
- (c) Disqualification for benefits under this section continues until the individual has returned to employment and:
  - (1) worked for six weeks; or
  - (2) earned wages equal to six times the individual's weekly benefit amount.

**Subchapter D. Protection of Benefit Rights**

**Sec. 207.071. Waiver, Release, or Commutation Agreement Invalid**

- (a) Except for an employer's waiver under Chapter 204 and Section 205.011, an agreement by an individual to waive, release, or commute the individual's right to benefits or to any other rights under this subtitle is not valid.
- (b) An agreement by an individual employed by an employer to pay all or a portion of a contribution or reimbursement required to be paid by the employer under this subtitle is not valid.

**Sec. 207.072. Acceptance or Requirement of Waiver Prohibited**

An employer may not require or accept a waiver of a right of an individual employed by the employer under this subtitle.

**Sec. 207.073. Prohibited Deduction from Wages**

An employer may not, directly or indirectly, make, require, or accept a deduction from wages to finance a contribution or reimbursement required to be paid by the employer under this subtitle.

**Sec. 207.074. Criminal Offense; Penalty**

An employer, or officer or agent of an employer, commits an offense if the person violates Section 207.072 or 207.073. An offense under this section is punishable by:

- (1) a fine of not less than \$100 and not more than \$1,000;
- (2) imprisonment for not more than six months; or
- (3) both a fine and imprisonment.

**Sec. 207.075. Assignment of Benefits Prohibited; Benefit Exemptions**

- (a) An assignment, pledge, or encumbrance of a right to benefits is not valid.
- (b) A right to benefits is exempt from levy, execution, attachment, or any other remedy for debt collection.
- (c) Benefits received by an individual are exempt from debt collection if the benefits are not mingled with other funds of the individual except for debts incurred for necessities furnished to the individual or the individual's spouse or dependents during the time that the individual was unemployed.
- (d) A waiver of an exemption provided by this section is not valid.
- (e) Subchapter E prevails over this section to the extent of any conflict.

### **Sec. 207.076. Equal Treatment**

Benefits based on services for all employers in employment are payable in the same amount, on the same terms, and subject to the same conditions, except to the extent that Section 207.041 is applicable.

## **Subchapter E. Child Support Obligations**

### **Sec. 207.091. Definitions**

In this subchapter:

- (1) **"Benefit"** includes amounts payable by the commission under an agreement entered under federal law that provides for compensation, assistance, or allowances with respect to unemployment.
- (2) **"Child support obligation"** includes only an obligation that is enforced under a plan described by Section 454 of the Social Security Act (42 U.S.C. Section 654) that has been approved by the secretary of health and human services under Subtitle IV, Part D, Social Security Act (42 U.S.C. Section 651 et seq.).
- (3) **"State or local child support enforcement agency"** means an agency of the state or a political subdivision of the state operating under a plan described by Subdivision (2).

### **Sec. 207.092. Disclosure of Child Support Obligations**

- (a) An individual at the time of filing a new claim for benefits shall disclose whether the individual owes a child support obligation.
- (b) If the individual discloses a child support obligation and the individual is determined to be eligible for benefits, the commission shall notify the state or local child support enforcement agency enforcing the child support obligation that the individual has been determined to be eligible for benefits.

### **Sec. 207.093. Withholding of Child Support by Commission**

- (a) The commission shall withhold from the benefits payable to an individual that owes a child support obligation an amount equal to:
  - (1) any amount required to be withheld under legal process properly served on the commission;



- (2) if Subdivision (1) does not apply, the amount determined under an agreement submitted to the commission under Section 454(19)(B)(i) of the Social Security Act (42 U.S.C. Section 654) by the state or local child support enforcement agency; or
  - (3) if neither Subdivision (1) or (2) applies, the amount the individual specifies to the commission to be withheld.
- (b) The commission shall pay the amount withheld under Subsection (a) to the appropriate state or local child support enforcement agency. The amount withheld shall be treated for all purposes as if it were benefits paid to the individual and paid by the individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligation.
  - (c) This section applies only if appropriate arrangements have been made for reimbursement to the commission by a state or local child support enforcement agency for the administrative costs incurred by the commission under this subchapter that are attributable to the enforcement of child support obligations by the state or local child support enforcement agency.
  - (d) In this section, "**legal process**" has the meaning assigned by Section 459(i)(5) of the Social Security Act (42 U.S.C. Section 659).

**Sec. 207.094. Federal Law Requirement**

- (a) This subchapter and Section 207.075(e) are enacted because Section 303(e) of the Social Security Act (42 U.S.C. Section 503(e)) requires the enactment of these provisions into state law as a condition for federal funding of administration of the state unemployment compensation laws.
- (b) If Section 303(e) of the Social Security Act (42 U.S.C. Section 503(e)) is repealed, this subchapter and Section 207.075(e) are repealed.

**Subchapter F. Tax Withholding**

**Sec. 207.101. Withholding from Benefits for Federal Income Tax**

- (a) An eligible individual may elect to have federal income tax withheld from benefits. The commission shall withhold federal income taxes from the benefits of an individual who elects the withholding as provided by the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.) and Section 303, Social Security Act (42 U.S.C. Section 503).
- (b) The commission may not withhold federal income tax from benefits as provided by this section until January 1, 1997.

## **Subchapter G. Withholding from Unemployment Benefits for Uncollected Overissuances of Food Stamps**

### **Sec. 207.111. Definitions**

In this subchapter:

- (1) **"State agency"** has the meaning assigned by Section 3(n), Food Stamp Act of 1977 (7 U.S.C. Section 2012(n)).
- (2) **"Uncollected overissuance"** has the meaning assigned by Section 13(c)(1), Food Stamp Act of 1977 (7 U.S.C. Section 2022(c)(1)).
- (3) **"Unemployment benefits"** means benefits payable under this subtitle and any other amounts payable by the commission under an agreement entered into under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

### **Sec. 207.112. Application**

This subchapter applies only if arrangements have been made for reimbursement by the state agency for the administrative costs incurred by the commission under this subchapter that are attributable to the repayment of uncollected overissuances to the state agency.

### **Sec. 207.113. Required Disclosure; Notice to Food Stamp Agency**

- (a) An individual who files a new claim for unemployment benefits shall disclose, at the time of filing of that claim, whether the individual owes an uncollected overissuance.
- (b) If an individual who discloses under Subsection (a) that the individual does owe an uncollected overissuance is found eligible for unemployment benefits, the commission shall notify the state agency of the identity of that individual.

### **Sec. 207.114. Withholding**

- (a) The commission shall deduct and withhold from unemployment benefits payable to an individual who owes an uncollected overissuance:
  - (1) the amount the individual specifies to the commission to be deducted and withheld under this section;
  - (2) the amount determined under an agreement submitted to the state agency under Section 13(c)(3)(A), Food Stamp Act of 1977 (7 U.S.C. Section 2022(c)(3)(A)); or

- (3) any amount otherwise required to be deducted and withheld from unemployment benefits under Section 13(c)(3)(B), Food Stamp Act of 1977 (7 U.S.C. Section 2022(c)(3)(B)).
- (b) The commission shall pay any amount deducted and withheld under this section to the state agency in this state.
- (c) An amount deducted and withheld under this section shall be treated for all purposes as if it were paid to the individual as unemployment benefits and submitted by that individual to the state agency as repayment of the individual's uncollected overissuance.

## **CHAPTER 208. BENEFIT CLAIMS**

### **Subchapter A. Filing of Claim**

#### **Sec. 208.001. Filing; Information Notices**

- (a) Claims for benefits shall be made in accordance with rules adopted by the commission. An unemployed individual who does not have a current benefit year may file an initial claim in accordance with commission rules.
- (b) The commission shall supply, without cost to each employer, printed notices that provide general information about filing a claim for unemployment benefits. Each employer shall post and maintain the notices in places accessible to the individuals in the employ of the employer.

#### **Sec. 208.002. Initial Claim; Last Work**

- (a) When used in connection with an initial claim, "last work" and "person for whom the claimant last worked" refer to:
  - (1) the last person for whom the claimant actually worked, if the claimant worked for that person for at least 30 hours during a week; or
  - (2) the employer, as defined by Subchapter C, Chapter 201, or by the unemployment law of any other state, for whom the claimant last worked.
- (b) The commission shall mail a notice of the filing of an initial claim to the person for whom the claimant last worked before the effective date of the initial claim. If the person for whom the claimant last worked has more than one branch or division operating at different locations, the commission shall mail the notice to the branch or division at which the claimant last worked.
- (c) Mailing of a notice under this section to the correct address of the person, branch, or division for which the claimant last worked constitutes notice of the claim to the person.

**Sec. 208.003. Notice to Employer**

- (a) An employer may designate in writing to the commission an address for mail service.
- (b) If an employer designates a mailing address under Subsection (a), mailing of notice of claims, determinations, or other decisions to that address constitutes notice to the employer.

**Sec. 208.004. Notification of Adverse Facts Affecting Claim; Waiver**

- (a) A person to whom notice is mailed under Section 208.002 shall notify the commission promptly of any facts known to the person that may:
  - (1) adversely affect the claimant's right to benefits; or
  - (2) affect a charge to the person's account.
- (a-1) A notification provided by a person under Subsection (a), including an initial response to a notice mailed to the person under Section 208.002, must include sufficient factual information to allow the commission to make a determination regarding the claimant's entitlement to benefits under this subtitle.
- (b) A person who does not mail or otherwise deliver that notification to the commission within 14 days after the date notice of a claim was mailed to the person by the commission waives all rights in connection with the claim, including rights the person may have under Subchapter B, Chapter 204, other than rights relating to a clerical or machine error as to the amount of the person's chargeback or maximum potential chargeback in connection with the claim for benefits.
- (c) Notwithstanding Subchapter B, Chapter 204, benefits paid to a claimant that are not in accordance with the final determination or decision under this subtitle shall be charged to the account of a person if:
  - (1) the person, or the person's agent, without good cause, fails to provide adequate or timely notification under this section; and
  - (2) the commission determines that the person, or the person's agent, has failed to provide timely or adequate notification under this section on at least two prior occasions.
- (d) For purposes of Subsection (c), a notification is not adequate if the notification merely alleges that a claimant is not entitled to benefits without providing sufficient factual information, other than a general statement of the law, to support the allegation.

- (e) For purposes of Subsection (c), good cause is established only by showing that a person, or the person's agent, was prevented from complying with this section due to compelling circumstances that were beyond the person's control.
- (f) The commission may adopt rules as necessary to implement this section.

## **Subchapter B. Claim Determination**

### **Sec. 208.021. Initial Claim Determination**

- (a) The commission shall determine whether an initial claim is valid.
- (b) For each valid initial claim, the commission shall determine:
  - (1) the claimant's benefit year;
  - (2) the benefit amount for total unemployment; and
  - (3) the duration of benefits.

### **Sec. 208.022. Notice of Initial Claim Determination**

The commission shall mail a notice of the determination of an initial claim to the claimant's last known address as shown by the commission's records.

### **Sec. 208.023. Request for Redetermination or Appeal by Claimant**

A claimant, within 14 days after the date the commission mailed notice of the commission's determination to the claimant under Section 208.022, may request a redetermination of or may appeal the commission's determination of the validity of an initial claim in the manner provided by Chapter 212.

## **CHAPTER 209. EXTENDED BENEFITS**

### **Subchapter A. General Provisions**

#### **Sec. 209.001. Definitions**

In this chapter:

- (1) **"Eligibility period"** means the period consisting of the benefit periods in an individual's benefit year that begin in an extended benefit period and, if the individual's benefit year ends within the extended benefit period, any subsequent benefit periods that begin in the extended benefit period.

- (2) **"Extended benefit"** means a benefit payable to an individual under this chapter for a benefit period of unemployment in the individual's eligibility period, including a benefit payable to a federal civilian employee or to an ex-service member under 5 U.S.C. Chapter 85.
- (3) **"Regular benefit"** means a benefit, other than an extended benefit, payable to an individual under this subtitle or another state unemployment compensation law, including a benefit payable to a federal civilian employee or an ex-service member under 5 U.S.C. Chapter 85.
- (4) **"Secretary"** means the United States secretary of labor.
- (5) **"State unemployment compensation law"** means the unemployment compensation law of a state if the law is approved by the secretary under Section 3304 of the Internal Revenue Code of 1986 (26 U.S.C. Section 3304).
- (6) **"Employment service"** has the meaning assigned by Section 301.001.

#### **Sec. 209.002. Application of Provisions Relating to Regular Benefits**

A provision of this subtitle or a commission rule applicable to a claim for or the payment of regular benefits applies to a claim for or the payment of extended benefits unless the result of the application of the provision or rule is inconsistent with this chapter.

#### **Sec. 209.003. Findings**

- (a) The commission shall make findings as necessary to determine an extended benefit period, compute the rate of insured unemployment, and determine the eligibility or ineligibility or disqualification of an individual for extended benefits
- (b) A finding of an extended benefit period and a computation of the rate of insured unemployment shall be made in accordance with the rules of the secretary.

### **Subchapter B. Determination of Extended Benefit Period**

#### **Sec. 209.021. Beginning and Ending Dates for Extended Benefit Period**

- (a) Except as provided by Subsection (b), an extended benefit period begins with the third week after a week with a state "on" indicator.
- (b) An extended benefit period may not begin before the 14th week after the end of a previous extended benefit period in effect for this state.
- (c) An extended benefit period ends with the later of:
  - (1) the third week after the first week with a state "off" indicator; or

- (2) the 13th consecutive week of the period.

**Sec. 209.022. State "On" and "Off" Indicator Weeks**

- (a) Except for a week to which Subsection (b) applies, a week is a state "on" indicator week if the rate of insured unemployment for the period consisting of that week and the preceding 12 weeks:
  - (1) is five percent or more; and
  - (2) equaled or exceeded 120 percent of the average of the rates for the corresponding 13-week period ending in each of the preceding two calendar years.
- (b) If the determination that the week is a state "on" indicator week would begin an extended benefit period, the week is a state "on" indicator week if the rate of insured unemployment for the period consisting of that week and the preceding 12 weeks is six percent or more.
- (c) Except for a week to which Subsection (d) applies, a week is a state "off" indicator week if the rate of insured unemployment for the period consisting of that week and the preceding 12 weeks is less than:
  - (1) five percent; or
  - (2) 120 percent of the average of the rates for the corresponding 13-week period ending in each of the preceding two calendar years.
- (d) If the determination that a week is a state "off" indicator week would end an extended benefit period, the week is a state "off" indicator week if the rate of insured unemployment for the period consisting of that week and the preceding 12 weeks is less than six percent.
- (e) Notwithstanding Subsection (d), any week that would otherwise be a state "on" indicator week under Subsection (a) may not be a state "off" indicator week.
- (f) The rate of insured unemployment as used in this section is not to be seasonally adjusted.

**Sec. 209.023. Rate of Insured Unemployment**

For the purpose of Section 209.022, the rate of insured unemployment is computed by:

- (1) dividing:
  - (A) the average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the commission from the commission's reports to the secretary; by

- (B) the average monthly employment covered under this subtitle for the first four of the most recent six completed calendar quarters ending before the end of the 13-week period; and
- (2) multiplying the quotient by 100 to determine a percentage rate.

**Sec. 209.024. Public Announcement of Extended Benefit Period**

The commission shall publicly announce, in accordance with commission rule, the beginning of each extended benefit period and the termination of each extended benefit period.

**Sec. 209.025. Federal Funding of Extended Benefits**

Notwithstanding any other provision of this subchapter, the commission by rule may adjust the extended benefit eligibility period as necessary to maximize the receipt of any fully funded federal extended unemployment benefits, if full federal funding for those benefits is available.

**Subchapter C. Eligibility Requirements for Extended Benefits**

**Sec. 209.041. Eligibility for Extended Benefits**

An individual is eligible to receive extended benefits for a benefit period of unemployment in the individual's eligibility period if, with respect to the benefit period, the individual:

- (1) has exhausted all regular benefits; and
- (2) satisfies the requirements of this subtitle for the receipt of regular benefits that are applicable to an individual claiming extended benefits, including not being disqualified for the receipt of benefits; and
- (3) has within the individual's base period received benefit wage credits for employment by employers in an amount not less than:
  - (A) 40 times the individual's weekly benefit amount; or
  - (B) 1½ times the individual's high-quarter benefit wage credits.

**Sec. 209.042. Exhaustion of Regular Benefits**

- (a) An individual has exhausted regular benefits with respect to a benefit period of unemployment in the individual's eligibility period if the individual:
  - (1) before that period:
    - (A) has received all of the regular benefits available to the individual in the individual's current benefit year that includes the benefit period; or



- (B) had a benefit year expire and does not have benefit wage credits sufficient to establish a new benefit year that would include the benefit period;
  - (2) is not entitled to unemployment benefits or allowances under the Railroad Unemployment Insurance Act (45 U.S.C. Section 351 et seq.) or other federal law as specified in regulations issued by the secretary; and
  - (3) has not received unemployment benefits under the unemployment compensation law of Canada and is not seeking those benefits, or has sought those benefits and the appropriate agency finally determines that the individual is not entitled to benefits under that law.
- (b) For the purposes of Subsection (a)(1)(A), an individual is considered to have received all of the regular benefits available to the individual even if, as a result of a pending appeal with respect to benefit wage credits not considered in the original monetary determination in the individual's benefit year, the individual may subsequently be determined to be entitled to added regular benefits.

**Sec. 209.043. Requirement to Seek Work**

- (a) An individual is ineligible for payment of extended benefits for a benefit period in the individual's eligibility period if during that period the individual failed to actively seek work.
- (b) For purposes of Subsection (a), an individual is actively seeking work during a benefit period if the individual:
  - (1) engages in a systematic and sustained effort to obtain work during the benefit period; and
  - (2) furnishes tangible evidence of that effort.

**Sec. 209.044. Requirement to Accept or Apply for Suitable Work**

An individual is ineligible for payment of extended benefits for a benefit period in the individual's eligibility period if during that period the individual failed to:

- (1) accept an offer of suitable work; or
- (2) apply for suitable work to which the individual was referred by the commission.

**Sec. 209.045. Employment Service Referrals to Suitable Work**

The employment service shall refer a claimant entitled to extended benefits to suitable work that meets the standards prescribed in Sections 209.046, 209.047(a), and 209.047(b).

**Sec. 209.046. Exceptions to Requirement to Accept or Apply for Suitable Work**

An individual may not be denied extended benefits for failure to accept a job offer of suitable work or apply for suitable work if:

- (1) the work was not offered to the individual in writing and was not listed with the employment service; or
- (2) failure to accept or apply for the work would not result in a denial of benefits under the applicable suitable work requirements for a regular benefit claimant in Section 207.008, to the extent that the standards of suitability in that section are not inconsistent with Section 209.047.

**Sec. 209.047. Suitable Work**

- (a) For purposes of this subchapter, and subject to Subsections (b) and (c), suitable work for an individual is work:
  - (1) within the individual's capabilities;
  - (2) for which the gross average weekly remuneration payable exceeds the sum of:
    - (A) the individual's weekly extended benefit amount computed under Section 209.061; and
    - (B) the amount, if any, of supplemental unemployment compensation benefits, as defined in Section 501(c)(17)(D) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(17)(D)), payable to the individual for that week; and
  - (3) that pays wages not less than the greater of:
    - (A) the minimum wage under Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 206(a)(1)), without regard to any exemption; or
    - (B) the applicable state or local minimum wage.
- (b) If an individual furnishes satisfactory evidence to the commission that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, the determination of whether work is suitable for that individual shall be made in accordance with the provisions of Section 207.008 applicable to suitable work for

a claimant for regular benefits, without regard to the standards of suitability in Section 209.046 and this section.

- (c) Work that does not accord with the labor standard provisions required by Section 3304(a)(5) of the Internal Revenue Code of 1986 (26 U.S.C. Section 3304(a)(5)) is not suitable work for an individual.

**Sec. 209.048. Duration of Ineligibility; Work Requirements**

An individual ineligible for extended benefits under Sections 209.043 or 209.044 is ineligible for benefits for a period:

- (1) beginning with the first day of the week following the week in which the individual is ineligible under those sections; and
- (2) ending when the individual has been employed in each of four subsequent weeks, consecutive or nonconsecutive, and has earned remuneration in an amount not less than four times the weekly extended benefit amount.

**Sec. 209.049. Ineligibility Due to Disqualification**

- (a) Except as provided by Subsection (b), an individual is ineligible to receive extended benefits for a benefit period in the individual's eligibility period if the individual has been disqualified for regular or extended benefits under this subtitle because the individual:
  - (1) voluntarily left work;
  - (2) was discharged for misconduct; or
  - (3) failed to accept an offer of or apply for suitable work.
- (b) Subsection (a) does not apply if the disqualification is terminated in accordance with specific conditions established under this subtitle requiring the individual to perform service for remuneration after the date of the disqualification.

**Sec. 209.050. Interstate Claim**

- (a) An individual is ineligible for extended benefits payable for a benefit period under an interstate claim filed in any state under an interstate benefit payment plan if an extended benefit period is not in effect for the benefit period in that state.
- (b) Subsection (a) does not apply to the first two benefit periods for which extended benefits are payable under an interstate claim filed under an interstate benefit payment plan, regardless of whether an extended benefit period is in effect for the state, to the individual from the extended benefit account established for the individual with respect to the benefit year.

## **Subchapter D. Amount of Extended Benefits**

### **Sec. 209.061. Weekly Extended Benefit Amount**

The weekly extended benefit amount payable to an individual for a benefit period of total unemployment in the individual's eligibility period is equal to the weekly benefit amount payable to the individual during the individual's applicable benefit year.

### **Sec. 209.062. Maximum Total Extended Benefit Amount**

The total extended benefit amount payable to an eligible individual for the individual's eligibility period is 50 percent of the total amount of regular benefits that were payable to the individual under this subtitle in the individual's benefit year.

### **Sec. 209.063. Effect of Trade Readjustment Allowances**

- (a) Notwithstanding any other provision of this subtitle, the remaining balance of extended benefits that an individual would otherwise be entitled to receive in an extended benefit period for benefit periods beginning after the end of a benefit year is reduced as provided by Subsections (b) and (c) if:
  - (1) the benefit year of the individual ends within an extended benefit period; and
  - (2) the individual receives trade readjustment allowances under the Trade Act of 1974 (19 U.S.C. Section 2101 et seq.) within that benefit year.
- (b) The balance is reduced by an amount equal to the product of:
  - (1) the number of benefit periods for which the individual received trade readjustment allowances within that benefit year; and
  - (2) the individual's weekly benefit amount for extended benefits.
- (c) The balance may not be reduced to less than zero.

## **Subchapter E. Financing of Extended Benefits**

### **Sec. 209.081. Unemployment Compensation Fund**

- (a) Extended benefits shall be paid from the compensation fund.
- (b) Payments made by the federal government for its share of extended benefits shall be deposited in the compensation fund.

**Sec. 209.082. Charges to Reimbursing Employer**

Fifty percent of the extended benefit payments based on benefit wage credits from a reimbursing employer shall be charged to the employer's account and reimbursed by the employer in the same manner as a regular benefit payment. Those payments may not be used in determining the replenishment ratio in Section 204.045.

**Sec. 209.083. Charges to Taxed Employer**

- (a) Fifty percent of extended benefit payments based on benefit wage credits from a taxed employer are chargebacks and must be used in determining the employer's benefit ratio unless regular benefits paid to the individual were determined not to be charged back against the employer's account.
- (b) Fifty percent of extended benefit payments based on benefit wage credits from a taxed employer, regardless of whether charged to an employer, shall be used in the numerator of the replenishment ratio in Section 204.045(b). Chargebacks resulting from the payment of extended benefits shall be used in the denominator of the replenishment ratio in Section 204.045.

**Sec. 209.084. Charges to Governmental Employer**

The total amount of extended benefit payments shall be charged to the employer if the payments are based on benefit wage credits earned from:

- (1) a state;
- (2) any political subdivision of a state; or
- (3) any instrumentality of any one or more states or political subdivisions that is wholly owned by one or more states or political subdivisions.

**Sec. 209.0845. Charges to Indian Tribe**

The total amount of extended benefit payments that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be charged to the Indian tribe.

**Sec. 209.085. Notice to Taxed Base Period Employer**

- (a) The notice to a taxed base period employer of a claim for benefits under Section 204.023 or 204.027 must state that if the claim results in the payment of extended benefits, the maximum potential chargeback may be increased by as much as 25 percent. Further notice to the employer of the potential chargeback is not required when the extended benefits are paid.

- (b) A taxed employer subject to Section 209.084 is entitled to receive notice that its maximum potential chargeback may be increased by as much as 50 percent rather than 25 percent as provided for other employers.

## **CHAPTER 210. BACK PAY AWARDS; LOST OR MISPLACED WARRANTS**

### **Subchapter A. Back Pay Awards**

#### **Sec. 210.001. Notice of Back Pay Award Reduction**

If a back pay award to a claimant is reduced because of the receipt of unemployment compensation benefits by the claimant, the employer against whom the back pay award was made shall notify the commission of the back pay award in writing not later than the 12th day after the day on which the employer learns about the reduction.

#### **Sec. 210.002. Reimbursement by Employer for Reduction of Back Pay Award**

- (a) Subject to Subsection (b), an employer who is assessed a back pay award that is reduced because of the receipt of unemployment compensation benefits by the claimant shall reimburse the compensation fund for benefits paid from the compensation fund in an amount equal to the amount of the reduction in the back pay award.
- (b) An employer is not liable under this section to pay more than the amount that the commission determines the claimant was overpaid unemployment compensation benefits because of the back pay award.
- (c) An employer shall reimburse the compensation fund as provided by rules adopted by the commission.
- (d) The commission shall credit the payment of reimbursement by an employer against the overpayment of benefits.

**Sec. 210.003. Employee's Liability; Sole Liability of Employer**

A claimant is not liable for an overpayment of benefits that results from a back pay award and for which the employer against whom the award is made is required under Section 210.002 to reimburse the compensation fund, and the employer's liability is the only liability because of the overpayment. This section prevails over any conflicting provision of this subtitle.

**Subchapter B. Lost or Misplaced Warrants**

**Sec. 210.011. Replacement for Lost or Misplaced Warrant**

- (a) The comptroller may issue to a claimant a replacement warrant for a warrant issued in payment of benefits under this subtitle if the claimant who was entitled to receive the original warrant:
  - (1) loses or for any reason fails to receive the warrant; and
  - (2) furnishes satisfactory proof to the comptroller of the loss or failure to receive the warrant.
- (b) Subject to Section 210.013, the replacement warrant shall be issued as provided by Section 403.054, Government Code.

**Sec. 210.012. Deadline for Payment of Warrant**

The comptroller may not pay a warrant issued for benefits unless the warrant is presented for payment before the first anniversary of the date on which the warrant was issued.

**Sec. 210.013. Deadline for Issuance of Replacement Warrant**

A replacement warrant may not be issued under this chapter after the first anniversary of the date of the original warrant.

**CHAPTER 211. RECIPROCAL ARRANGEMENTS**

**Sec. 211.001. Location of Service for Unemployment Insurance Purposes**

The commission may enter into arrangements with an appropriate agency of another state or a federal agency under which an individual performing services in this and one or more other states for an employing unit is considered to be engaged in employment entirely in:

- (1) this state;
- (2) one of the other states in which the individual performs some of the services;
- (3) the state of the individual's residence; or

- (4) the state in which the employing unit maintains a place of business.

**Sec. 211.002. Location of Service of State Employees**

- (a) The commission may enter into a reciprocal arrangement with the appropriate agency of another state under which a state employee who performs services in the state that is not the employing state is considered to be engaged in employment performed entirely in the employing state.
- (b) The commission shall enter the arrangement on request of an agency of this state that has an employee performing a service in another state.

**Sec. 211.003. Combination of Wages and Employment**

The commission shall participate in an arrangement for the payment of benefits determined by combining an individual's wages and employment covered under this subtitle and the wages and employment covered under the unemployment compensation laws of another state or the United States, or both, if the arrangement is approved by the United States secretary of labor in consultation with the state unemployment compensation agencies as reasonably calculated to ensure the prompt and full payment of benefits. The arrangement must provide for:

- (1) applying the base period of one unemployment compensation law to a claim that combines an individual's wages and employment covered under two or more unemployment compensation laws; and
- (2) avoiding the duplicate use of wages and employment because of the combination.

**Sec. 211.004. Offset for Overpayment of Unemployment Benefits**

- (a) Notwithstanding any other provision of this subtitle, the commission may enter into a reciprocal arrangement with an appropriate state or federal agency, or both, that provides:
  - (1) an overpayment of benefits under this subtitle is recovered by offset from unemployment benefits otherwise payable under the unemployment compensation law of another state or of the United States; and
  - (2) an overpayment of unemployment benefits under the unemployment compensation law of the other state of the United States are recovered by offset from benefits payable under this subtitle.
- (b) A procedure for notice and opportunity for a hearing that applies to the recovery of an overpayment of unemployment benefits paid under this subtitle applies to an offset of those benefits under this section.



- (c) In this section, "**unemployment benefits**" means unemployment compensation benefits, trade adjustment allowances, and other unemployment assistance.

**Sec. 211.005. Interstate or Foreign Commerce**

The commission may enter into a reciprocal arrangement with the appropriate agency of another state or federal agency, or both, under which service on a vessel or aircraft engaged in interstate or foreign commerce for a single employer is considered to be performed in this state or in another state, regardless of where the service is performed.

**Sec. 211.006. Reciprocal Treatment by Federal Agency**

- (a) The commission may enter into an agreement with the proper agency under an Act of Congress establishing an unemployment compensation system to provide reciprocal treatment to an individual:
- (1) who has acquired a right to unemployment compensation under the Act of Congress after acquiring a potential right to benefits under this subtitle; or
  - (2) who has acquired a right to benefits under this subtitle after acquiring a potential right to unemployment compensation under the Act of Congress.
- (b) An agreement under this section takes effect 10 days after the date on which the agreement is published in the manner provided for a rule.

**CHAPTER 212. DISPUTE RESOLUTION**

**Subchapter A. General Provisions**

**Sec. 212.001. Procedures**

The manner in which disputed claims are presented, the reports on disputed claims required from claimants, employers, or other persons, and the conduct of hearings and appeals must be in accordance with rules adopted by the commission for determining the rights of parties to disputed claims

**Sec. 212.002. Record**

- (a) A complete record shall be kept of proceedings in connection with a disputed claim.
- (b) Testimony at any hearing on a disputed claim shall be recorded.

**Sec. 212.003. Witness Fees**

- (a) A witness subpoenaed under this chapter is entitled to a fee at a rate set by the commission.

- (b) The witness fee is an expense of administering this subtitle.

**Sec. 212.004. Payment of Benefits Pending Appeal**

- (a) Except as otherwise provided by this section, benefits shall be paid in accordance with a final determination.
- (b) Benefits shall be paid promptly in accordance with:
  - (1) a determination or redetermination of an examiner;
  - (2) a decision of an appeal tribunal;
  - (3) a decision of the commission; or
  - (4) a decision of a reviewing court.
- (c) Subsection (b) applies without regard to:
  - (1) any provision of this subtitle under which benefits may be paid or denied; or
  - (2) the pendency of:
    - (A) a period to:
      - (i) apply for reconsideration;
      - (ii) file an appeal; or
      - (iii) petition for judicial review;
    - (B) an application for reconsideration;
    - (C) an appeal; or
    - (D) a petition for judicial review.
- (d) Benefits paid under a determination, redetermination, or decision continue until the determination, redetermination or decision is modified or reversed by a subsequent redetermination or decision, and shall be paid or denied in accordance with the modifying or reversing redetermination or decision.

**Sec. 212.005. Chargeback on Reversal of Determination or Decision Allowing Benefits Prohibited; Exception**

- (a) Except as provided by Subsection (b), a chargeback may not be made to an employer's account because of payments having been made under a determination or decision to the

claimant for any benefit period with regard to which the claimant is finally denied benefits by a modification or reversal of the determination or decision.

- (b) A chargeback shall be made to an employer's account for benefits paid to a claimant that are not in accordance with the final determination or decision under this subtitle if the benefits were paid due to the failure of the employer, or the employer's agents, to comply with Section 208.004.

#### **Sec. 212.006. Recovery of Benefits Paid**

- (a) Benefits paid to a claimant that are not in accordance with the final decision shall be:
  - (1) refunded by the claimant to the commission; or
  - (2) in the discretion of the commission, deducted from future benefits payable to the claimant under this subtitle.
- (b) Benefits paid that are not in accordance with the final decision are also collectible in the manner provided by Sections 213.031, 213.032, 213.033, 213.035, and 213.051 for the collection of past due contributions.

### **Subchapter B. Examiners**

#### **Sec. 212.051. Determination by Examiner on Notification**

- (a) If the person for which a claimant last worked files a notification with the commission as provided by Section 208.004, an examiner shall determine:
  - (1) whether the claimant is disqualified from receiving benefits under Section 207.044-207.053;
  - (2) the resolution of any other issue affecting the claimant's right to receive benefits that arises under any other provision of this subtitle; and
  - (3) whether, if benefits are to be paid to the claimant, a chargeback is to be made to the person's account.
- (b) The examiner shall mail a copy of the determination to the claimant and:
  - (1) the person for which the claimant last worked;
  - (2) the branch or division for which the claimant last worked; or
  - (3) the address for mail service designated by a governmental employer.

**Sec. 212.052. Determination by Examiner on Examiner's Own Motion**

- (a) If a notification as provided by Section 208.004 from the person for which a claimant last worked is not filed, and information on the claim or other information secured raises an issue affecting the claimant's right to benefits under this subtitle, an examiner shall determine whether the claimant is to receive benefits.
- (b) The examiner shall mail a copy of the determination to the claimant at the claimant's last known address.

**Sec. 212.053. Determination Final; Appeal**

An examiner's determination is final for all purposes unless:

- (1) the claimant or the person or branch for which the claimant last worked and to whom the copy of the determination is mailed files an appeal from the determination not later than the 14th calendar day after the date on which the copy of the determination is mailed to the last known address of the claimant, person, or branch as shown by commission records;
- (2) an examiner files an appeal from the determination within the period specified in Subdivision (1); or
- (3) an examiner makes a redetermination as provided by Section 212.054.

**Sec. 212.054. Redetermination by Examiner**

- (a) Except as otherwise provided by this subsection, if an examiner discovers an error in connection with a determination or discovers additional information not previously available, the examiner, within the period specified in Section 212.053(1), may reconsider and redetermine the determination. An examiner may issue a redetermination to correct a clerical or machine error at any time during a claimant's benefit year.
- (b) An examiner's redetermination replaces the original determination and becomes final unless the claimant or the person for which the claimant last worked files an appeal from the redetermination not later than the 14th calendar day after the date on which a copy of the redetermination is mailed to the claimant's or person's last known address as shown by commission records.

## **Subchapter C. Appeal Tribunals**

### **Sec. 212.101. Establishment of Appeal Tribunals**

- (a) The commission shall establish one or more impartial appeal tribunals to hear and decide disputed claims if the establishment of those appeal tribunals is necessary to ensure prompt disposal of cases on appeal.
- (b) An appeal tribunal is composed of a salaried examiner.

### **Sec. 212.102. Action by Appeal Tribunal**

Unless the appeal is withdrawn, an appeal tribunal shall affirm or modify the determination of the examiner after giving the parties reasonable opportunity for fair hearing.

### **Sec. 212.103. Notice of Appeal Tribunal Action**

The parties to an appeal shall be notified of the appeal tribunal's decision and the reasons for the decision.

### **Sec. 212.104. Decision Considered Final Commission Decision**

The decision of an appeal tribunal is the final decision of the commission unless further appeal is initiated as provided by Section 212.151 not later than the 14th day after the date the decision is mailed.

### **Sec. 212.105. Removal or Transfer of Claim Pending Before Appeal Tribunal**

- (a) The commission may remove to itself or transfer to another appeal tribunal the proceedings on a claim pending before an appeal tribunal.
- (b) A quorum of the commission shall hear a proceeding removed to the commission under Subsection (a).
- (c) The commission promptly shall mail to the parties before it a copy of its findings and decision.

### **Sec. 212.106. Rules Regarding Hearings Conducted by Telephone Conference**

The commission by rule shall develop procedures to ensure that an appeal tribunal makes every effort in a hearing conducted by telephone conference under this subchapter to obtain all relevant facts and evidence from the parties to the appeal.

## **Subchapter D. Commission Review**

### **Sec. 212.151. Review of Appeal Tribunal Decision**

The commission may:

- (1) on its own motion:
  - (A) affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in the case; or
  - (B) direct the taking of additional evidence; or
- (2) permit any of the parties to the decision to initiate a further appeal before the commission.

### **Sec. 212.152. Notice of Commission Action**

The commission promptly shall mail to the parties before it a copy of its findings and decision.

### **Sec. 212.153. Finality of Commission Decision**

A decision of the commission becomes final 14 days after the date the decision is mailed unless before that date:

- (1) the commission by order reopens the appeal; or
- (2) a party to the appeal files a written motion for rehearing.

## **Subchapter E. Judicial Review of Commission Decision**

### **Sec. 212.201. Commencement of Judicial Review; Defendants**

- (a) A party aggrieved by a final decision of the commission may obtain judicial review of the decision by bringing an action in a court of competent jurisdiction for review of the decision against the commission on or after the date on which the decision is final, and not later than the 14th day after that date.
- (b) Each other party to the proceeding before the commission must be made a defendant in an action under this subchapter.

**Sec. 212.202. Standard of Judicial Review; Exceptions Not Necessary**

- (a) Judicial review under this subchapter is by trial de novo based on the substantial evidence rule.
- (b) It is not necessary in a judicial proceeding under this subchapter to enter exceptions to the rulings of the commission.

**Sec. 212.203. Exhaustion of Remedies**

- (a) A party claiming to be aggrieved by a final decision of the commission may not obtain judicial review of the decision unless the party has exhausted the party's remedies before the commission as provided by this subtitle.
- (b) The exhaustion of those remedies does not include a motion for rehearing.

**Sec. 212.204. Filing of Action**

An action under this subchapter must be filed:

- (1) in the county of the claimant's residence; or
- (2) if the claimant is not a resident of this state, in:
  - (A) Travis County;
  - (B) the county in this state in which the claimant's last employer has its principal place of business; or
  - (C) the county of the claimant's last residence in this state.

**Sec. 212.205. Petition; Supersedeas**

- (a) A petition in an action under this subchapter must state the grounds on which review is sought.
- (b) A petition for judicial review does not act as a supersedeas.

**Sec. 212.206. Commission Considered Party to Judicial Review; Notice of Petition**

- (a) The commission is considered a party to any judicial action involving a final decision of the commission.
- (b) A petition to bring an action under this subchapter must be served on:
  - (1) a member of the commission; or

- (2) a person designated by the commission.
- (c) As many copies of the petition as there are defendants must be left with the party served under Subsection (b). The commission immediately shall mail one copy of the petition to each defendant.
- (d) Service in compliance with this section constitutes completed service on all defendants.

**Sec. 212.207. Representation of Commission**

The commission may be represented in any judicial action involving a final decision of the commission by any qualified attorney who:

- (1) is a regular salaried employee of the commission; and
- (2) has been appointed for that purpose by the attorney general.

**Sec. 212.208. Precedence Over Other Civil Actions**

An action under this subchapter shall be given precedence over all other civil cases except cases arising under the workers' compensation laws of this state.

**Sec. 212.210. Appeal Bond Not Required**

An appeal bond is not required in an appeal from a decision of a trial court in an action under this subchapter.

## **CHAPTER 213. ENFORCEMENT OF TEXAS UNEMPLOYMENT COMPENSATION ACT**

### **Subchapter A. General Enforcement Provisions**

**Sec. 213.001. Representation in Court**

- (a) The attorney general shall designate an assistant attorney general to represent the commission and the state in a civil action to enforce this subtitle and to perform legal duties as the commission requires.
- (b) The assistant attorney general shall institute in the name of the state and the attorney general any civil action requested by the commission.
- (c) The commission shall pay the assistant attorney general for a service performed by the assistant attorney general solely for the commission.
- (d) A qualified attorney who is regularly employed by the commission may assist the assistant attorney general.



**Sec. 213.002. Prosecution of Criminal Actions**

The prosecuting attorney for a county in which a criminal violation of this subtitle or a rule adopted under this subtitle is alleged to have occurred shall prosecute the criminal action.

**Sec. 213.003. Admissibility of Certified Copy of Commission Record**

In a civil or criminal proceeding brought under this subtitle, a certified copy of a document from commission records is admissible in evidence instead of the original document.

**Sec. 213.004. Admissibility of Report or Audit; Prima Facie Evidence**

- (a) In a judicial proceeding in which the establishment or collection of a contribution, penalty, or interest is sought because an employer does not pay a contribution, a penalty, or interest within the time and in the manner required by this subtitle or by a rule adopted under this subtitle, the following are admissible:
  - (1) a report filed in an office of the commission by the employer or the employer's representative that shows the amount of wages paid by the employer or the employer's representative for which a contribution, a penalty, or interest has not been paid;
  - (2) a copy of a report described in Subdivision (1) that is certified by a member of the commission or by an employee designated for that purpose by the commission; and
  - (3) an audit made by the commission or its representative from the books of the employer that is signed and sworn to by the representative as being made from the records of the employer.
- (b) A report or audit admissible under this section is prima facie evidence of the truth of its contents. The incorrectness of the report or audit may be shown.

**Sec. 213.005. Costs Adjudged Against State or Commission**

The commission shall pay from the administration fund established under Subchapter D, Chapter 203, costs adjudged against the state or the commission in a suit instituted on behalf or at the request of the commission under this chapter or Section 204.086.

**Sec. 213.006. Priority of Claim for Contribution**

If an employer's assets are distributed under a court order issued under the laws of this state, including a receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, a contribution due at the time of distribution or that becomes due after the distribution has the same priority as other tax claims under the laws of this state.

**Sec. 213.007. Collateral Estoppel Doctrine Inapplicable**

A finding of fact, conclusion of law, judgment, or final order made under this subtitle is not binding and may not be used as evidence in an action or proceeding, other than an action or proceeding brought under this subtitle, even if the action or proceeding is between the same or related parties or involves the same facts.

**Sec. 213.008. Election of Collection Remedies**

An action taken under this chapter is not an election by the commission to pursue a particular remedy or action under this chapter to the exclusion of another remedy or action under this subtitle or under another law of this state.

**Sec. 213.009. Commission Enforcement of Out-of-State Judgment**

- (a) A qualified attorney who is a regular salaried employee of the commission may represent an employment security agency of another state in a proceeding in a court in this state to collect a contribution, a penalty, interest, or a court cost for which liability has been incurred by an employing unit under an unemployment compensation law or unemployment insurance law of the other state, if:
  - (1) the liability has been reduced to judgment in a court of record in the state of the requesting agency; and
  - (2) the unemployment compensation law or unemployment insurance law of the requesting state provides for a similar action on behalf of the commission by the requesting state agency.
- (b) The venue for a proceeding under this section is the same as the venue for an action to collect an overdue contribution, penalty, or interest due under this subtitle.

### **Sec. 213.010. Notice to Indian Tribes**

A notice of payment or notice of delinquency provided to an Indian tribe under this chapter must inform the Indian tribe that failure to make full payment within the required time:

- (1) will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.), as amended;
- (2) will cause the Indian tribe to lose the option to pay reimbursements for benefits instead of contributions; and
- (3) may cause the Indian tribe to no longer be considered an employer and services for the Indian tribe to no longer be considered employment for purposes of Section 201.048.

### **Sec. 213.011. Effect of Previous Employment Determination**

- (a) Subject to Subsection (c), it is reasonable for an employer to rely on a court ruling or commission determination that, for the purposes of this subtitle, service performed by an individual, including service in interstate commerce, is not employment under this subtitle if:
  - (1) the ruling is:
    - (A) a judicial decision or precedent, including a published opinion, from a court in this state; or
    - (B) a commission decision involving the employer as a party or a subject; and
  - (2) the ruling or determination has not been reversed or otherwise invalidated.
- (b) The commission shall relieve an employer that reasonably relies on a ruling or determination described by Subsection (a) from penalties, interest, or sanctions under this chapter or Chapter 214 that result from a subsequent ruling or determination that the service in question is employment. An employer who receives relief under this subsection is not indebted to the state for the penalties, interest, or sanctions from which the employer is relieved and may not be considered delinquent on the payment of taxes, to the extent of the amount from which the employer is relieved.
- (c) An employer may reasonably rely on a ruling or determination under Subsection (a) until the earlier of:
  - (1) the effective date of the subsequent ruling or determination invalidating the ruling or determination on which the employer reasonably relied; or
  - (2) the third anniversary of the due date of a contribution based on the service in question.

- (d) This section applies only if the commission determines that the nature of the business and the service in question are substantially unchanged from the time the initial ruling was issued or the initial determination was made.

## **Subchapter B. Employer Penalties and Interest**

### **Sec. 213.021. Interest On Past Due Contribution**

- (a) An employer who does not pay a contribution on or before the date prescribed by the commission is liable to the state for interest of one and one-half percent of the contribution for each month or portion of a month that the contribution and interest payments are not paid in full. The total interest applied may not exceed 37½ percent of the amount of contribution due at the due date.
- (b) Liability for interest under Subsection (a) does not apply to an employer who:
- (1) failed to pay a contribution because of the bona fide belief that all or some of its employees were covered under the unemployment insurance law of another state; and
  - (2) paid when due a contribution on all wages of those employees under that law.

### **Sec. 213.022. Penalty for Failure to File Report**

An employer who does not file a report of wages paid or contributions due as required by this subtitle or commission rule shall pay to the commission a penalty in the amount equal to:

- (1) \$15, if the completed report is filed not later than the 15th day after the report's due date;
- (2) \$30 plus one-twentieth of one percent of wages that the employer failed to report, if the completed report is filed after the 15th day after the report's due date but during the first month after the report's due date;
- (3) the sum of the amount computed under Subdivision (2) and the amount equal to \$30 plus one-tenth of one percent of wages that the employer failed to report, if the completed report is filed during the second month after the report's due date; or
- (4) the sum of the amount computed under Subdivision (3) and the amount equal to \$30 plus one-fifth of one percent of wages that the employer failed to report, if the completed report is filed during the third month after the report's due date.

### **Sec. 213.023. Penalty for Other Violation**

An employing unit shall pay a penalty of \$30 if a civil penalty is not otherwise provided by this subtitle and the employing unit:

- (1) does not keep records required under this subtitle or commission rule;
- (2) makes a false report to the commission; or
- (3) violates this subtitle or a commission rule adopted under this subtitle.

### **Sec. 213.024. Penalty for Continuing Violation**

- (a) In addition to the penalty imposed under Section 213.023, an employing unit shall pay a penalty of \$30 for each consecutive day that a violation of this subtitle or of a rule adopted under this subtitle continues after notice is given as provided by Subsection (b).
- (b) The penalty is imposed and becomes cumulative on the 10th day after the date written notice is given or mailed to the employing unit by the commission or its authorized representative.

### **Sec. 213.025. Additional Interest on Judgment or Final Assessment for Past Due Contribution**

For a judgment or final assessment that grants recovery of the amount of a contribution and the amount of interest computed at the maximum rate permitted under Section 213.021(a), the part of the judgment or final assessment for the amount of the contribution earns additional interest at the rate of one percent for each month or part of a month it remains unpaid.

## **Subchapter C. Collection of Contribution by Civil Suit or Notice of Assessment**

### **Sec. 213.031. Collection Required; Methods**

If after notice an employer does not pay a contribution or a penalty or interest on a contribution, the commission shall collect the amount due by:

- (1) bringing a civil action in the name of the state and the attorney general in a district court in Travis County; or
- (2) serving a notice of assessment on the defaulting employer, stating the amount of contribution, penalty, and interest outstanding.

**Sec. 213.032. Service of Notice of Assessment; Contents as Prima Facie Evidence; Judicial Review; Effect**

- (a) A notice of assessment shall be served in the manner provided by law for service of process on a defendant in a civil action in district court.
- (b) A notice of assessment is prima facie evidence of the truth of contents of the notice. The incorrectness of the notice may be shown.
- (c) An employer aggrieved by the determination of the commission as stated in a notice of assessment may file a petition for judicial review of the assessment with a Travis County district court not later than the 30th day after the date on which the notice of assessment is served. A copy of the petition must be served on a member of the commission or on a person designated by the commission in the manner provided by law for service of process on a defendant in a civil action in a district court.
- (d) If an employer does not seek judicial review under Subsection (c), a commission assessment is final for all purposes.
- (e) An assessment that is not contested by the employer or that is upheld after judicial review has the effect of a final judgment of a district court and shall be recorded, enforced, and renewed in the same manner. An assessment described by this subsection is a final assessment.

**Sec. 213.033. Limitations**

- (a) The commission may not begin a civil action in court or make an assessment under this subchapter to collect a contribution, a penalty, or interest from an employer after the third anniversary after the due date of the contribution.
- (b) The following actions suspend the running of the limitations period prescribed under Subsection (a):
  - (1) an administrative hearing to redetermine the liability for a contribution, a penalty, or interest pending before the commission; and
  - (2) a bankruptcy case begun under Title 11 of the United States Code pending before the court.
- (c) After a hearing or case described by Subsection (b) is closed, the running of the limitations period prescribed under Subsection (a) resumes.
- (d) In the case of a willful attempt to evade the provisions of this subtitle or a commission rule adopted under this subtitle, the action or assessment may be begun or made at any time.

**Sec. 213.034. Statement as Evidence in Civil Action; Denial**

- (a) If a civil action filed under this subchapter is supported by a statement, report, or audit issued by the commission and the commission certifies that the contribution, penalty, and interest shown to be due by the statement, report, or audit are delinquent and that all offsets, payments, and credits have been allowed, the statement, report, or audit is prima facie evidence of the truth of its contents unless before an announcement of ready for trial the defendant files an affidavit that:
  - (1) denies that all or part of the contribution, penalty, or interest is due; and
  - (2) states the details relating to any part of the contribution, penalty, or interest claimed not due.
- (b) If the defendant files an affidavit described by Subsection (a) on the day of the trial, the court at the request of the plaintiff shall postpone the cause for a reasonable time.
- (c) A defendant who does not file an affidavit in accordance with this section may not deny the claim for the contribution, penalty, or interest or an item of the claim.

**Sec. 213.035. Costs**

Unless the employer prevails in a civil action brought under this subchapter or the notice of assessment is reversed by a reviewing court, the employer shall pay all costs of either action.

**Sec. 213.036. Abstract of Judgment; Abstract of Assessment; Fee; Release**

- (a) The commission shall pay the fee for filing and recording an abstract of a judgment or an abstract of an assessment against an employer for a contribution, a penalty, or interest by warrant drawn by the comptroller to the county clerk of each county in which the abstract is recorded.
- (b) The amount of the fee paid under Subsection (a) shall be added to the amount due under the judgment or assessment.
- (c) When the liability secured by the lien is paid, the commission shall mail a release of the lien to the employer. The employer is responsible for filing the release with the appropriate county clerk and for paying the county clerk's fee for recording the release.

**Subchapter D. Other Enforcement Remedies Against Employer**

**Sec. 213.051. Forfeiture of Right to Employ Individuals in This State; Bond**

- (a) After a judgment is entered against an employer for a contribution, penalty, or interest or an assessment against an employer under this chapter is final and execution returned

unsatisfied, an employer liable for the unpaid judgment or final assessment may not employ an individual in this state until the employer furnishes a surety bond.

- (b) The amount of the bond may not exceed twice the amount due at the time the bond is furnished plus contributions estimated by the commission to become due from the employer during the succeeding calendar year. The bond must be conditioned on payment of the contribution, penalty, interest, and court costs due from the employer not later than January 30 of the succeeding calendar year. The bond must be approved by the commission.
- (c) If the employer does not furnish the bond or pay the contribution, penalty, and interest due, the commission may apply to the court that entered the judgment for an injunction to prohibit the employer from employing a person in this state without first furnishing a bond as required by this section. After reasonable notice of not less than 10 days by the court, the court may grant a temporary injunction. The temporary injunction may be made permanent on final hearing and remains in effect until the requirements of this chapter are satisfied.

**Sec. 213.052. Injunction Restraining Certain Violations**

- (a) If an individual or employing unit appears to be violating or threatening to violate this subtitle or any rule or order of the commission adopted under this subtitle relating to the collection of a contribution, a penalty, or interest or to the filing of a report relating to employment, the commission shall bring suit against the individual or employing unit to restrain the violation. The court may grant a temporary or permanent, prohibitory or mandatory injunction, including a temporary restraining order, as warranted by the facts.
- (b) A suit under this section must be brought through the attorney general in the name of the state in a court of competent jurisdiction in Travis County.

**Sec. 213.053. Violation of Injunction; Receiver**

- (a) If an individual or an employing unit violates an injunction granted under this subtitle, the court on its own motion or the commission's motion in the name of the state, after notice and hearing, may appoint a receiver. The receiver may exercise the powers that, in the judgment of the court, are necessary to provide compliance with the injunction, including taking charge of the property of the individual or employing unit.
- (b) The power to appoint a receiver under this section is in addition to the power to punish for contempt.



#### **Sec. 213.054. Offset Against State Warrant**

Any contribution, penalty, interest, or court cost owed by an employer under this subtitle is a debt owed by the employer to the state under Section 403.055, Government Code, only for withholding of a warrant for:

- (1) the refund of taxes, fees, assessments, or other deposits required under the law of this state; or
- (2) compensation for goods and services, other than a warrant for:
  - (A) payment for services performed as an elected or appointed employee of this state; or
  - (B) reimbursement of expenses incurred in the performance of employment as an elected or appointed employee of this state.

#### **Sec. 213.055. Audit of Employer**

- (a) The commission may employ an auditor or other person to determine the amount of a contribution due and prepare a report due from an employer who does not properly pay a contribution or make a report as required by this subtitle or a rule adopted under this subtitle.
- (b) An employer who has not paid the correct amount or made a correct report shall pay, as an additional penalty, the reasonable expenses incurred in the investigation under Subsection (a). The commission may collect this penalty in accordance with this chapter.
- (c) This section does not prevent the commission from using other available funds as necessary for the purpose of auditing an employer or preparing or assisting in preparing a report of an employer.

#### **Sec. 213.056. Estimated Taxable Wages if Report Not Filed**

- (a) If an employer does not make a report to the commission that is required by this subtitle or by commission rule, the commission may estimate the taxable wages paid by the employer during the period to have been covered by the report. In making this estimate, the commission may use any available source of information.
- (b) The commission may collect contributions and penalties using an estimate made under this section as if the estimated wages had been properly reported by the employer.

#### **Sec. 213.057. Tax Lien**

- (a) The amount due from an employing unit under this subtitle is secured by a lien on property belonging to the employing unit or to any individual indebted for the sum.

- (b) The lien attaches at the time the contribution, penalty, interest, or other charge becomes overdue.
- (c) The lien may be recorded in a "State Tax Liens" book kept by a county clerk under Section 113.004, Tax Code.
- (d) The lien may be released in the manner provided for other state tax liens under Chapter 113, Tax Code.
- (e) The commission shall pay by warrant drawn by the comptroller to the county clerk of the county in which the notice of lien is filed the fee for filing and recording similar instruments. The fee shall be added to the amount due from the employer.
- (f) When the liability secured by the lien is fully paid, the commission shall mail to the employer a release of the lien. The employer is responsible for filing the release with the appropriate county clerk and to pay the county clerk's fee for recording the release.

**Sec. 213.058. Additional Tax Lien Enforced by Commission**

- (a) The amount due from an employing unit to the commission under this subtitle is secured by a lien on property belonging to the employing unit or to any individual indebted for the sum.
- (b) The lien attaches at the time a contribution, a penalty, interest, or another charge becomes overdue.
- (c) Subchapters A and B, Chapter 113, Tax Code, govern the enforcement of a lien under this section. In administering and enforcing a lien created under this section, the commission has the powers and duties imposed and conferred on the comptroller for the enforcement of other liens under those subchapters.
- (d) A lien under this section is cumulative of the lien created under Section 213.057.

**Sec. 213.059. Delinquency; Notice of Levy**

- (a) If a person is delinquent in the payment of any amount, including contributions, penalties, and interest due under this subtitle, the commission may notify personally or by mail any other person who:
  - (1) possesses or controls an asset belonging to the delinquent person; or
  - (2) owes a debt to the delinquent person.
- (b) A notice under this section to a state officer, department, or agency must be given before the officer, department, or agency presents to the comptroller the claim of the delinquent person.

- (c) A notice under this section may be given at any time after the amount due under this subtitle becomes delinquent. The notice must state the amount of contributions, penalties, interest, or other amounts due, and any additional amount that will accrue by operation of law in a period not to exceed 30 days after the date on which the notice is given, and, in the case of a credit, bank, or savings account or deposit, is effective only up to that amount.
- (d) On receipt of a notice under this section, the person receiving the notice:
  - (1) shall advise the commission not later than the 20th day after the date the notice is received of each asset belonging to the delinquent person that is possessed or controlled by the person receiving the notice and of each debt owed by the person receiving the notice to the delinquent person; and
  - (2) unless the commission consents to an earlier disposition, may not transfer or dispose of the asset or debt possessed, controlled, or owed by the person receiving the notice as of the time the person received the notice during the 60-day period after the date of receipt of the notice.
- (e) A notice under this section that attempts to prohibit the transfer or disposition of an asset possessed or controlled by a bank is effective if it is delivered or mailed to the principal or any branch office of the bank, including any office of the bank at which the deposit is carried or the credit or property is held.
- (f) A person who has received a notice under this section and who transfers or disposes of an asset or debt in a manner that violates Subsection (d) is liable to the commission for the amount of the indebtedness of the delinquent person with respect to whose obligation the notice was given to the extent of the value of that asset or debt.
- (g) At any time during the 60-day period described by Subsection (d), the commission may levy on the asset or debt by delivery of a notice of levy. On receipt of the levy notice, the person possessing the asset or debt shall transfer the asset to the commission or pay to the commission the amount owed to the delinquent person.
- (h) A notice delivered under this section is effective:
  - (1) at the time of delivery against all property, rights to property, credits, and debts involving the delinquent person that are not, as of the date of the notice, subject to a preexisting lien, attachment, garnishment, or execution issued through a judicial process; and
  - (2) against all property, rights to property, credits, and debts involving the delinquent party that come into the possession or control of the person served with the notice within the 60-day period described in Subsection (d).

- (i) A person acting in accordance with the terms of the notice of freeze or levy issued by the commission is discharged from any obligation or liability to the delinquent person with respect to the affected property, rights to property, credits, and debts of the person affected by compliance with the notice of freeze or levy.
- (j) In this section, "**asset**" means:
  - (1) a credit, bank, or savings account or deposit; or
  - (2) any other intangible or personal property.

**Sec. 213.060. Enforcement Against Indian Tribe**

- (a) Services performed for an Indian tribe that fails to make a required payment, including payment of a penalty and interest, are not considered, after the exhaustion of all necessary collection activities by the commission, to be employment for purposes of Section 201.048.
- (b) Services for an Indian tribe that loses coverage under Subsection (a) may be considered to be employment for purposes of Section 201.048 if the Indian tribe has paid all contributions, payments instead of contributions for benefits paid, penalties, and interest owed by the Indian tribe.
- (c) The commission shall notify the Internal Revenue Service and the United States Department of Labor of an Indian tribe that fails to make required payments.

**Subchapter E. Adjustment or Refund for Employer's Overpayment**

**Sec. 213.071. Credit or Refund of Overpayment**

- (a) The commission shall allow the employing unit on application under Section 213.072 to adjust its contribution payments then due for a contribution or penalty erroneously collected from the employer.
- (b) If an adjustment cannot be made under Subsection (a), the commission shall refund the amount erroneously collected.
- (c) The commission may not approve an application for adjustment or refund if making the adjustment or refund would require removing or disregarding benefit wages that became benefit wage credits or that were charged as benefit wages more than three years before the date on which the application was filed. For the purpose of this subsection, removing or disregarding benefit wages does not include transferring compensation experience described in Subchapter E, Chapter 204.

**Sec. 213.072. Application.**

- (a) An employing unit that pays the commission a contribution or penalty that is allegedly due and that later is determined not due, in whole or in part, may apply to the commission for:
  - (1) an adjustment for a contribution payment then due; or
  - (2) a refund of the overpaid amount if an adjustment cannot be made.
- (b) An application for adjustment or refund must be filed before the third anniversary of the date on which the contribution or penalty was allegedly due.

**Sec. 213.073. Appeal of Commission Determination**

- (a) If the commission denies a timely application made under this subchapter, the employing unit may bring an action in a court of competent jurisdiction in Travis County against the commission for review of the commission's refusal to allow an adjustment or a refund.
- (b) An action under this section must be filed before the first anniversary of the date on which notice of the denial was mailed to the employing unit.
- (c) Trial of an action filed under this section is by trial de novo.
- (d) The employing unit may not bring an action for the refund under any other law.

**Sec. 213.074. Interest Not Allowed**

Interest is not allowed on an adjustment or refund made under this subchapter or a recovery made in a court action filed under this subchapter.

**Sec. 213.075. Adjustment or Refund on Commission Initiative**

The commission may make an adjustment or refund on its own initiative under this subchapter within the period prescribed by this subchapter.

## **CHAPTER 214. OFFENSES, PENALTIES, AND SANCTIONS**

**Sec. 214.001. Fraudulently Obtaining Benefits or Other Payment**

- (a) A person commits an offense if, to obtain or increase a benefit or other payment, either for the person or another person, under this subtitle, the unemployment compensation law of another state, or any act or program of the United States that is administered by the commission, the person:
  - (1) makes a false statement or representation, knowing it to be false; or

- (2) knowingly fails to disclose a material fact.
- (b) An offense under this section is a Class A misdemeanor.

**Sec. 214.002. Liability for Improperly Obtaining Benefits**

- (a) A person who has received improper benefits is liable for the amount of the improper benefits. The commission may recover improper benefits by:
  - (1) deducting the amount of the improper benefits from any future benefits payable to the person; or
  - (2) collecting the amount of the improper benefits for the compensation fund in the same manner provided by Sections 213.031, 213.032, 213.033, 213.035, and 213.051 for the collection of past due contributions.
- (b) In this section, "**improper benefit**" means the benefit obtained by a person:
  - (1) because of the nondisclosure or misrepresentation by the person or by another of a material fact, without regard to whether the nondisclosure or misrepresentation was known or fraudulent; and
  - (2) while:
    - (A) any condition imposed by this subtitle for the person's qualifying for the benefit was not fulfilled in the person's case; or
    - (B) the person was disqualified from receiving benefits.

**Sec. 214.003. Forfeiture or Cancellation of Benefits Paid and Remaining Benefits; Penalty**

- (a) If, by willful nondisclosure or misrepresentation of a material fact, whether the nondisclosure or misrepresentation is made by the person or for the person by another, a person receives a benefit when a condition imposed by this subtitle for the person's qualifying for the benefit is not fulfilled or the person is disqualified from receiving the benefit:
  - (1) the person forfeits the:
    - (A) benefit received; and
    - (B) rights to benefits that remain in the benefit year in which the nondisclosure or misrepresentation occurred; and
  - (2) the commission shall require the person to pay a penalty in an amount equal to 15 percent of the amount forfeited under Subdivision (1)(A).

- (b) If a person attempts to obtain or increase benefits by a nondisclosure or misrepresentation as provided by Subsection (a), the commission may cancel the person's right to benefits that remain in the benefit year in which the nondisclosure or misrepresentation occurred.
- (c) A forfeiture, cancellation, or penalty imposed under this section is effective only after the person has been afforded an opportunity for a fair hearing before the commission or its duly designated representative.
- (d) A person who is assessed a penalty by the commission under Subsection (a)(2) is liable for the amount of the penalty. The commission may collect the penalty in the same manner as provided by Sections 213.031, 213.032, 213.033, 213.035, and 213.051 for the collection of past-due contributions. The commission shall deposit a penalty assessed under Subsection (a)(2) in the unemployment compensation fund established under Section 203.021.

**Sec. 214.004. Fraudulently Avoiding Contribution or Payment of Benefits**

- (a) A person commits an offense if the person makes a false representation, knowing it to be false, or knowingly fails to disclose a material fact, to:
  - (1) prevent or reduce the payment of benefits to an individual entitled to the benefits;
  - (2) avoid becoming or remaining subject to this subtitle; or
  - (3) avoid or reduce any contribution or other payment required from an employing unit under this subtitle.
- (b) An offense under this section is a Class A misdemeanor.

**Sec. 214.005. Failure or Refusal to Make Contribution or Other Payment**

- (a) A person commits an offense if the person willfully fails or refuses to make a contribution or other payment required from an employing unit under this subtitle.
- (b) An offense under this section is a Class A misdemeanor.

**Sec. 214.006. Offenses Regarding Reports and Records**

- (a) A person commits an offense if the person willfully fails or refuses to:
  - (1) furnish a report required under this subtitle; or
  - (2) produce or permit the inspection or copying of records as required under this subtitle.
- (b) An offense under this section is a Class A misdemeanor.

**Sec. 214.007. General Offense**

- (a) A person commits an offense if the person willfully violates a provision of this subtitle or a rule adopted under this subtitle:
  - (1) the violation of which is made unlawful or the observance of which is required under this subtitle; and
  - (2) for which a penalty is not otherwise provided by this subtitle or any other applicable statute.
- (b) An offense under this section is a Class A misdemeanor.

**Sec. 214.008. Misclassification of Certain Workers; Penalty**

- (a) A person who contracts with a governmental entity to provide a service as defined by Section 2155.001, Government Code, shall properly classify, as an employee or independent contractor in accordance with Chapter 201, any individual the person directly retains and compensates for services performed in connection with the contract.
- (b) In this subsection, "subcontractor" means a person directly retained and compensated by a person who contracts with a governmental entity to provide a service as defined by Section 2155.001, Government Code. A subcontractor shall properly classify, as an employee or independent contractor in accordance with Chapter 201, any individual the subcontractor directly retains and compensates for services performed in connection with the contract for which the subcontractor is retained.
- (c) A person who fails to properly classify an individual as required by Subsection (a) or (b) shall pay to the commission a penalty equal to \$200 for each individual that the person has not properly classified.
- (d) The commission may not take action to collect a penalty under this section from a person after the third anniversary of the date on which the violation occurred.

**CHAPTER 215. SHARED WORK UNEMPLOYMENT COMPENSATION PROGRAM**

**Subchapter A. General Provisions**

**Sec. 215.001. Definitions**

In this chapter:

- (1) **"Affected unit"** means a unit of two or more employees, including a department or shift, designated by an employer to participate in a shared work plan.



- (2) **"Fringe benefit"** means health insurance, a retirement benefit received under a defined benefit plan, as defined by 26 U.S.C. Section 414(j), or under a defined contribution plan, as defined by 26 U.S.C. Section 414(i), a paid vacation day, a paid holiday, sick leave, or any other similar employee benefit provided by an employer.
- (3) **"Normal weekly hours of work"** means the number of hours in a week that an employee ordinarily works for a participating employer or an average of 40 hours per week over a two-week pay period, whichever is less.
- (4) **"Participating employee"** means an employee who works a reduced number of hours under an approved shared work plan.
- (5) **"Participating employer"** means an employer who has a shared work plan in effect.
- (6) **"Shared work benefit"** means an unemployment compensation benefit that is payable to a participating employee.
- (7) **"Shared work plan"** means a plan for reducing unemployment under which employees who are members of an affected unit share the work remaining after a reduction in their normal weekly hours of work.
- (8) **"Shared work program"** means the shared work unemployment compensation program.
- (9) **"Training"** means commission-approved voluntary training sponsored by an employer or funded under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.) that is designed to enhance a participant's job skills.

#### **Sec. 215.002. Shared Work Unemployment Compensation Program**

- (a) The commission, under a voluntary shared work unemployment compensation program designed to reduce unemployment and stabilize the work force, shall allow participating employees shared work benefits.
- (b) The commission may adopt rules and establish procedures necessary to administer the shared work program.

### **Subchapter B. Shared Work Plan**

#### **Sec. 215.021. Approval Required for Employer Plan**

- (a) Before an employer may participate in the shared work program, the commission must approve the employer's shared work plan. The plan must be submitted in writing to the commission.

- (b) If an employee who participates in a shared work plan is covered by a collective bargaining agreement, the collective bargaining agent must approve the plan in writing.

**Sec. 215.022. Requirements of Shared Work Plan**

- (a) The commission may approve a shared work plan if:
- (1) the plan:
    - (A) applies to and identifies a specific affected unit;
    - (B) identifies the employees in the affected unit by name and social security number and describes how the employees will be notified in advance of the plan, if feasible;
    - (C) provides an estimate of the number of employees who would be laid off if the employer does not participate in the shared work plan;
    - (D) reduces the normal weekly hours of work for an employee in the affected unit by at least 10 percent but not more than 40 percent;
    - (E) applies to at least 10 percent of the employees in the affected unit; and
    - (F) permits eligible employees to participate in training;
  - (2) the employer certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of layoffs that would:
    - (A) affect at least 10 percent of the employees in the affected unit; and
    - (B) result in an equivalent reduction in work hours;
  - (3) the employer certifies that:
    - (A) if the employer currently provides fringe benefits, the fringe benefits continue for employees in the affected unit unless those benefits are not continued for employees not participating in the shared work plan; and
    - (B) participation in the shared work plan is consistent with the employer's obligations under state and federal law; and
  - (4) the employer agrees to furnish the commission reports relating to the operation of the plan as requested by the commission and any other information the United States secretary of labor determines is appropriate.

- (b) A shared work plan may not be implemented to subsidize a seasonal employer during the off-season.

**Sec. 215.023. Approval or Denial of Shared Work Plan; Notice**

- (a) The commission shall approve or deny a shared work plan in writing not later than the 30th day after the date the commission receives the plan.
- (b) If the commission denies the plan, the commission shall give the employer the reasons for denial.

**Sec. 215.024. Effective Date of Shared Work Plan; Expiration or Termination**

- (a) A shared work plan takes effect on the date the commission approves the plan.
- (b) A shared work plan expires on the last day of the 12th calendar month beginning after the effective date of the plan.
- (c) The commission may terminate a shared work plan for good cause if the plan is not being executed according to the terms and intent of the shared work program.

**Sec. 215.025. Modification of Shared Work Plan**

- (a) An employer may modify a shared work plan to meet changed conditions if the modification conforms to the basic provisions of the plan as approved by the commission.
- (b) Before implementing a proposed change, the employer must report the change in writing to the commission.
- (c) The commission shall reevaluate a plan that is proposed to be substantially modified.
- (d) If a proposed plan modification is substantial, the commission may approve the modified plan according to the requirements of Sections 215.022(a)(1) and (2) or shall deny the modification subject to Section 215.023.
- (e) Approval of a modified plan does not affect the plan's original expiration date.

**Sec. 215.026. Participating Employer's Report on Plan Operation**

A participating employer shall:

- (1) monitor and evaluate the operation of its established shared work plan as requested by the commission; and
- (2) report the findings to the commission.

## **Subchapter C. Shared Work Benefits**

### **Sec. 215.041. Employee's Eligibility for Shared Work Benefits**

- (a) Notwithstanding any other provision of this subtitle, an individual is unemployed for the purposes of this subtitle in a week in which the individual works under an approved shared work plan in effect for that week for less than the individual's normal weekly hours of work.
- (b) An individual is eligible to receive shared work benefits for a week in which:
  - (1) the individual is employed as a member of an affected unit subject to a shared work plan that was approved before that week and is in effect for that week;
  - (2) the individual is able to work and is available for additional hours of work or for full-time work with the participating employer; and
  - (3) the individual's normal weekly hours of work have been reduced by at least 10 percent but not more than 40 percent, with a corresponding reduction in wages.
- (c) The commission may not deny shared work benefits for a week to an otherwise eligible individual because of a provision of this subtitle that relates to:
  - (1) availability for work;
  - (2) active search for work; or
  - (3) refusal to apply for or accept work with an employer other than the participating employer.

### **Sec. 215.042. Shared Work Benefits Formula**

- (a) The commission shall pay an individual who is eligible for shared work benefits a weekly shared work benefit in an amount equal to the individual's regular weekly benefit amount for a period of total unemployment multiplied by the nearest full percentage of reduction of the individual's wages under the employer's shared work plan.
- (b) The commission shall round to the next highest dollar a shared work benefit that is not a multiple of one dollar.

### **Sec. 215.043. Limitations on Benefits**

- (a) An individual is not entitled to receive shared work benefits and regular unemployment compensation benefits that exceed the maximum total benefits payable to the individual in a benefit year as provided by Section 207.005.

- (b) An individual who receives shared work benefits is not entitled to receive benefits for partial unemployment under Section 207.003 for any week in which the individual works as a participating employee.
- (c) The commission may not pay an individual shared work benefits for a week in which the individual performs paid work for the participating employer that exceeds the reduced hours established under a shared work plan.

**Sec. 215.044. Extended Benefits**

An individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year is an individual who has exhausted regular benefits under Section 209.042 and is entitled to receive extended benefits under Chapter 209 if the individual is otherwise eligible under that chapter.

# ILLUSTRATION

## COMPUTATION OF UNEMPLOYMENT BENEFIT AMOUNTS

### STEP 1

**Determine Base Period**

The *Base Period* is the first four of the last five completed calendar quarters immediately preceding the quarter in which an initial claim is filed establishing a benefit year

<i>Base Period</i>					
Fourth Quarter 2002	First Quarter 2003	Second Quarter 2003	Third Quarter 2003	Fourth Quarter 2003	Initial Claim January 12, 2004
\$5,420.	\$5,580.	\$5,670.	\$5,775.	\$5,825.	Quarterly Earnings

### STEP 2

**Determine Benefit Amount for Total Unemployment**

Take 1/25 of highest quarterly earnings in Base Period. For our example that is Third Quarter 2003 - \$5,775.

High Quarter \$5,775. / 25 = \$231. **BENEFIT AMOUNT**

Amount payable for a 7-day benefit period of total unemployment

The maximum weekly benefit amount is 47.6% and the minimum weekly benefit amount is 7.6% of the previous year's average annual weekly wage in covered employment. These amounts are subject to change each October. Within these limits, amounts that do not compute to an even multiple of \$1 will be rounded to the nearest \$1 (i.e., \$216.20 lowered to \$216 and \$216.80 raised to \$217).

### STEP 3

**Determine Total Benefits For Benefit Year**

Take the lesser of: 26 x the Benefit amount: 26 x \$231. = \$6,006.  
or

27% of total Base Period wage credits:  
(\$5,670 + 5,420. + 5,580. + 5,775. = \$22,445.)  
27% of \$22,445. = \$6,060.

**TOTAL BENEFITS FOR BENEFIT YEAR = \$6,006.**

### STEP 4

**Determine Maximum Number of Benefit Periods of Total Unemployment for which benefits may be paid.**

**Number of Benefit Periods of Total Unemployment Payable during Benefit Year**

Divide:  $\frac{\text{Total Benefits Payable } \$6,006.}{\text{by Benefit Amount } \$231.} = 26$

### STEP 5

**Computation of Benefits for Benefit Period of Partial Unemployment**

Add to Benefit Amount the sum of \$5. or 25% of the benefit amount whichever is greater. From this total subtract the amount of gross earnings.

Benefit Amount	Work Incentive	Earnings in Benefit Period	AMOUNT PAYABLE
\$ 231.00	\$ 231.00		\$288.75
x .25	+ 57.75		- 70.00
\$ 57.75	\$288.75	\$70.00	\$ 218.75 = \$219.00

(rounded to nearest dollar)

# TITLE 4. EMPLOYMENT SERVICES AND UNEMPLOYMENT

## SUBTITLE B. TEXAS WORKFORCE COMMISSION; WORKFORCE DEVELOPMENT; EMPLOYMENT SERVICES

### CHAPTER 301. TEXAS WORKFORCE COMMISSION

#### Subchapter A. Organization of Commission

##### Sec. 301.001. Purpose; Agency Goals; Definitions

- (a) The Texas Workforce Commission is a state agency established to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related educational programs available in this state, and to administer the unemployment compensation insurance program in this state.
- (b) The commission shall meet the needs of:
- (1) the businesses of this state for the development of a highly skilled and productive workforce;
  - (2) the workers of this state for education, skills training, and labor market information to enhance their employability, earnings, and standard of living and for an efficient unemployment compensation system;
  - (3) the people of this state who are making a transition into the workforce, particularly persons receiving public assistance, displaced homemakers, and students making the transition from school to work;
  - (4) the communities of this state to provide economic incentive programs for job creation, attraction, and expansion; and
  - (5) the taxpayers of this state to ensure that tax revenues for workforce development are spent efficiently and effectively.
- (c) A reference in this code or another law to the Texas Employment Commission means the Texas Workforce Commission.
- (d) In this title:
- (1) **"Chair"** means the chair of the commission.
  - (2) **"Commission"** means the Texas Workforce Commission.
  - (3) **"Council"** means the Texas Workforce Investment Council.

- (4) **"Employment service"** means the commission or the entity designated by the commission to implement duties imposed under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.)
- (5) **"Executive director"** means the executive director of the commission.
- (6) **"Local workforce development board"** means an entity formed under Chapter 2308, Government Code.

**Sec. 301.0015. Guidelines Regarding Functions of Commission and Staff**

- (a) In administering its functions under this title or another law, the commission shall limit its activities to:
  - (1) setting commission policies, including policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the executive director and commission staff;
  - (2) giving general direction to the executive director regarding the implementation of the commission's policies, and holding the executive director accountable for implementing the policies;
  - (3) approving the commission's budget recommendation to the legislature;
  - (4) reviewing under Subchapter D, Chapter 212, the decision of an appeal tribunal regarding unemployment compensation;
  - (5) reviewing under Subchapter D, Chapter 61, the decision of a wage claim appeal tribunal regarding a wage claim;
  - (6) adopting rules necessary to administer the commission's policies, including rules necessary for the administration of this title and rules governing required reports, procedures, and orders;
  - (7) responding to questions and comments that are directed to the commission by the executive director and that relate to setting or clarifying commission policies or relate to other matters of general interest to the commission; and
  - (8) requesting information from commission staff.
- (b) Except as provided by Subsection (c), the commission may conduct the activities listed in Subsection (a) only when acting as a governmental body.
- (c) The commission, acting as a governmental body, or an individual member of the commission may conduct the activities listed in Subsections (a)(7) and (8).



- (d) In administering its functions under this title or another law, the commission, acting as a governmental body, or an individual member of the commission may not:
  - (1) direct the day-to-day operations of the executive director or other commission staff;  
or
  - (2) establish the details for the implementation of commission policies or direct the executive director or other commission staff about those details.

**Sec. 301.002. Membership Requirements**

- (a) The commission is composed of three members:
  - (1) one member who is a representative of labor;
  - (2) one member who is a representative of employers; and
  - (3) one member who is a representative of the public.
- (b) The governor shall appoint the members and make the appointments without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

**Sec. 301.003. Member Restrictions**

- (a) In this section:
  - (1) **"Business"** does not mean personal investment in real property, financial instruments or tangible assets, or the provision of personal services, other than workforce services in the State of Texas, as an independent contractor.
  - (2) **"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 member of the commission or the member's spouse may not be employed by any business or other organization receiving money from the commission during the member's term on the commission.

- (c) A person may not be a member of the commission or 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.), and its subsequent amendments, if:
- (1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of labor, business, workforce development, child care, or career schools and colleges; or
  - (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of labor, business, workforce development, child care, or career schools and colleges.
- (d) A person may not serve as a member of the commission if the person or the person's spouse:
- (1) is employed by or participates in the management of a career school or college or a business entity or other organization receiving money from the commission;
  - (2) owns or controls, directly or indirectly, more than a 10 percent interest in a career school or college or a business entity or other organization receiving money from the commission; or
  - (3) is registered, certified, licensed, permitted, or otherwise authorized by the commission; for purposes of this subdivision, "registered, certified, licensed, permitted, or otherwise authorized by the commission" does not include the following:
    - (A) the commission's role under Subtitle A; or
    - (B) employment of domestic service workers under Section 201.027.
- (e) If a member of the commission or the member's spouse is engaged in any other employment, the member of the commission shall refrain from voting on or participating in any commission decision that involves the other employment.
- (f) A member of the commission or the member's spouse may not enter into a contract, either directly with a local workforce development board or with an entity that contracts with a local workforce development board, under which the member or the member's spouse receives compensation for services provided by the member or the member's spouse.

**Sec. 301.004. Effect of Lobbying Activity**

A person may not be a member of the commission 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. If the person ceases to engage in lobbying activity and files a notice of termination as prescribed by 305.008, Government Code, the person may serve as a member of the commission or act as the general counsel to the commission.

**Sec. 301.005. Terms; Vacancy**

- (a) Members of the commission are appointed for staggered six-year terms, with one member's term expiring on February 1 of each odd-numbered year.
- (b) A member appointed to fill a vacancy shall hold office for the remainder of that term.

**Sec. 301.006. Chair**

- (a) The governor shall designate the chair of the commission from among the members of the commission. The chair shall serve in that capacity at the pleasure of the governor for a two-year term. The governor may redesignate the same member to serve consecutive terms.
- (b) Notwithstanding Subsection (a), the member of the commission who represents the public shall serve as chair:
  - (1) when the commission acts under:
    - (A) Subchapter D, Chapter 61; or
    - (B) Subchapter D, Chapter 212; and
  - (2) in commission hearings involving unemployment insurance issues regarding tax coverage, contributions, or reimbursements.

**Sec. 301.007. Removal of Commission Members**

- (a) It is a ground for removal from the commission that a member:
  - (1) during any 60-day period, is absent from each commission meeting for which the member received at least 48 hours' notice;
  - (2) does not have at the time of taking office the qualifications required by Section 301.002;
  - (3) does not maintain during service as a member of the commission the qualifications required by Section 301.002;

- (4) is ineligible for membership on the commission under Section 301.003 or 301.004;
  - (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 meetings of the members that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the members.
- (b) The validity of an action of the commission is not affected by the fact that it was taken when a ground for the removal of a member of the commission existed.
- (c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the chair of the potential ground. The chair shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the chair, the executive director shall notify the next highest ranking member, who shall then notify the governor and the attorney general that a potential ground for removal exists.

**Sec. 301.0075. Member 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 members 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 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;
  - (8) civil rights laws relevant to employment programs offered by the commission; and
  - (9) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.
- (c) A person appointed as a member of 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.

**Sec. 301.008. Application of Sunset Act**

The Texas Workforce Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2015.

**Sec. 301.009. Commission Divisions**

- (a) The commission shall have:
- (1) a division of workforce development; and
  - (2) a division of unemployment compensation.
- (b) In addition to the divisions listed in Subsection (a), the executive director may establish additional divisions within the commission for effective administration and performance of commission functions.
- (c) The executive director shall appoint the directors of the divisions of the commission. The directors serve at the pleasure of the executive director.

**Subchapter B. Commission Administration**

**Sec. 301.021. Donations**

- (a) The commission may accept a donation of services, money, or property that the commission determines furthers the lawful objectives of the commission. The donation must be accepted in an open meeting by a majority of the voting members of the commission and must be reported in the public records of the commission with the name of the donor and the purpose of the donation.

- (b) The commission may not accept a donation from a person who is a party to an administrative proceeding pending before the commission until the 30<sup>th</sup> day after the date the commission's final order is issued. The commission may not accept a donation from a person who is a party to a suit in which the commission is also a party.
- (c) The commission may not accept a donation from a for-profit entity that has a contract with the commission or has submitted a bid in response to a pending request for proposal issued by the commission for services or products having a value of not less than \$50,000. This subsection does not apply to a contract or bid that relates only to providing child-care services.
- (d) A for-profit entity may not enter into a contract with the commission or submit a bid in response to a request for proposal issued by the commission before the first anniversary of the date of making a donation to the commission unless the contract or bid relates only to providing child-care services.

**Sec. 301.022. Audit**

The financial transactions of the commission are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

**Sec. 301.023. Complaints Against Commission**

- (a) The commission shall maintain a file on each written complaint filed with the commission. The file must include:
  - (1) the name of the person who filed the complaint;
  - (2) the date the complaint is received by the commission;
  - (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 commission closed the file without taking action other than to investigate the complaint.
- (b) 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.
- (c) 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.

- (1) cooperate with the secretary under the Social Security Act (42 U.S.C. Section 301 et seq.) to the fullest extent consistent with this title;
  - (2) make reports in the form and containing information required by the secretary and comply with provisions the secretary finds necessary to ensure that the reports are correct and verified;
  - (3) comply with the regulations prescribed by the secretary governing the expenditures of funds allotted and paid to the state under Title III of the Social Security Act (42 U.S.C. Section 501 et seq.) to assist in the administration of this title; and;
  - (4) cooperate with any official or agency of the United States having powers or duties under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.) and take all actions necessary to secure to this state the benefits of that Act and necessary to perform the commission's duties under Chapter 307. .)
- (c) The commission may provide reasonable cooperation to each agency of the United States charged with the administration of any unemployment insurance law.
- (d) On request, the commission shall furnish to an agency of the United States responsible for the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits, including each nonrecipient parent as defined by Section 31.0021, Human Resources Code, who is receiving benefits, and shall inform the agency of the recipient's right to further benefits under Subtitle A;
- (e) In this section, "**secretary**" means the United States secretary of labor.
- (f) The commission shall contract with the Texas Department of Transportation for the Texas Department of Transportation to deliver public transportation services to clients of eligible programs, except that the Texas Department of Transportation may not assume responsibility for client case review, case management, or coordination or authorization of benefits.

**Sec. 301.064. Interpreter Services; Bilingual Forms**

- (a) The executive director shall provide language interpreters for agency programs through a comprehensive language services program for persons whose primary language is Spanish and may provide language interpreters through the program for agency programs for persons whose primary language is other than Spanish or English.
- (b) The language services program must provide services, including translation services, both to employers and to employees or prospective employees.

- (c) The executive director shall print essential agency forms and instructional information in both English and Spanish. A form shall be written in Spanish only when revised or when new or additional forms are printed or prepared.

**Sec. 301.065. Annual Report**

- (a) As soon as practicable after the close of each fiscal year, the commission shall submit to the governor and the legislature a report on the administration and operation of the commission's activities under this title during the preceding fiscal year, including each recommendation of the commission for amendments to this title.
- (b) The annual report must include:
  - (1) a balance sheet of the money in the compensation fund;
  - (2) the commission's long-term and short-term objectives; and
  - (3) any other information requested by the legislature or the Legislative Budget Board.

**Sec. 301.066. Publications**

- (a) The executive director shall print:
  - (1) the text of Subtitle A;
  - (2) the commission's rules; and
  - (3) the commission's annual report to the governor and the legislature.
- (b) The executive director shall prepare information describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission.
- (c) The executive director shall make the information required to be printed or prepared under this section and any other material that the executive director determines to be relevant and suitable for distribution available to the public and appropriate state agencies.

**Sec. 301.067. Tax Assistance; Information on Earned Income Tax Credit**

- (a) The commission may work in conjunction with the Internal Revenue Service to make certain offices of the commission volunteer income tax assistance sites during the two months preceding the date federal income taxes are due.
- (b) In conjunction with the comptroller's office, the commission may use existing resources to distribute information and educational materials on the federal earned income tax credit provided by the comptroller under Section 403.024, Government Code, to local workforce



- (4) determine the organization of the agency and methods of procedure of the agency in accordance with this title; and
- (5) make expenditures necessary for the operation of this title.

**Sec. 301.0611. Coordination of Certain Awards and Incentives**

The commission, in cooperation with the Texas Education Agency, the comptroller, and the Texas Higher Education Coordinating Board, shall prepare and make available to the public a list of all awards and incentives available for business participation in:

- (1) a school district's career and technology education program under Subchapter F, Chapter 29, Education Code; or
- (2) any other career and technology education training.

**Sec. 301.0615. Application of Administrative Procedure Act**

- (a) Except as otherwise provided by this title, a hearing conducted under this title is not subject to:
  - (1) Section 2001.038, Government Code; or
  - (2) Subchapters C-H, Chapter 2001, Government Code.
- (b) A commission order or decision that results from a hearing conducted under this title is not subject to the requirements imposed under:
  - (1) Section 2001.004(3), Government Code; or
  - (2) Section 2001.005, Government Code.

**Sec. 301.062. Findings**

Both the commission and the executive director may make findings and determine issues under this title as necessary to administer this title.

**Sec. 301.063. State and Federal Cooperation**

- (a) The commission is designated as the agency of this state for implementation in this state of:
  - (1) the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.); and.
  - (2) the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.).
- (b) In administering this title the commission and executive director shall:

- (2) an analysis of the extent to which the composition of the commission'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) The policy statement must:
- (1) be updated annually;
  - (2) be reviewed by the Commission on Human Rights for compliance with Subsection (a-1)(1); and
  - (3) be filed with the governor's office
- (c) The governor's office 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.

(NOTE: H.R. 874, 81<sup>st</sup> Legislature, repealed Section 301.046.)

**Sec. 301.047. Commission Employees Accountable to Executive Director**

In performing functions required or authorized by law, employees of the commission are directly accountable to the executive director.

**Subchapter D. General Powers and Duties of Commission and Executive Director**

**Sec. 301.061. General Powers and Duties of Commission and Executive Director**

- (a) The commission shall provide the public with a reasonable opportunity to appear before the commission and speak on any issue under the jurisdiction of the commission.
- (b) The executive director shall:
  - (1) administer this title as provided by rules adopted by the commission;
  - (2) oversee and manage:
    - (A) the daily operation and administrative affairs of the commission; and
    - (B) the implementation of commission policies set by the commission;
  - (3) coordinate the activities of the commission staff and hold commission staff accountable for the staff's performance of its duties;

- (c) In this section, "**security sensitive position**" means a position of employment that requires as an incident of the employment:
- (1) the performance of duties in:
    - (A) the automated data processing, controller, or fiscal department; or
    - (B) a position designated to handle receipts or disbursements of cash in a local or regional office;
  - (2) access to a computer terminal, if the information available from the terminal is required by law to be confidential;
  - (3) access to a master key for access to the premises other than during regular working hours; or
  - (4) the performance of duties considered to be security sensitive by the state auditor or the Inspector General of the United States Department of Labor.

**Sec. 301.043. Standards of Conduct Information**

The executive director or the executive director's designee shall provide to the members of the commission and employees of the commission, 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.

**Sec. 301.044. Career Ladder**

The executive director shall develop an intra-agency career ladder program for employees of the commission. The program shall require the intra-agency posting of all nonentry-level positions concurrently with any public posting.

**Sec. 301.045. Equal Employment Opportunity Policies**

- (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.
- (a-1) 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; and

**Sec. 301.024. Official Seal; Use of Facsimiles**

- (a) The commission has an official seal. A court shall take judicial notice of the seal.
- (b) The commission may execute, certify, authenticate, or sign, with a facsimile signature and seal, any instrument authorized under this subtitle to be issued by the commission or by an authorized representative of the commission, including a claim, statement, or audit report relating to the establishment or collection of delinquent contributions or penalties.

**Subchapter C. Executive Director; Agency Personnel**

**Sec. 301.041. Executive Director; Agency Personnel**

- (a) The commission shall appoint an executive director to administer the daily operations of the commission in compliance with federal law.
- (b) A reference in this code or another law to the "agency administrator" of the commission means the executive director.
- (c) The executive director may:
  - (1) appoint and prescribe the powers and duties of all commission staff, including officers, accountants, attorneys, experts, and other persons as necessary in the performance of the commission's duties;
  - (2) delegate authority to a person appointed under this section as the executive director considers reasonable and proper for the effective administration of this title;
  - (3) employ and terminate the employment of commission staff members; and
  - (4) bond any person that handles money or signs checks under this title.
- (d) The executive director or a person designated by the executive director shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this subsection.

**Sec. 301.042. Access to Certain Criminal History Record Information**

- (a) The commission may request an applicant for a security sensitive position to provide either a complete set of fingerprints or the applicant's complete name, driver's license number, and social security number. The executive director may deny employment in a security sensitive position to an applicant who fails to provide the requested fingerprints or information.
- (b) The executive director may use information obtained under this section only to evaluate an applicant for employment in a security sensitive position. A security sensitive position must be so identified in the job description and in the announcement of the position.

development boards and workforce development centers for use in providing federal income tax assistance to persons who participate in workforce development programs.

- (c) In addition to providing information under Subsection (b) to a person who participates in a workforce development program, the commission may provide the information to any other person who uses services provided through the commission.
- (d) The commission may adopt rules as necessary to implement this section, including rules regarding the information that employers must provide under Chapter 104 regarding employee eligibility for the federal earned income tax credit.

**Sec. 301.0671. Federal Work Opportunity Tax Credit and State Tax Refund for Certain Employers**

- (a) The commission is the lead agency in promoting awareness of the federal work opportunity tax credit program and the state tax refund for employers under Subchapter H.
- (b) The commission, in coordination with the comptroller's office and the Texas Department of Human Services, shall develop and distribute educational materials designed to increase awareness of the tax credit and tax refund described by Subsection (a) to encourage employers to hire recipients of the financial assistance program for persons with dependent children under Chapter 31, Human Resources Code.

**Sec. 301.068. Efficiency Pilot Program**

- (a) The commission shall establish a pilot program to:
  - (1) improve the efficiency and quality of commission operations while reducing costs; and
  - (2) adopt a structured approach for identifying the wasteful use of state resources and improving commission processes.
- (b) In implementing the pilot program, the commission shall use:
  - (1) a methodology that includes a define, measure, analyze, improve, and control structure for reviewing project management;
  - (2) a continuous improvement technique that:
    - (A) identifies value and a value stream;
    - (B) creates a flow for activities;
    - (C) allows consumers to pull products or services through the process; and

- (D) allows for the process to be perfected over time; and
- (3) a measurement system analysis to evaluate data.
- (c) Not later than August 1, 2012, the commission shall submit a written report on the effectiveness of the pilot program to the:
  - (1) governor;
  - (2) lieutenant governor;
  - (3) speaker of the house of representatives;
  - (4) Senate Committee on Government Organization;
  - (5) House Government Efficiency and Reform Committee; and
  - (6) house and senate committees with primary jurisdiction over state affairs.
- (d) The commission shall implement the pilot program from available funds that may be used for that purpose.
- (e) A state agency, other than the commission, may implement the pilot program established under this section with respect to the agency. An agency that implements the pilot program shall:
  - (1) submit the written report in the time and manner described by Subsection (c); and
  - (2) use available resources to fund the pilot program.
- (f) A report required by this section may be submitted electronically.
- (g) This section expires September 1, 2013.

**Sec. 301.0681. Policy on Technological Solutions**

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:
  - (A) the public is able to easily find information about the commission on the Internet; and
  - (B) persons who want to use the commission's services are able to:

- (i) interact with the commission through the Internet; and
  - (ii) access any service that can be provided effectively through the Internet;
- (2) be cost-effective; and
- (3) be developed through the commission's planning processes.

**Sec. 301.0682. Negotiated Rulemaking and Alternative Dispute Resolution Policy**

- (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 the commission's 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, other than proceedings conducted by the commission under Title 2 and this title of this code that are not subject to Subchapters C-H, Chapter 2001, Government Code.
- (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 developed 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.

**Sec. 301.069. Partnership with Business Community**

To meet the needs of businesses in this state and to equip workers and job seekers with the skills required to compete for jobs in this state, the commission shall:

- (1) partner with the business community to:
  - (A) identify:
    - (i) skills required by the business community;

- (ii) key industry sectors in the business community that are likely to benefit from skill development services and programs offered by the commission; and
    - (iii) employment opportunities offered by the business community; and
  - (B) develop services and programs that are designed to equip workers and job seekers with the skills required by the business community; and
- (2) support business and community economic development activities of local workforce development boards and the state.

## **Subchapter E. Investigative and Subpoena Powers**

### **Sec. 301.071. Investigative and Subpoena Powers**

- (a) In discharging duties imposed under this title, an appeal tribunal established under this title, an examiner or other hearings officer employed or appointed by the commission or the executive director, a member of the commission, or a representative authorized by the commission may:
  - (1) administer oaths;
  - (2) take depositions;
  - (3) certify to official acts; and
  - (4) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a disputed claim or the administration of this title.
- (b) The commission's authority to conduct an investigation, assemble information, or require the submission of documentary or oral testimony is limited to the power necessary to properly administer this title.
- (c) Notwithstanding Section 154.004, Local Government Code, or any other law, the executive director shall pay the fee of a sheriff or constable who serves a subpoena under this section. The fee shall be paid from the commission's administrative funds, and the comptroller shall issue a warrant for the fee as directed by the executive director.

### **Sec. 301.072. Enforcement of Subpoena; Offense; Penalties**

- (a) If a person is guilty of contumacy or refuses to obey a subpoena issued by a member of the commission or an authorized representative of the commission, a county or district court, on



application by the commission or its authorized representative, may order the person to appear before a member of the commission, the commission, or its authorized representative to produce evidence or give testimony regarding the matter under investigation or in question. Only a court within the jurisdiction where the commission conducts the inquiry or where the person is found, resides, or transacts business may issue the order.

- (b) Failure to obey a court order issued under Subsection (a) is punishable as contempt.
- (c) A person commits an offense if the person, without just cause, does not obey a subpoena of the commission. An offense under this subsection is punishable by a fine of not less than \$200, by confinement for not more than 60 days, or by both fine and confinement. Each day of violation constitutes a separate offense.

#### **Sec. 301.073. Self-Incrimination**

- (a) In any cause or proceeding before the commission, a person is not excused from attending and testifying, from producing books, papers, correspondence, memoranda, and other records, or from obeying a subpoena of the commission, a member of the commission, or a representative of the commission on the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate the person or subject the person to a penalty or forfeiture.
- (b) A person may not be prosecuted or subjected to penalty or forfeiture for or because of a transaction or thing for which the person is compelled to testify or produce evidence after having claimed a privilege against self-incrimination except for perjury.

#### **Sec. 301.074. Defamation**

An oral or written statement made to the commission or to an employee of the commission in connection with the discharge of the commission's or the employee's duties under Subtitle A may not be the basis for an action for defamation of character.

### **Subchapter F. Records**

#### **Sec. 301.081. Employee Records of Employing Unit; Offense; Penalty**

- (a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.
- (b) The commission may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title.

- (c) Employment information obtained or otherwise secured under this section may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title or as provided by commission rule and consistent with federal law.
- (d) A person commits an offense if the person violates any provision of this section. An offense under this subsection is a Class A misdemeanor.

**Sec. 301.082. Copies of Records**

- (a) The executive director may furnish a photostatic or certified copy of a record in the commission's possession to a person entitled to receive a copy of the record on application by the person.
- (b) The executive director shall charge a reasonable fee in an amount set by the commission for a copy of a record furnished under this section.

**Sec. 301.083. Access to Records by Railroad Retirement Board**

- (a) The executive director may make state records relating to the administration of Subtitle A available to the Railroad Retirement Board.
- (b) The executive director may furnish the Railroad Retirement Board with copies of the records requested by the board at the board's expense.

**Sec. 301.084. Destruction of Records**

The executive director may destroy any of the records of the agency under safeguards that protect the confidential nature of the records if the executive director:

- (1) determines that the records no longer serve a legal, administrative, or other useful purpose; or
- (2) has made an authentic reproduction of the records to be destroyed.

**Sec. 301.085. Unemployment Compensation and Job Matching Services Information; Offense; Penalty**

- (a) In this section:
  - (1) "Job matching services information" means information in the records of the commission that pertains to the commission's job matching services provided to employers and job seekers through the Internet, workforce centers, or other means.
  - (2) "Unemployment compensation information" means information in the records of the commission that pertains to the administration of Subtitle A, including any

information collected, received, developed, or maintained in the administration of unemployment compensation benefits or the unemployment compensation tax system.

- (b) Consistent with federal law, the commission shall adopt and enforce reasonable rules governing the confidentiality, custody, use, preservation, and disclosure of unemployment compensation information. The rules must include safeguards to protect the confidentiality of identifying information regarding any individual or any past or present employer or employing unit contained in unemployment compensation information, including any information that foreseeably could be combined with other publicly available information to reveal identifying information regarding the individual, employer, or employing unit, as applicable.
- (b-1) The commission shall adopt and enforce reasonable rules governing the confidentiality, custody, use, preservation, and disclosure of job matching services information. The rules must include safeguards to protect the confidentiality of identifying information regarding any individual or any past or present employer or employing unit contained in job matching services information, including any information that foreseeably could be combined with other publicly available information to reveal identifying information regarding the individual, employer, or employing unit, as applicable.
- (c) Unemployment compensation information and job matching services information are not public information for purposes of Chapter 552, Government Code.
- (d) Unless permitted by this subchapter or commission rule, a person commits an offense if the person solicits, discloses, receives, or uses, or authorizes, permits, participates in, or acquiesces in another person's use of, unemployment compensation information or job matching services information that reveals:
  - (1) identifying information regarding any individual or past or present employer or employing unit; or
  - (2) information that foreseeably could be combined with other publicly available information to reveal identifying information regarding any individual or past or present employer or employing unit.
- (e) An offense under Subsection (d) is a Class A misdemeanor.

**Sec. 301.086. Provision of Certain Information to Comptroller**

- (a) Not later than June 1 of every fifth year, the commission shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address, social security number, and date of birth of each person about whom the commission has such information in its records.

- (b) Information provided to the comptroller under this section is confidential and may not be disclosed to the public.
- (c) The commission shall provide the information in the format prescribed by rule of the comptroller.

(Note: As directed by the Legislature in Section 47.04, Senate Bill 1, 82nd Texas Legislature 1st Special Session, the Department of Public Safety, the Employees Retirement System of Texas, the Teacher Retirement System of Texas, and the Texas Workforce Commission shall provide information described in this section beginning in 2016.)

## **Subchapter H. Tax Refund for Wages Paid to Employee Receiving Financial Assistance**

### **Sec. 301.101. Definition**

In this subchapter, "**wages**" has the meaning assigned by Sections 51(c)(1), (2), and (3), Internal Revenue Code of 1986 (26 U.S.C. Section 51).

### **Sec. 301.102. Tax Refund Voucher**

- (a) The commission shall issue a tax refund voucher in the amount allowed by this subchapter and subject to the restrictions imposed by this subchapter to a person that meets the eligibility requirements under this subchapter.
- (b) A person issued a tax refund voucher may, subject to the provisions of this subchapter, apply for the amount of the refund of a tax that is paid by the person to this state if the tax is administered by the comptroller and deposited to the credit of the general revenue fund without dedication.

### **Sec. 301.103. Amount of Refund; Limitation**

- (a) The amount of the refund allowed under this subchapter is equal to 20 percent of the total wages, up to a maximum of \$10,000 in wages for each employee, paid or incurred by a person for services rendered by an employee of the person during the period beginning with the date the employee begins work for the person and ending on the first anniversary of that date.
- (b) The refund claimed for a calendar year may not exceed the amount of net tax paid by the person to this state, after any other applicable tax credits, in that calendar year.

### **Sec. 301.104. Eligibility**

A person is eligible for the refund for wages paid or incurred by the person, during each calendar year for which the refund is claimed, only if:

- (1) the wages paid or incurred by the person are for services of an employee who is:
  - (A) a resident of this state; and
  - (B) a recipient of:
    - (i) financial assistance and services in accordance with Chapter 31, Human Resources Code; or
    - (ii) medical assistance in accordance with Chapter 32, Human Resources Code;
- (2) the person satisfies the certification requirements under Section 301.105; and
- (3) the person, under an arrangement under Section 32.0422, Human Resources Code, provides and pays for the benefit of the employee a part of the cost of coverage under:
  - (A) a health plan provided by a health maintenance organization established under Chapter 843, Insurance Code;
  - (B) a health benefit plan approved by the commissioner of insurance;
  - (C) a self-funded or self-insured employee welfare benefit plan that provides health benefits and is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.); or
  - (D) a medical savings account or other health reimbursement arrangement authorized by law.

**Sec. 301.105. Certification**

A person is not eligible for the refund for wages paid or incurred by the person unless the person has received a written certification from the commission that the employee is a recipient of medical assistance or financial assistance and services on or before the day the employee begins employment with the person.

**Sec. 301.106. Application for Refund; Issuance**

- (a) A person may apply for a tax refund voucher for wages paid an employee in a calendar year only on or after January 1 and before April 1 of the following calendar year.
- (b) The commission shall promulgate a form for the application for the tax refund voucher. A person must use this form in applying for the refund.

- (c) On issuance of the tax refund voucher to the person by the commission, the person may apply the voucher against a tax paid by the person to this state only for the calendar year for which the voucher is issued.

**Sec. 301.107. Rules**

- (a) The commission shall adopt rules as necessary to carry out its powers and duties under this subchapter.
- (b) The Texas Department of Human Services shall provide to the commission information as necessary to enable the commission to determine whether a person is eligible for the tax refund authorized by this subchapter.

**Sec. 301.108. Limitation on Conveyance, Assignment, or Transfer of Refund**

A person may convey, assign, or transfer a refund under this subchapter to another person only if:

- (1) the employing unit is sold, conveyed, assigned, or transferred, in the same transaction or in a related transaction, to the person to whom the refund is conveyed, assigned, or transferred; or
- (2) the person to whom the refund is conveyed, assigned, or transferred:
  - (A) is subject to a tax administered by the comptroller and deposited to the credit of the general revenue fund without dedication; and
  - (B) directly or indirectly owns, controls, or otherwise directs, in whole or in part, an interest in the person from whom the refund is conveyed, assigned, or transferred.

**Subchapter I. Civil Rights Division**

**Sec. 301.151. Definitions**

In this subchapter:

- (1) **"Director"** means the director of the division.
- (2) **"Division"** means the civil rights division of the commission.
- (3) **"Human rights commission"** means the Commission on Human Rights established by this subchapter.

**Sec. 301.152. General Provisions**

- (a) The division is an independent division in the commission. The division shall be responsible for administering Chapter 21 of this code and Chapter 301, Property Code, including exercising the powers and duties formerly exercised by the former Commission on Human Rights under those laws.
- (b) A reference in Chapter 21 of this code, Chapter 301, Property Code, or any other law to the former Commission on Human Rights means the division.

**Sec. 301.153. Human Rights Commission**

- (a) The division is governed by the human rights commission, which consists of seven members as follows:
  - (1) one member who represents industry;
  - (2) one member who represents labor; and
  - (3) five members who represent the public.
- (b) The members of the human rights commission established under this section shall be appointed by the governor. In making appointments to the human rights commission, the governor shall strive to achieve representation on the human rights commission that is diverse with respect to disability, religion, age, economic status, sex, race, and ethnicity.
- (c) The term of office of each commissioner is six years. The governor shall designate one commissioner to serve as presiding officer.
- (d) A commissioner is entitled to reimbursement of actual and necessary expenses incurred in the performance of official duties.
- (e) The human rights commission shall establish policies for the division and supervise the director in administering the activities of the division.
- (f) The human rights commission is the state authority established as a fair employment practice agency and is authorized, with respect to an unlawful employment practice, to:
  - (1) grant relief from the practice;
  - (2) seek relief from the practice; or
  - (3) institute criminal proceedings.

**Sec. 301.154. Director**

- (a) The director shall be appointed by the human rights commission to administer the powers and duties of the division.
- (b) To be eligible for appointment, the director must have relevant experience in the area of civil rights, specifically in working to prevent the types of discrimination the division is charged with preventing. The director must demonstrate a commitment to equal opportunity for minorities, women, and the disabled. The director should also have relevant experience with housing and employment discrimination claims.

**Sec. 301.155. Investigator Training Program; Procedures Manual**

- (a) A person who is employed under this chapter by the division as an investigator may not conduct an investigation until the person completes a comprehensive training and education program for investigators that complies with this section.
- (b) The training program must provide the person with information regarding:
  - (1) the requirements relating to employment adopted under the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) and its subsequent amendments, with a special emphasis on requirements regarding reasonable accommodations;
  - (2) various types of disabilities and accommodations appropriate in an employment setting for each type of disability; and
  - (3) fair employment and housing practices.
- (c) Each investigator shall annually complete a continuing education program designed to provide investigators with the most recent information available regarding the issues described by Subsection (b), including legislative and judicial changes in the law.
- (d) The director shall develop and biennially update an investigation procedures manual. The manual must include investigation procedures and information and may include information regarding the Equal Employment Opportunity Commission and the United States Department of Housing and Urban Development.

**Sec. 301.156. Analysis of Discrimination Complaints; Report**

- (a) The division shall collect and report statewide information relating to employment and housing discrimination complaints as required by this section.
- (b) Each state fiscal year, the division shall collect and analyze information regarding employment and housing discrimination complaints filed with the division, the Equal



Employment Opportunity Commission, the United States Department of Housing and Urban Development, and local commissions in this state. The information must include:

- (1) an analysis of employment complaints filed by the basis of the complaint, including:
    - (A) sex, race, color, age, disability, national origin, religion, and genetic information; and
    - (B) retaliatory actions against the complainant;
  - (2) an analysis of housing complaints filed by the basis of the complaint, including sex, race, color, disability, national origin, religion, and familial status;
  - (3) an analysis of employment complaints filed by issue, including discharge, terms and conditions, sexual harassment, promotion, hiring, demotion, and layoff;
  - (4) an analysis of housing complaints filed by issue, including terms and conditions, refusal to rent or sell, discriminatory financing or advertising, and false representation;
  - (5) an analysis of employment and housing cases closed by the reason the case was closed, including findings or determinations of cause or no cause, successful conciliation, right to sue issued, complaint withdrawn after resolution, no-fault settlement, failure to cooperate by the complainant, and lack of jurisdiction; and
  - (6) the average processing time for complaints resolved by the division in each state fiscal year, regardless of whether the complaint was filed in the same fiscal year in which the complaint was resolved.
- (c) The results of an analysis required under this section shall be included in the commission's annual report to the governor and legislature.

## **Subchapter J. Adult Education and Literacy**

### **Sec. 301.171. Cooperation with Texas Education Agency to Improve Adult Education and Literacy Services**

The commission shall collaborate with the Texas Education Agency to improve the coordination and implementation of adult education and literacy services in this state.

## **Subchapter K. Detection and Prevention of Child-Care Fraud, Waste, and Abuse**

### **Sec. 301.191. Prevention and Detection of Child-Care Fraud, Waste, and Abuse**

- (a) The commission shall develop risk assessment protocols to identify and assess possible instances of fraud, waste, and abuse in child-care programs, including:
  - (1) the use of unemployment insurance wage records to identify:
    - (A) potential ineligible parents due to a change in income or underreporting of income;
    - (B) relative child-care providers who are engaged in other employment; and
    - (C) parents who do not have the required work history; and
  - (2) the identification of parents who apply for or receive child-care services in multiple workforce areas simultaneously.
- (b) The commission shall ensure that local workforce development boards implement procedures to prevent and detect fraud, waste, and abuse in child-care programs.
- (c) The commission may use a motor vehicle record, including a photographic image and signature, to prevent and detect fraud, waste, and abuse in child-care programs.
- (d) The commission may use the information under Subsection (c) otherwise for enforcement under this title.

**Sec. 301.192. Correction of Child-Care Fraud, Waste, and Abuse**

- (a) The commission shall ensure that corrective action is initiated against a child-care provider who commits fraud, including:
  - (1) temporarily or permanently withholding payments to the provider for child-care services already delivered;
  - (2) recovering money paid for child care from the child-care provider;
  - (3) stopping the provision of authorized child care at the provider's facility or location; or
  - (4) taking any other action consistent with the intent of the governing statutes or rules to investigate, prevent, or stop suspected fraud.
- (b) The commission shall ensure that corrective action is initiated against a parent who commits fraud, including:
  - (1) recovering money paid for child care from the parent;
  - (2) declaring the parent ineligible for future child care under a commission program;

- (3) limiting the enrollment of the parent's child to a regulated child-care provider; or
  - (4) taking any other action consistent with the intent of the governing statutes or rules to investigate, prevent, or stop suspected fraud.
- (c) If the commission proposes to take a corrective action under Subsection (a) or (b), the provider or parent is entitled to appeal the proposed corrective action in accordance with procedures adopted by the commission by rule.

## **CHAPTER 302. DIVISION OF WORKFORCE DEVELOPMENT**

### **Subchapter A. General Provisions**

#### **Sec. 302.001. Definitions**

In this chapter:

- (1) **"Director"** means the director of the division.
- (2) **"Division"** means the division of workforce development of the commission.
- (3) **"Nonrecipient parent"** has the meaning assigned by Section 31.0021, Human Resources Code.

#### **Sec. 302.002. General Workforce Development Powers and Duties of Commission and Executive Director**

- (a) The executive director shall:
  - (1) to the extent feasible under federal law, consolidate the administrative and programmatic functions of the programs under the authority of the commission to achieve efficient and effective delivery of services;
  - (2) administer each program and implement corresponding federal and state legislation consolidated under the authority of the commission under this chapter and other applicable state law;
  - (3) determine the organization and methods of procedure of the division in accordance with applicable state and federal legislation;
  - (4) appoint and prescribe the duties of all officers, administrators, accountants, attorneys, experts, and other employees as necessary in the performance of the division's duties;

- (5) delegate authority to persons appointed under this section as the executive director considers reasonable and proper for the effective administration of the division;
  - (6) bond any person who handles money or signs checks for the division;
  - (7) implement workforce training and services policies and programs, consistent with recommendations from the council and as approved by the governor;
  - (8) serve as an advocate at the state and federal levels for local workforce development boards;
  - (9) contract with local workforce development boards for program planning and service delivery;
  - (10) provide training and professional development services for division staff, local workforce development boards, and the staff of those boards;
  - (11) support research and demonstration projects designed to develop new programs and approaches to service delivery;
  - (12) provide technical assistance and support to local workforce development boards;
  - (13) prepare an annual agency performance report for submission to the governor, the legislature, the commission, and the council;
  - (14) design and administer a statewide comprehensive labor market information system;
  - (15) serve as the chair of the State Occupational Information Coordinating Committee; and
  - (16) perform other functions and duties as may be required by law or assigned by the commission.
- (b) The executive director may make expenditures, enter into contracts with public, private, and nonprofit organizations, require reports, conduct investigations, and take other action the executive director or commission considers necessary or suitable to fulfill the division's administrative duties.
- (c) The executive director may enter interagency contracts and memoranda of understanding with other state agencies for the performance of administrative functions of the agency.
- (d) The commission shall adopt rules in accordance with Chapter 2001, Government Code, as necessary for the proper administration of the division.
- (e) The executive director may obligate funds from the skills development fund in a manner consistent with the rules adopted by the commission for that program. The executive director

shall report to the governor, the legislature, the commission, and the council on a quarterly basis regarding actions taken under this subsection.

- (f) In addition to the services provided under Subsection (a)(12), the executive director may enter into contracts with local workforce development boards or other entities to establish service level agreements for technology assistance and support. The executive director may charge fees for services based on the service level options selected by those entities. All fees collected under this subsection may be used only by the commission to pay costs incurred in providing those services.

**Sec. 302.0025. Employment Plan and Postemployment Strategies**

- (a) The commission shall ensure that an individual employment plan developed for a recipient of financial assistance or a nonrecipient parent participating in an employment program under Chapter 31, Human Resources Code, includes specific postemployment strategies to assist the recipient or the nonrecipient parent in making a transition to stable employment at a wage that enables the person and the person's family to maintain self-sufficiency.
- (b) The individual employment plan must:
  - (1) consider the person's individual circumstances and needs in determining the person's initial job placement;
  - (2) identify a target wage that enables the person and the person's family to maintain self-sufficiency;
  - (3) provide specific postemployment goals and include methods and time frames by which the person is to achieve those goals; and
  - (4) refer the person to additional educational and training opportunities.

**Sec. 302.0026. Employment Services Referral Program**

- (a) The commission and local workforce development boards shall develop an employment services referral program for recipients of financial assistance and nonrecipient parents who participate in employment programs under Chapter 31, Human Resources Code, and have, in comparison to other recipients or nonrecipient parents, higher levels of barriers to employment. The referral program must be designed to provide to a recipient or a nonrecipient parent referrals to preemployment and postemployment services offered by community-based organizations.
- (b) In developing the referral program, the commission and local workforce development boards shall, subject to the availability of funds, coordinate partnerships and contract with community-based organizations that provide employment services specifically for persons with high levels of barriers to employment.

**Sec. 302.0027. Financial Literacy Training**

- (a) The commission and local workforce development boards shall ensure that each workforce development program offered in this state includes training in financial literacy.
- (b) The division shall develop materials and information to be included in the training required by Subsection (a).
- (c) The commission may accept a donation of services, money, or property that the commission determines furthers the financial literacy training program. The donation must be accepted in an open meeting by a majority of the voting members of the commission and must be reported in the public records of the commission along with the name of the donor and the purpose of the donation.

**Sec. 302.003. Job Retention and Reemployment Assistance**

The division may provide ongoing job retention and reemployment assistance for a recipient of public assistance or nonrecipient parent who has participated in a job training program.

**Sec. 302.0031. College Credit for Heroes Program**

- (a) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.
- (b) The commission shall establish and administer the College Credit for Heroes demonstration program to identify, develop, and support methods to maximize academic or workforce education credit awarded by institutions of higher education to veterans and military servicemembers for military experience, education, and training obtained during military service in order to expedite the entry of veterans and military servicemembers into the workforce.
- (c) The commission shall work cooperatively with other state agencies, including the Texas Higher Education Coordinating Board, public junior colleges, and other institutions of higher education, to accomplish the purposes of this section.
- (d) The commission may award grants to state, local, or private entities that perform activities related to the purposes of this section.
- (e) The commission shall administer the program using money previously appropriated to the commission or received from federal or other sources.
- (f) The commission may adopt rules as necessary for the administration of this section.
- (g) Not later than November 1, 2012, the commission, after consultation with the Texas Higher Education Coordinating Board, shall report to the legislature and the governor on:

- (1) the results of any grants awarded under this section;
  - (2) the best practices for veterans and military servicemembers to achieve maximum academic or workforce education credit at institutions of higher education for military experience, education, and training obtained during military service;
  - (3) measures needed to facilitate the award of academic or workforce education credit by institutions of higher education for military experience, education, and training obtained during military service; and
  - (4) other related measures needed to facilitate the entry of trained, qualified veterans and military servicemembers into the workforce.
- (h) This subsection and Subsection (g) expire January 1, 2013.

**Sec. 302.0032. Texas Fast Start Program**

- (a) In this section:
- (1) "Fast start program" means a career and technical education program designed to help students earn postsecondary certificates and degrees and enter into the workforce quickly.
  - (2) "Public junior college," "public state college," and "public technical institute" have the meanings assigned by Section 61.003, Education Code.
- (b) The commission, in partnership with the Texas Higher Education Coordinating Board, shall establish and administer the Texas Fast Start Program to identify and develop methods to support, and shall provide support for, competency-based, rapid-deployment education delivery models for use by public junior colleges, public state colleges, and public technical institutes. The models must be designed to assist students in maximizing academic or workforce education program credit from public junior colleges, public state colleges, and public technical institutes to expedite the entry of those students into the workforce.
- (c) The commission shall work collaboratively with the Texas Higher Education Coordinating Board, public junior colleges, public state colleges, and public technical institutes to accomplish the purposes of this section.
- (d) A public junior college, public state college, or public technical institute may use the competency-based, rapid-deployment education delivery models described by Subsection (b) in developing or expanding a fast start program at the college or institute.
- (e) A fast start program offered by a public junior college, public state college, or public technical institute must:

- (1) focus on the current and future needs of employers in this state;
  - (2) enable students to obtain postsecondary certificates and degrees at an accelerated pace in high-demand fields or occupations, as identified by local employers;
  - (3) incorporate competency-based learning techniques;
  - (4) feature a variety of access channels that are uniquely designed to maximize job preparedness for identified groups such as veterans, high school graduates, and current workforce members seeking retraining; and
  - (5) be designed for rapid deployment statewide.
- (f) Through the collaboration, the commission may award grants to public junior colleges, public state colleges, and public technical institutes for:
- (1) the expansion of existing fast start programs;
  - (2) the development of new fast start programs; and
  - (3) any other activities related to the purposes of this section.
- (g) A grant received under this section may be used only to:
- (1) support a course or program that prepares students for career employment in fields or occupations that are identified as high-demand by local employers;
  - (2) finance the initial costs of developing a fast start program, including the costs of constructing or renovating facilities, purchasing equipment, and other associated expenses;
  - (3) finance the development or expansion of a fast start program leading to a postsecondary certificate or degree; or
  - (4) offer a new or expanded dual credit fast start program jointly with a public high school.
- (h) The commission and the Texas Higher Education Coordinating Board shall administer the program using money appropriated to the commission or board, money received from federal or other sources, or money from holding accounts that may be used by the commission for the purpose of skills development.
- (i) The commission and the Texas Higher Education Coordinating Board may adopt rules as necessary for the administration of this section.



**Sec. 302.0034. Employment Assistance Program for Certain Families of Military Personnel**

- (a) The commission shall provide employment assistance services, including job placement and other employment-related services, to the spouses and dependents of military personnel who are assigned to duty in this state.
- (b) The commission shall provide the services described by Subsection (a) in cooperation with the local workforce development boards in areas of the state having a defense community, as that term is defined by Section 481.501, Government Code.
- (c) The commission may accept and apply for gifts, grants, donations, and appropriations from public and private sources to fund the commission's duties under this section. The commission may use money from job training funds and other money appropriated by the legislature to implement the requirements of this section.

**Sec. 302.0035. Employment Assistance Program for Certain Parents**

The commission shall provide employment assistance services, including skills training, job placement, and employment-related services, to a person referred to the commission by:

- (1) the Title IV-D agency under Chapter 231, Family Code; or
- (2) a court under Section 157.211, Family Code.

**Sec. 302.0036. Transportation Assistance**

- (a) To the extent funds are available, the commission and local workforce development boards shall provide transportation assistance to recipients of financial assistance and nonrecipient parents participating in employment programs under Chapter 31, Human Resources Code, that enables the recipients and nonrecipient parents to maintain a stable work history and attain financial stability and self-sufficiency.
- (b) The commission and local workforce development boards may provide the assistance described by Subsection (a) by implementing new initiatives or expanding existing initiatives that provide transportation assistance to recipients of financial assistance or nonrecipient parents for whom transportation is a barrier to employment.

**Sec. 302.0037. Maximizing Federal Funds for Transportation Assistance**

- (a) The commission and local workforce development boards shall maximize the state's receipt of federal funds available to provide transportation assistance to recipients of financial assistance and nonrecipient parents participating in employment programs under Chapter 31, Human Resources Code.

- (b) The commission and local workforce development boards may, within any applicable appropriation limits, take any action required by federal law to receive federal funds to provide transportation assistance.

**Sec. 302.0038. Housing Resources for Certain Recipients of Financial Assistance and Certain Nonrecipient Parents**

- (a) The commission, in cooperation with local workforce development boards, shall, for a recipient of financial assistance or nonrecipient parents participating in an employment program under Chapter 31, Human Resources Code:
  - (1) identify unmet housing needs and assess whether those needs are barriers to the person's full participation in the workforce and attainment of financial stability and self-sufficiency; and
  - (2) develop a service plan that takes into consideration the person's unmet housing needs.
- (b) The commission by rule shall develop and implement a program through which a recipient or a nonrecipient parent identified under Subsection (a) as having unmet housing needs is referred by the commission or local workforce development board to agencies and organizations providing housing programs and services and connected to other housing resources. To provide those referrals and connections, the commission shall establish collaborative partnerships between:
  - (1) the commission;
  - (2) local workforce development boards;
  - (3) municipal, county, and regional housing authorities; and
  - (4) sponsors of local housing programs and services.
- (c) The commission shall ensure that commission and local workforce development board staff members receive training regarding the programs and services offered by agencies and organizations with which the commission establishes partnerships under Subsection (b) and other available housing resources.

**Sec. 302.004. Funds for Job Training, Employment Services, Adult Education and Literacy Activities, and Child Care**

In providing job training, employment services, adult education and literary services, and child care to eligible persons, the commission, notwithstanding the provisions in this chapter or other law, may establish a need-based formula to allocate funds available under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) and the Workforce Investment Act

of 1998 (29 U.S.C. Section 2801 et seq.) for job training, employment services, adult education and literacy activities, and child care to local workforce development areas so as to:

- (1) ensure compliance with federal participation rates and requirements and full utilization of the funding; and
- (2) achieve integrated education training

**Sec. 302.0041. Child-Care Demonstration Project Grants**

- (a) The commission may make grants available on a one-time basis to local workforce development boards to enable the boards to design and implement child-care demonstration projects.
- (b) A local workforce development board that receives a grant under this section shall use the grant to design and implement a demonstration project that:
  - (1) expands child-care services in underserved rural local workforce development areas, including:
    - (A) home-based child-care services;
    - (B) child-care services at nontraditional times, including services that accommodate the child-care needs of parents who work shift-schedules, evenings, and weekends; or
    - (C) services to link child-care programs, prekindergarten programs under Subchapter E, Chapter 29, Education Code, and the federal Head Start program;
  - (2) creates or expands existing pilot programs, based on demonstration models from other states, that provide strategies for successfully recruiting and retaining child-care providers;
  - (3) creates pilot programs designed to assist low-income, at-risk parents receiving child-care services provided by the commission for extended periods who may benefit from career counseling and employment location services that promote the potential for career advancement; or
  - (4) develops initiatives that foster school readiness in young children and encourage pre-reading and problem-solving skills in those children.
- (c) To be eligible for a grant under this section, a local workforce development board must:
  - (1) conduct the demonstration project for which the grant is made in a manner that allows replication of the project in whole or part by other local workforce

development boards to address similar child-care service needs in underserved local workforce development areas; and

- (2) use the grant to develop direct child-care services that, at the conclusion of the demonstration project, may be funded.
- (d) Child-care services that may continue to be funded under Subsection (c)(2) at the conclusion of the demonstration project may be funded through existing local workforce development board resources for child-care services or other local resources.

**Sec. 302.0042. Evaluation of Allocation Formulas for Child Care Development Funds**

- (a) The commission shall annually evaluate the formulas used by the commission to distribute federal child care development funds to local workforce development boards in order to ensure that the formulas address the child care needs of each local workforce development board.
- (b) The commission's evaluation must assess:
  - (1) the use of current federal child care funds by each local workforce development board;
  - (2) the ability of each local workforce development board to meet child care performance measures;
  - (3) the average cost of child care in each local workforce development area;
  - (4) the poverty rate of each local workforce development area compared to the state's poverty rate;
  - (5) the number of children on waiting lists for child care in each local workforce development area; and
  - (6) the number of vacant slots available for child care placement in each local workforce development area.

**Sec. 302.0043. Evaluation of Effectiveness of Subsidized Child Care Program**

- (a) To evaluate the effectiveness of the commission's child care program in helping parents who receive subsidized child care to maintain employment, the commission shall compile, regarding each parent receiving subsidized child care from the commission's child care program, the following information regarding the wage and employment status of the parent:
  - (1) if the parent receives both financial assistance under Chapter 31, Human Resources Code, and subsidized child care, whether the parent:

- (A) finds employment; and
  - (B) maintains the parent's employment after one year;
- (2) if the parent receives only subsidized child care, whether the parent:
  - (A) maintains the parent's employment; and
  - (B) experiences a change in the parent's earnings after one year of employment; and
- (3) if the parent leaves the child care program:
  - (A) the parent's reason for leaving the program; and
  - (B) whether the parent returns to financial assistance under Chapter 31, Human Resources Code, or becomes a recipient of financial assistance under that chapter for the first time.
- (b) The commission may use the wage and employment records of the parents to determine the employment outcome of the parents.
- (c) The commission shall also measure and evaluate the effectiveness of the commission's child care program in:
  - (1) improving the training of child care professionals; and
  - (2) facilitating collaboration with Head Start, the Texas Education Agency, the Department of Protective and Regulatory Services, and the Health and Human Services Commission.
- (d) The commission shall periodically analyze the information collected by the commission under this section and shall compile its findings regarding the effectiveness of the commission's child care program.
- (e) The commission shall make the information collected by the commission and the commission's findings available to local workforce development boards.
- (f) Not later than January 15 of each odd-numbered year, the commission shall report to the legislature regarding the commission's findings regarding the effectiveness of the commission's child care program.

**Sec. 302.0044. Wage Tracking of TANF Choices Program Recipients**

- (a) The commission, in consultation with local workforce development boards, shall compile the following information with regard to each recipient of employment services under the Temporary Assistance for Needy Families (TANF) CHOICES program:
  - (1) whether the recipient is placed in employment paying wages equal to or exceeding 200 percent of the federal poverty level for a family that is the size of the recipient's family; and
  - (2) if the recipient is placed in employment earning wages equal to or exceeding the amount described by Subdivision (1), whether the recipient has earned that amount before the first anniversary of the date of the recipient's initial date of employment.
- (b) Not later than December 15 of each year, the commission shall report to the legislature the percentage of recipients of employment services under the Temporary Assistance for Needy Families (TANF) CHOICES program who meet the wage criteria described by Subsections (a)(1) and (2).

**Sec. 302.0045. Quality Initiatives by Commission**

- (a) The commission shall collect state and local information relating to the effectiveness of the use of four percent quality dollars by local workforce development boards. The commission shall produce a report that highlights promising practices in expanding quality early education.
- (b) In performing its duties under this section, the commission shall report to the legislature and other interested persons on local programs and services that show promise in expanding access to quality early education.

**Sec. 302.0046. Notice Regarding Termination of Certain Child-Care Services**

- (a) The commission shall direct each local workforce development board to notify a working poor subsidy recipient who resides in that board's local workforce development area and who receives child-care services from a child-care services program financed through state or federal funds of any termination of the subsidy for any reason other than involuntary termination resulting from the recipient's actions or failure to act.
- (b) Except as otherwise provided by this subsection, the local workforce development board shall provide the notice in writing to the recipient not later than the 30th day before the scheduled date of termination of the affected child-care services subsidy. The notice must include information regarding other child-care services programs under which the recipient may be eligible for services. If providing notice on or before the deadline specified by this subsection would interfere with the ability of the local workforce development board to comply with its duties regarding the number of children to be served or would require the expenditure of

funds in excess of the amount appropriated to the board, the board may provide the notice on the earliest date on which it is practicable for the board to provide notice.

**Sec. 302.0047. Electronic Validation of Child-Care Services and Attendance**

If feasible, the commission shall use an electronic validation system to ensure that parents verify that a provider of relative child care is providing care and that the child for whom the care is provided is in attendance during the period for which the child-care provider is being reimbursed for services.

**Sec. 302.005. Child-Care Training Center Pilot Programs**

- (a) The commission shall establish four pilot programs in which the division shall certify day-care facilities licensed under Chapter 42, Human Resources Code, as training centers that offer training and certification for recipients of public assistance in basic skills, child care, child-care vendor entrepreneurial training, and early childhood education. The commission shall determine the pilot sites, with at least one site in an urban area and at least one site in a rural area.
- (b) The commission shall cooperate with the Department of Protective and Regulatory Services in the adoption of rules under this section. The commission may not adopt a rule under this section that conflicts with a rule of the Department of Protective and Regulatory Services.
- (c) The commission shall award a contract to a child-care facility to act as a training center based on:
  - (1) the level of training of the facility's staff; and
  - (2) the history of the facility in delivering high-quality care.
- (d) The child-care subsidy for a person who participates in training through a pilot program and who qualifies for a subsidy for the person's child shall be paid directly to the facility. The facility may not count such a person in the facility's child-to-staff ratio.
- (e) A person who is a recipient of financial assistance under Chapter 31, Human Resources Code, may qualify to participate in training through a pilot program by applying to the commission and:
  - (1) providing proof of possession of a high school diploma or the equivalent or enrollment in a program leading to a high school diploma or the equivalent;
  - (2) demonstrating possession of general skills and competence, as determined by commission rule; and
  - (3) demonstrating, to the satisfaction of the commission, a long-term commitment to the early childhood care profession.

- (f) Funding for a person who participates in training through a pilot program shall be provided through a work supplement program for 12 months. The commission may provide additional funding for the person to participate in training through the pilot program for an additional 12 months.
- (g) The commission may also provide funding for a person who participates in training through a pilot program to:
  - (1) complete the person's Child Development Associate national credential, Certified Child-Care Professional Credential, or other child-care certification, as determined by the commission;
  - (2) participate in ongoing interactive training; and
  - (3) provide start-up grants and loans to establish the person's own child-care business.
- (h) A facility that provides training through a pilot program shall maintain a mentor relationship with each person who participates in training through the program at the facility. A person who participates in training at a facility may be required to participate in additional training programs after the date the person completes the pilot program.
- (i) The child of a person who participates in training through a pilot program is entitled to the same discounted rate for child-care services at the facility in which the person is participating in training that the facility offers to the facility's employees. The child-care subsidy provided for the person's child shall be paid to the facility in which the person is participating in training at the rate that the facility offers to the facility's employees. The money saved by the commission under this subsection may be used by the commission to administer the pilot program established under this section.
- (j) The commission shall adopt rules that establish eligibility criteria for a facility to participate in a pilot program and provide requirements for implementation of the pilot program.

(NOTE: S.B. 280, 78<sup>th</sup> Legislature, repealed (k).)

- (l) In this section, "**work supplement program**" means a program under which the state reserves all or part of the amounts that would be payable as benefits to welfare recipients and uses those amounts to provide and subsidize jobs for the recipients.

**Sec. 302.006. Professional Child-Care Training Scholarships, Bonuses, and Wage Supplementation**

- (a) The commission may develop and administer a program under which the commission awards scholarships in the amount of \$1,000 each for professional child-care training to eligible recipients.



- (b) A recipient may use a scholarship awarded under this section only to pay expenses associated with obtaining:
- (1) Child Development Associate (CDA) national credentials;
  - (2) Certified Child-Care Professional (CCP) credentials; or
  - (3) a level one certificate or associate's degree in the area of child development or early childhood education from a public or private institution of higher education.
- (c) To be eligible to receive a scholarship awarded under this section, a person must:
- (1) be employed in a child-care facility, as defined by Section 42.002, Human Resources Code;
  - (2) intend to obtain a credential, certificate, or degree specified in Subsection (b);
  - (3) agree to work for at least 18 additional months in a child-care facility, as defined by Section 42.002, Human Resources Code, that accepts federal Child Care Development Fund subsidies and that, at the time the person begins to fulfill the work requirement imposed by this subdivision, is located:
    - (A) within the attendance zone of a public school campus considered low-performing under Subchapter E, Chapter 39, Education Code; or
    - (B) in an economically disadvantaged community, as determined by the commission; and
  - (4) satisfy any other requirements adopted by the commission.
- (d) A person may not receive more than one scholarship awarded under this section.
- (e) In addition, the commission may provide for payment of a bonus or wage supplementation to a scholarship recipient who for 18 months after the date of receiving the scholarship provides care for children younger than six years of age while remaining in the employment of the child-care facility that employed the person when the scholarship was awarded and that meets the requirements of Subsection (c)(3). Any bonus or wage supplementation provided under this subsection shall be paid in equal shares by the scholarship recipient's employer and the commission. The commission shall determine the amount of any bonus and the amount and duration of any wage supplementation provided under this subsection.
- (f) The commission shall fund scholarships and any bonuses or wage supplementation provided under this section through federal Child Care Development funds or other funding sources available to the commission. Total funding may not exceed \$2 million per state biennium.

- (g) The commission shall adopt rules necessary to implement this section. The rules must include provisions that:
  - (1) address the computation of the 18-month service requirement prescribed by Subsection (c); and
  - (2) ensure that the commission may recover scholarship money from a recipient who fails to comply with that service requirement or any other requirement imposed by the commission.

**Sec. 302.007. Report on Trade Adjustment Programs**

- (a) The commission shall submit an annual report to the legislature on the effectiveness of federal programs designed to provide trade adjustment assistance to persons in this state.
- (b) The report shall include the following information regarding persons who have participated in a program described by Subsection (a):
  - (1) the number of persons who enter employment;
  - (2) the occupations in which the persons are placed;
  - (3) the wages earned by persons before and after participation in the program;
  - (4) whether a person who enters employment after completion of a program retains that employment for at least six months;
  - (5) the number of persons participating in integrated vocational and language training programs; and
  - (6) whether a participant has acquired basic skills to enhance employability in the participant's local labor market.

**Sec. 302.008. Statewide Technology Workforce Campaign**

The commission shall develop an information and marketing campaign designed to encourage residents of the state to enter the technology workforce. The campaign shall target populations that are traditionally economically disadvantaged and underrepresented in the technology workforce.

**Sec. 302.009. Job Placement Incentive Program**

- (a) The commission by rule shall develop a job placement incentive program under which persons with whom local workforce development boards contract for employment services under Chapter 2308, Government Code, are provided incentives for placing recipients of financial assistance and nonrecipient parents participating in employment programs under

Chapter 31, Human Resources Code, in higher-wage jobs, as determined by the commission.

- (b) In developing guidelines for the job placement incentive program, the commission shall:
  - (1) define measures for higher-wage jobs based on:
    - (A) locally appropriate indicators of the wages necessary to lift recipients of employment services out of poverty and into self-sufficiency; and
    - (B) the self-sufficiency wage developed for each local workforce development board under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.); and
  - (2) involve representatives of local workforce development boards in developing guidelines for the program and the measures for higher-wage jobs.
- (c) The commission shall administer the job placement incentive program through the local workforce development boards.
- (d) A local workforce development board that provides a monetary incentive under the job placement incentive program to a person with whom the board contracts for employment services shall require the person to use the money for expenses relating to education, training, and support services necessary to prepare, place, and maintain recipients of financial assistance and nonrecipient parents in jobs paying wages that allow those persons to attain self-sufficiency.

**Sec. 302.010. Postemployment Services Guidelines**

- (a) The commission by rule shall develop guidelines under which local workforce development boards provide postemployment services to a recipient of financial assistance or nonrecipient parent participating in an employment program under Chapter 31, Human Resources Code.
- (b) In developing the guidelines, the commission must consider the difficulties the recipient is likely to encounter in acquiring additional education and training after becoming employed.
- (c) The commission shall assist local workforce development boards in meeting the guidelines by providing information about model programs and best practices, including employer involvement in past employment services.
- (d) The commission shall involve representatives of local workforce development boards and other appropriate organizations in developing the guidelines and identifying model programs and best practices.

**Sec. 302.011. Postemployment Case Management and Mentoring**

The commission shall encourage local workforce development boards to provide postemployment case management services for and use mentoring techniques to assist recipients of financial assistance and nonrecipient parents who participate in employment programs under Chapter 31, Human Resources Code, and have, in comparison to other recipients and nonrecipient parents, higher levels of barriers to employment. The case management services and mentoring techniques must be designed to increase the person's potential for wage growth and development of a stable employment history.

**Sec. 302.012. Monitoring of Employment History of Certain Former Recipients of Public Assistance**

- (a) The division shall develop and implement a system to monitor the long-term employment history of persons who are former recipients of assistance under employment programs operated by the division under:
  - (1) Chapter 31, Human Resources Code; and
  - (2) 7 U.S.C. Section 2015(d).
- (b) In designing the system, the division shall cooperate with the Texas Department of Human Services.
- (c) For each former recipient of assistance, the system must be designed to:
  - (1) establish a baseline earnings measure based on the recipient's earnings on leaving the employment program;
  - (2) track the wage and employment outcomes of the recipient for a period of up to but not more than three years;
  - (3) provide, to the extent possible, information regarding the recipient's household composition and earnings;
  - (4) provide, to the extent possible, information regarding additional training or education received by the recipient;
  - (5) compute:
    - (A) the recipient's individual earnings as a percentage of the federal poverty level; and
    - (B) if data is available, the recipient's household earnings as a percentage of the federal poverty level; and

- (C) if data is available, the recipient's income as a percentage of the federal poverty level adjusted for the total value of any public assistance utilized by the recipient's household, including, but not limited to, medical assistance, food stamps, child care, transportation assistance, the federal earned income tax credit, and job training activities; and
- (6) compare the recipient's individual earnings to a self-sufficiency standard similar to that required under 20 C.F.R. Section 663.230.
- (d) The commission shall report to the legislature not later than January 1 of each odd-numbered year regarding the information obtained from the system developed under Subsection (a). The report required under this subsection may be made separately or as a part of any other required report submitted to the legislature by the commission.

**Sec. 302.013. Local Workforce Development Board Advisory Committee**

- (a) In this section, "**advisory committee**" means the local workforce development board advisory committee created under this section.
- (b) The organization composed of a member of and the staff director of each local workforce development board in this state shall establish a local workforce development board advisory committee composed of nine members appointed by the executive officers of that organization.
- (c) The advisory committee shall be composed of:
  - (1) six members of local workforce development boards who serve as members of the organization described by Subsection (b); and
  - (2) three staff directors of local workforce development boards who serve as members of the organization described by Subsection (b).
- (d) The members of the advisory committee must represent different geographic areas of the state.
- (e) The advisory committee shall:
  - (1) meet at least quarterly;
  - (2) report to the commission at least annually; and
  - (3) advise the commission and commission staff regarding the programs, policies, and rules of the commission that affect the operations of local workforce development boards and the local workforce delivery system.

**Sec. 302.014. Employment Information for Secondary School Students**

- (a) The commission shall provide the Texas Education Agency with information at least each quarter regarding current and projected employment opportunities in this state, disaggregated by county or other appropriate region.
- (b) The Texas Education Agency shall provide the information obtained under Subsection (a) to school districts for use in local planning and implementation of career and technical education and training programs.

**Sec. 302.015. Provision of Employment Services to Certain Nonrecipient Parents**

The commission shall provide employment services, including needs assessment, job training, postemployment, and related support services, to nonrecipient parents to the same extent the services are provided to recipients of financial assistance under Chapter 31, Human Resources Code.

**Sec. 302.016. Rules Regarding Private Sector Prison Industries Programs**

The commission shall adopt rules necessary to implement Section 497.0596(a) (4), Government Code.

**Sec. 302.017. Peace Officer Employment Opportunity Internet Website**

- (a) In this section, "peace officer" has the meaning assigned by Section 1701.001, Occupations Code.
- (b) The commission shall develop, maintain, and promote a statewide employment opportunity Internet website to facilitate:
  - (1) public awareness of peace officer employment opportunities with state and local law enforcement agencies; and
  - (2) an exchange of information between individuals seeking employment as peace officers in this state and state and local law enforcement agencies seeking applicants for employment as peace officers.
- (c) The Internet website must:
  - (1) be accessible to members of the public; and
  - (2) provide to individuals seeking employment as peace officers and state and local law enforcement agencies that have posted employment opportunities on the website an organized means of exchanging information.

- (d) The commission shall contract with the Texas Commission on Law Enforcement to develop a license verification interface to verify whether an applicant for employment as a peace officer:
  - (1) holds a current license issued by the Texas Commission on Law Enforcement under Chapter 1701, Occupations Code, and, if so, the level of that license; and
  - (2) has had the applicant's license revoked or suspended by the Texas Commission on Law Enforcement.
- (e) The Texas Commission on Law Enforcement shall provide the commission with technical assistance in the development and testing of the license verification interface under Subsection (d).
- (f) If the development and operation of the Internet website and the associated license verification interface is not possible due to a lack of available funding, the commission shall:
  - (1) enter into a memorandum of understanding with the Texas Commission on Law Enforcement to integrate a peace officer job matching database for individuals seeking employment as peace officers in this state and state and local law enforcement agencies seeking applicants for employment as peace officers into the commission's existing Labor Exchange System; and
  - (2) ensure that:
    - (A) the commission registers an Internet domain name that is unique and that identifies on its face the purpose of the peace officer job matching database; and
    - (B) the registered domain name and associated link directs users of the Internet to a web page that instructs users on how to use the Labor Exchange System and includes a link to enter that system.

### **Sec. 302.019. Occupational Shortage Study; Report**

- (a) The commission shall gather and study information relating to existing and projected shortages in high-wage, high-demand occupations in this state. The study conducted by the commission under this section must include information on existing and projected shortages in high-wage, high-demand occupations in industrial job sectors, including:
- (1) construction;
  - (2) manufacturing;
  - (3) agriculture;
  - (4) forestry;
  - (5) health care and social services;
  - (6) education;
  - (7) transportation and warehousing;
  - (8) mining, quarrying, and oil and gas extraction;
  - (9) utilities;
  - (10) wholesale trade;
  - (11) retail trade;
  - (12) finance and insurance;
  - (13) professional, scientific, and technical services; and
  - (14) hospitality and food services.
- (b) Not later than January 1 of each year, the commission shall submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each standing committee or subcommittee of the legislature with primary jurisdiction over workforce development matters a detailed report summarizing the results of the commission's study under this section for the most recent state fiscal year and any suggestions and recommendations for legislative action the commission considers appropriate resulting from that study.

## **Subchapter B. Jurisdiction of Division of Workforce Development**

### **Sec. 302.021. Consolidation of Workforce Development Programs**



(a) The following job-training, employment, and employment-related educational programs and functions are consolidated under the authority of the commission:

- (1) career school and college programs under Chapter 132, Education Code;
- (2) apprenticeship programs under Chapter 133, Education Code;
- (3) postsecondary vocational and technical job-training programs that are not a part of approved courses or programs that lead to licensing, certification, or an associate degree under Chapters 61, 130, and 135, Education Code, Subchapter E, Chapter 88, Education Code, and Subchapter E, Chapter 96, Education Code;
- (4) employment programs under Chapter 31, Human Resources Code;
- (5) the senior citizens employment program under Chapter 101, Human Resources Code;
- (6) the work and family policies program under Chapter 81;
- (7) job-training programs funded under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.);
- (8) the job-counseling program for displaced homemakers under Chapter 304;
- (9) the reintegration of offenders program under Chapter 306;
- (10) the inmate employment counseling program;
- (11) the continuity of care program under Section 501.095, Government Code;
- (12) a literacy program from state, local, federal, and private funds available to the state for that purpose;
- (13) the employment service;

(NOTE: (14) intentionally omitted in order to track the numbering used in S.B. 280,  
78<sup>th</sup> Legislature.)

- (15) the trade adjustment assistance program under Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et seq.);
- (16) education, employment, employment support, training services, activities and programs funded under Temporary Assistance for Needy Families (42 U.S.C. Section 601 et seq.);

- (17) the food stamp employment and training program authorized under 7 U.S.C. Section 2015(d); and
  - (18) the functions of the State Occupational Information Coordinating Committee.
- (b) In addition to the programs consolidated under the authority of the commission under Subsection (a), the commission shall administer:
- (1) child-care services provided under Chapter 44, Human Resources Code; and
  - (2) programs established in this state through federal funding to conduct full service career development centers and school-to-work transition services.
- (c) To the extent permitted under federal law, the commission shall administer the programs funded through the education coordination funds under Section 123, Job Training Partnership Act (29 U.S.C. Section 1533).
- (d) To the extent permitted under federal law, the commission shall promote and monitor services provided to persons with disabilities, including persons referred from the Texas Rehabilitation Commission.

**Sec. 302.022. Client Accessibility**

The director shall develop a uniform, statewide client application and enrollment process to determine an applicant's eligibility for workforce training and services funded through the division.

**Sec. 302.023. Delegation of Functions**

The executive director shall delegate all or part of the administration of a program listed under Section 302.021 that is eligible for block grant funding under Section 302.062 to a local workforce development board in an area in which a board has been certified and a local plan approved by the governor, or to another appropriate state or local entity in an area in which a local workforce development board has not been certified and a local plan approved by the governor.

**Subchapter C. State-Local Planning; Local Workforce Development Boards**

**Sec. 302.041. State-Local Planning Process**

The director shall design and implement a state-local planning process for workforce training and services provided through the programs under the jurisdiction of the division.

**Sec. 302.042. Review of Local Plans; Recommendations**

The commission shall review the local plans developed under Section 2308.304, Government Code, and shall make recommendations to the council regarding the implementation of those plans.

**Sec. 302.043. Training for Local Workforce Development Board Members**

- (a) The division shall provide management and board development training for all members of local workforce development boards that includes information regarding client eligibility determination, early childhood education, vendor management, the importance of high-quality workforces, and the complexity of managing multiple state and federal child-care funding sources and that encourages board members to be advocates in their communities for effective and efficient workforce development programs and for the improvement of child-care quality. If a member of a local workforce development board does not receive training under this section before the 91st day after the date on which the member begins service on the board, the person is ineligible to continue serving on the board unless the training required under this subsection was requested by the member but not provided by the division.
- (b) Training may be provided directly by the division or by a third party that has demonstrated experience in providing training to local workforce development or similar boards.
- (c) The division shall ensure that a local workforce development board receives training under Subsection (a) before the board begins to manage the delivery of child-care services.
- (d) The training under this section must include training for local workforce development board members and board employees regarding the collection and analysis of data in the commission's reporting and information system for performance reports.

**Sec. 302.044. Outreach Activities**

The commission shall require that local workforce development boards participate in outreach activities provided by the commission that are designed by the commission to allow board members and employees to become more proficient in the administration and operation of local workforce development activities. The commission shall adopt policies establishing the number of outreach activities in which a board is required to participate.

**Sec. 302.045. Sanctions Plan**

The commission shall adopt a detailed and understandable plan to be used by local workforce development boards in the implementation of the sanction process. The plan adopted under this section must include:

- (1) a requirement that the commission provide technical assistance to the boards in avoiding or responding to sanctions; and

- (2) specific provisions regarding the time in which a board is to be allowed to address concerns and improve the board's performance.

**Sec. 302.046. Plan Regarding Lack of Service Providers**

- (a) The commission shall adopt a plan to address the lack of service providers in specific local workforce development areas.
- (b) The plan adopted under this section must include provisions:
  - (1) for offering incentives to attract exceptional service providers and to encourage those providers to cooperate and assist in improving the practices of other providers;
  - (2) relating to the imposition of sanctions by a board against a service provider; and
  - (3) requiring, under certain circumstances, the commission to assist in providing services until a provider is designated.

**Sec. 302.047. Flexibility Rating System for Commission Directives**

- (a) The commission shall develop and implement a flexibility rating system for directives sent by the commission to local workforce development boards. A rating assigned to a directive under the system shall indicate the degree of flexibility that a local workforce development board has in implementing the directive. The commission shall provide an explanation of the ratings assigned under the system to each local workforce development board.
- (b) The commission shall adopt rules as necessary to implement this section.

**Sec. 302.048. Assessment of Local Workforce Development Board's Capacity to Oversee and Manage Local Funds and Delivery of Services**

- (a) In consultation with local workforce development boards, the commission by rule shall establish criteria to be used by the commission to evaluate each local workforce development board's overall capacity to oversee and manage local funds and the delivery of local workforce services.
- (b) The criteria established under Subsection (a) must address a local workforce development board's ability to:
  - (1) develop, maintain, and upgrade comprehensive fiscal management systems;
  - (2) hire, train, and retain qualified staff to carry out the board's oversight activities;
  - (3) select and oversee local contractors to improve the delivery of workforce services;

- (4) oversee and improve the operations of local career development centers in the area served by the board;
  - (5) manage the contractors' performance across multiple board programs; and
  - (6) identify and resolve long-standing oversight problems of the board and performance problems of contract providers.
- (c) Based on the criteria prescribed under this section, the commission shall develop performance measures to be used by the commission to evaluate each local workforce development board.
- (d) The commission shall post the results of the commission's evaluation of each local workforce development board on the commission's Internet website in a format that is readily accessible to and understandable by a member of the public.
- (e) The commission annually shall compile information provided to the commission by local workforce development boards that aggregates existing performance measure data on each local career development center in a consistent format demonstrating overall performance across multiple programs.
- (f) The commission shall post the information compiled by the commission under Subsection (e) on the commission's Internet website in a format that is readily accessible to and understandable by a member of the public.

## **Subchapter D. Allocation of Funds; Block Grant Program**

### **Sec. 302.061. Administration Funding**

Unless superseded by federal law, the commission may use an amount not to exceed 20 percent of the amount of funds available to the commission for workforce training and services to implement state-level responsibilities, including administration, research and planning, system design and development, and training and technical assistance.

### **Sec. 302.062. Block Grants to Local Workforce Development Areas**

- (a) Effective July 1, 1996, the commission shall provide to the local workforce development areas in which local workforce development boards have been certified and local plans approved by the governor, through a block grant process, funds available to the commission for workforce training and employment services, unless superseded by federal law. Administrative costs under this subsection may not exceed five percent of the total amount of funds available to the commission for block grants for workforce training and services.

- (b) In the case of funds that are allocated to this state or regions of this state through the application of established formulas, the commission shall allocate amounts across the state using the same formula that was used to provide the funds to the state or that region.
- (c) In the case of funds that are not allocated by formula to this state or regions of this state, the commission shall develop a need-based formula that will equitably allocate funds among local workforce development areas throughout this state.
- (d) Contingent on the availability of funds, in any state fiscal biennium, the commission may not allocate to a local workforce development area less than 90 percent or more than 125 percent of the amount received by that area during the preceding state fiscal biennium.
- (e) In each area of the state not yet designated as a local workforce development area or that has been so designated but in which a local workforce development board has not been certified and a local plan approved by the governor, the executive director shall:
  - (1) provide workforce training and services in that area to the extent allowed by federal law; and
  - (2) specify an entity, which may be the commission, for the performance of employment services in that area.
- (f) At least 80 percent of the funds available to the commission for workforce training and services in an area shall be provided to the local workforce development board under Subsection (a) or, in an area in which a local workforce development board has not been certified and a local plan approved by the governor, to the entity specified by the executive director under Subsection (e). If a local workforce development board has been certified and a local plan approved by the governor, the funds shall be provided through the block grant process described by this section. Unless superseded by federal law, total administrative costs for local workforce training and services may not exceed 15 percent of the funds allocated under this subsection, whether the training and services are provided through a local workforce development board or through the commission or other entity specified under Subsection (e).
- (g) Block grant funding under this section does not apply to:
  - (1) the work and family policies program under Chapter 81;
  - (2) a program under the skills development fund created under Chapter 303;
  - (3) the job counseling program for displaced homemakers under Chapter 304;
  - (4) the Communities In Schools program under Subchapter E, Chapter 33, Education Code, to the extent that funds are available to the commission for that program;

- (5) the reintegration of offenders program under Chapter 306;
- (6) apprenticeship programs under Chapter 133, Education Code;
- (7) the continuity of care program under Section 501.095, Government Code;
- (8) employment programs under Chapter 31, Human Resources Code;
- (9) the senior citizens employment program under Chapter 101, Human Resources Code;
- (10) the programs described by Section 302.021(b)(2);
- (11) the community service program under the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);
- (12) the trade adjustment assistance program under Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et seq.);
- (13) the programs to enhance the employment opportunities of veterans;
- (14) the functions of the State Occupational Information Coordinating Committee; and
- (15) the adult education and literacy programs under Chapter 315.

**Sec. 302.063. Waivers**

The commission shall develop objective criteria for the granting of waivers allowed under this chapter.

**Sec. 302.064. Collaboration with Local Boards**

- (a) The commission shall collaborate with local workforce development boards when determining the use of funds at the local level.
- (b) The commission shall develop funding guidelines and strategies allowing boards to exercise flexibility in identifying and addressing the needs of persons who live in remote areas or who face other barriers to employment.

**Sec. 302.065. Integration of Block Grant Programs and Workforce Services**

- (a) To streamline the delivery of services provided in local career development centers, the commission and local workforce boards shall integrate the administration of the following federal block grant programs and the caseworker functions associated with those programs as provided by this section:

- (1) Temporary Assistance for Needy Families (TANF) CHOICES training and employment programs under Chapters 31 and 34, Human Resources Code;
  - (2) child care programs under Chapter 44, Human Resources Code;
  - (3) employment and training programs under Title I of the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.) or any subsequent applicable federal legislation; and
  - (4) the food stamp employment and training program authorized under 7 U.S.C. Section 2015(d).
- (b) The commission, in consultation with local workforce development boards, shall ensure that state-level performance measures, rules, policies, procedures, and organizational structures support the integration of the federal block grant programs described by Subsection (a) and the caseworker functions associated with those programs at the local level.
- (c) Each local career development center that provides services through the federal block grant programs described by Subsection (a) shall provide:
- (1) integrated services across the programs;
  - (2) an integrated determination through a single point of contact of a customer's eligibility for services under more than one program; and
  - (3) integrated case management through a single point of contact for a customer receiving services under more than one program.

## **Subchapter E. Workforce Development Evaluation System**

### **Sec. 302.081. Maintenance and Operation of Workforce Development Evaluation System**

- (a) The commission shall maintain and operate an automated follow-up and evaluation system derived from appropriate available information, including:
- (1) unemployment insurance wage records maintained by the commission; and
  - (2) student follow-up information available through the Texas Higher Education Coordinating Board.
- (b) The agencies represented on the council shall fund the maintenance and operation of the evaluation system by using funds available to the agencies for evaluation of each agency's workforce development programs.



**Sec. 302.082. Information and Data for Evaluation System**

- (a) Each state agency represented on the council shall provide information to support the commission's follow-up and evaluation system as requested.
- (b) Evaluation data in the system must include:
  - (1) placement rates;
  - (2) wages paid;
  - (3) retention in employment statistics;
  - (4) the number of education and training-related placements; and
  - (5) other appropriate factors, including public welfare dependency and the pursuit of additional education.
- (c) The commission may develop a method for collecting occupational information to supplement wage record information collected by the commission. The commission may request employers, providers, and other appropriate sources to provide placement, employment, and earnings information to the commission.

**Sec. 302.083. Analysis**

- (a) At least annually, the commission shall issue an analysis, by occupation and by the provider of the job placement performance, of each workforce development program for the previous one-year, three-year, and five-year periods to:
  - (1) each provider of workforce education or workforce training and services;
  - (2) the Texas Higher Education Coordinating Board for each provider of workforce education approved and administered by the coordinating board;
  - (3) each local workforce development board for each provider of workforce training and services in the workforce development area; and
  - (4) the division.
- (b) The commission shall post each analysis issued under Subsection (a) on the commission's Internet website in a format that is readily accessible to and understandable by a member of the public.

### **Sec. 302.084. Use by Texas Higher Education Coordinating Board**

The Texas Higher Education Coordinating Board shall use the job placement information received under this subchapter and other information to:

- (1) evaluate the effectiveness of workforce education;
- (2) determine whether a public or private workforce education program is effective in placing persons who successfully complete the program in jobs related to the persons' training; and
- (3) determine whether to continue, expand, or terminate a program established under Section 61.051, Education Code.

### **Sec. 302.085. Use by Council and Workforce Development Board**

The council and each local workforce development board shall use the information developed under this subchapter and other information to determine whether a specific workforce training and services program administered by or funded by the local board is effective and whether to continue the training and services program.

### **Sec. 302.086. Use of Evaluation System**

The follow-up and evaluation system shall be used to assist the commission, the council, local workforce development boards, institution boards, the Texas Higher Education Coordinating Board, the Texas Education Agency, and other agencies in evaluating the labor market success and effectiveness of workforce development in this state.

## **Subchapter F. Employment and Training Investment Assessment**

### **Sec. 302.101. Training Stabilization Fund**

- (a) The training stabilization fund is established as a special trust fund outside of the state treasury in the custody of the comptroller separate and apart from all public money or funds of this state. The fund is composed of:
  - (1) money deposited to the fund under Section 204.123; and
  - (2) any other money received for deposit in the fund.
- (b) Money in the training stabilization fund may be used in a year in which the amounts in the employment and training investment holding fund are insufficient to meet the legislative appropriation for that fiscal year for the skills development program strategies and activities.
- (c) Money in the training stabilization fund shall be transferred to the skills development fund under Subsection (b) not later than September 30. The amount transferred from the training

stabilization fund may not exceed the amounts appropriated to the skills development program strategies and activities in the fiscal year in which the transfer is made.

- (d) Interest that accrues on the money in the training stabilization fund shall be deposited quarterly to the credit of the compensation fund.

## **Subchapter G. Priority of Service In Job Training and Employment Assistance Programs**

### **Sec. 302.151. Definitions**

In this subchapter:

- (1) "Active military, naval, or air service" has the meaning assigned by 38 U.S.C. Section 101(24).
- (2) "Covered person" has the meaning assigned by 38 U.S.C. Section 4215(a). The term includes the spouse of any member of the armed forces who died while serving on active military, naval, or air service.
- (3) "Veteran" has the meaning assigned by 38 U.S.C. Section 101(2).

### **Sec. 302.152. Priority Of Service Required**

- (a) A covered person is entitled to priority in obtaining services or resources under this subchapter. In the implementation of this section, a covered person may take precedence in obtaining services or resources under this subchapter over persons who are not covered persons.
- (b) For purposes of Subsection (a), "taking precedence" may mean that:
  - (1) the covered person receives access to a service or resource before a person who is not a covered person; or
  - (2) if the service or resource is limited, the covered person receives access to the service or resource instead of a person who is not a covered person.

### **Sec. 302.153. Participation In State-Funded Programs**

In selecting applicants to receive training or assistance under a job training or employment assistance program or service that is funded wholly or partly with state money, priority of service must be given to a covered person who meets the minimum eligibility requirements to participate or enroll in the program or receive the service.

**Sec. 302.154. Participation In Texas Veterans Commission Programs**

- (a) The Texas Veterans Commission shall operate programs funded under 38 U.S.C. Chapters 41 and 42. The commission may provide services to enhance the employment and training opportunities of veterans, covered persons, active duty service members, spouses of active duty service members, and members of the Texas National Guard. The services provided under this section must be provided by state employees.
- (b) The Texas Veterans Commission may adopt rules necessary to implement this section.

**CHAPTER 303. SKILLS DEVELOPMENT FUND**

**Sec. 303.001. Purpose; Definitions**

- (a) The purpose of this chapter is to remove administrative barriers that impede the response of public community and technical colleges, community-based organizations, and the Texas Engineering Extension Service to industry and workforce training needs and to develop incentives for public community and technical colleges, community-based organizations, and the Texas Engineering Extension Service to provide customized assessment and training in a timely and efficient manner.
- (b) For purposes of this chapter:
  - (1) **"Assessment"** means the evaluation of an employer's workforce needs and requirements.
  - (2) **"Community-based organization"** means a private nonprofit organization, including a development corporation and faith-based organization, that:
    - (A) provides for education, vocational education, rehabilitation, job training, or internship services or programs; and
    - (B) 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.

**Sec. 303.002. Waiver**

- (a) The commission may review and recommend to the legislature the waiver of any requirements set forth in Title 3, Education Code, as they may apply to public community and technical colleges, that impede the ability of such a college to develop in a timely manner customized training for demand occupations in particular industries, including statutes or regulations limiting costs that may be recovered by a public community or technical college from state funds.

- (b) A public community or technical college or the Texas Engineering Extension Service may recover customized assessment and training costs incurred by the institution if:
  - (1) there is an actual or projected labor shortage in the occupation in which training is provided that is not being met by an existing institution or program in the area; and
  - (2) the wages at the time of job placement for individuals who successfully complete customized training at the public community or technical college or the Texas Engineering Extension Service are equal to the prevailing wage for that occupation in the local labor market area.

**Sec. 303.003. Skills Development Fund**

- (a) To achieve the purposes of this chapter, the skills development fund is created. The fund is composed of:
  - (1) money transferred into the fund under Section 204.123; and
  - (2) any amounts appropriated by the legislature for the purpose of this chapter from the general revenue fund.
- (b) The skills development fund may be used by public community and technical colleges, community-based organizations, and the Texas Engineering Extension Service as start-up or emergency funds for the following job-training purposes:
  - (1) developing customized training programs for businesses and trade unions; and
  - (2) sponsoring small and medium-sized business networks and consortiums.
- (b-1) The commission by rule may establish and develop additional job incentive programs that use the skills development fund to create incentives for public community and technical colleges in partnership with one or more employers, including prospective employers who commit to establishing a place of business in this state, to provide workforce training in an effort to create and retain employment opportunities in this state. Under a program established under this subsection, the commission may commit money to a prospective employer described by this subsection contingent on the employer's establishment of a place of business in this state.
- (b-2) In addition to the purposes described by Subsections (b) and (b-1), in each state fiscal biennium, an amount of money from the skills development fund not to exceed five percent of the amount of general revenue appropriated to the skills development fund for that biennium may be used as provided by this subsection. Funds available to the commission from other sources may also be used as provided by this subsection. Funds may be awarded under this subsection to a lower-division institution of higher education to be used under an agreement with a school district to support courses offered for joint high school and

college-level credit or offered under a college credit career or technical education program that leads to an industry-recognized license, credential, or certificate. Appropriate uses of funds awarded under this subsection include purchasing or repairing necessary equipment for a course and developing a course curriculum. A course or program supported under this subsection must:

- (1) have the endorsement of, or a letter of support from, at least one employer in this state; and
  - (2) be targeted to address the needs of high-demand fields or occupations, as identified by the applicable local workforce development board.
- (c) Money from the skills development fund may not be used to pay the training costs and other related costs of an employer who relocates the employer's worksite from one location in this state to another in-state location.
- (d) The executive director, or a person appointed by the executive director who is knowledgeable in the administration of grants, is responsible for the distribution of money from the skills development fund.
- (e) It is the intent of the legislature that, to the greatest extent practicable, money from the skills development fund shall be spent in all areas of this state.
- (f) The Texas Engineering Extension Service shall focus the service's training activities under this chapter on programs that:
- (1) are statewide in nature; or
  - (2) are not available from a local junior college district, a local technical college, or a consortium of junior college districts.
- (g) This section does not prohibit the Texas Engineering Extension Service from participating in a consortium of junior college districts or with a technical college that provides training under this chapter.
- (h) A community-based organization may apply for money to participate in a training program only in partnership with a community and technical college or the Texas Engineering Extension Service. A community-based organization providing services regulated by the state shall provide evidence of any certification, license, or registration required by law.
- (i) In this section, "lower-division institution of higher education" means a public junior college, public state college, or public technical institute.

**Sec. 303.0035. Use of Money in Holding Fund (General Revenue Account 5069) for Skills Development**

Money in the holding fund (general revenue account 5069) may be used only for the purposes for which the money in the skills development fund created under Section 303.003 may be used.

**Sec. 303.004. Fund Review**

- (a) The Texas Higher Education Coordinating Board shall review all customized training programs biennially to verify that state funds are being used appropriately by public community and technical colleges and the Texas A&M Engineering Extension Service under this chapter.
- (b) Not later than October 1 of each even-numbered year, the Texas A&M Engineering Extension Service and each public community or technical college that provides workforce training under this chapter shall:
  - (1) conduct a review of the service's or college's training programs to:
    - (A) determine the effectiveness of the programs in improving the wages of participants who complete the programs; and
    - (B) identify strategies for improving the delivery of workforce training in order to more effectively impact economic development in this state; and
  - (2) submit to the commission a detailed written report summarizing the results of the review for inclusion by the executive director in the report to the governor and the legislature required by Section 303.006(c).

**Sec. 303.005. Participation In Additional Programs; Application Requirements; Priority**

- (a) An employer may not apply both to a public community or technical college for customized training and assessment from the college through a grant issued to the college under the skills development fund program established under this chapter and for a grant under the Texas Enterprise Fund program established under Subchapter E, Chapter 481, Government Code, unless the employer and the college file an application for concurrent participation in both programs that complies with any rules adopted by the Texas Workforce Commission on concurrent participation
- (b) In awarding any grant under this chapter, the commission shall consider giving priority to training incentives for small businesses.

**Sec. 303.006. Reporting Requirements**

- (a) In this section:

- (1) **“Employee”** means an individual who performs services for another under a contract of hire, whether express or implied, or oral or written.
  - (2) **“Employer”** means a person that employs one or more employees.
  - (3) **“Existing employer”** means an employer that:
    - (A) has been liable to pay contributions under Subtitle A, Title 4, for more than one year;
    - (B) has employees; and
    - (C) is in compliance with the reporting and payment requirements of Subtitle A, Title 4, as determined by the Texas Workforce Commission.
  - (4) **“In-kind contribution”** means a noncash contribution of goods and services provided by an employer as all or part of the employer’s matching share of a grant or project.
  - (5) **“Job”** means employment on a basis customarily considered full-time for the applicable occupation and industry.
  - (6) **“Large employer”** means a business entity that employs at least 500 employees.
  - (7) **“Medium employer”** means a business entity that employs more than 99 but fewer than 500 employees.
  - (8) **“Micro-employer”** means a business entity that employs not more than 20 employees.
  - (9) **“Program”** means the skills development fund program created under this chapter.
  - (10) **“Small employer”** means a business entity that employs more than 20 but fewer than 100 employees.
  - (11) **“Trainee”** means a participant in a project funded under this chapter.
  - (12) **“Wages”** means all forms of compensation or remuneration, excluding benefits, payable for a specific period to an employee for personal services rendered by that employee.
- (b) In implementing provisions under this section regarding the classification of this state into regions, the executive director shall use the uniform service regions established by the comptroller under Section 120, Article V, Chapter 19, Acts of the 72nd Legislature, 1st Called Session, 1991 (the General Appropriations Act).



- (c) The executive director shall report to the governor and the legislature at the end of each fiscal year the status of the program established under this chapter.
- (d) The annual report must include for that fiscal year:
  - (1) the total number of applications submitted, the total number of applications approved, and the total number of applications rejected by region of the state;
  - (2) the average and median weekly wage levels of trainees under this chapter entering or returning to the workforce, broken down by:
    - (A) current employees undergoing retraining;
    - (B) new hires; and
    - (C) region of the state;
  - (3) the average and median weekly wage levels of trainees under this chapter entering or returning to the workforce, broken down by region of the state;
  - (4) the number and percentage of trainees covered by health care insurance coverage, workers' compensation insurance coverage, and other analogous benefit programs;
  - (5) the total amount of money awarded in each region of the state and the percentage that amount represents of the total amount of money awarded on a statewide basis;
  - (6) a comparison of the percentage of total dollars awarded to each region versus each region's percentage of:
    - (A) the state's population;
    - (B) the civilian labor force;
    - (C) the number of unemployed persons; and
    - (D) the number of qualified grant applications submitted to the commission by public community and technical colleges;
  - (7) the total amount of money awarded to micro-employers, small employers, medium employers, and large employers, reported by region of the state; and
  - (8) the total number of jobs created or persons retrained under the program:
    - (A) by region of the state;
    - (B) by occupation classified by the two-digit standard industrial classification;

- (C) by wage level; and
- (D) whether attributable to:
  - (i) relocation of businesses to this state; or
  - (ii) training or retraining of employees of existing employers.

## **CHAPTER 304. COUNSELING FOR DISPLACED HOMEMAKERS OR WORKERS**

### **Sec. 304.001. Definition**

In this chapter, "**displaced homemaker**" means a person who:

- (1) has worked without pay as a homemaker for the person's family;
- (2) is not gainfully employed;
- (3) has had, or would have, difficulty in obtaining employment; and
- (4) has depended on:
  - (A) the income of a family member for financial support and has lost that income; or
  - (B) government assistance as the parent of dependent children and is no longer eligible for that assistance.

### **Sec. 304.002. Job Counseling Program**

- (a) The commission, through a special assistance job counseling program, shall:
  - (1) provide counseling for displaced homemakers;
  - (2) assist displaced homemakers in obtaining training and education; and
  - (3) place displaced homemakers in suitable employment.
- (b) The counseling must:
  - (1) consider and build on the skills and experiences of the homemaker; and
  - (2) prepare the person, through employment counseling, to reenter the paid work force and develop and improve job skills.
- (c) The commission shall design the program specifically for persons reentering the paid work force after a number of years as homemakers to enable them to assume or resume a

valuable role in the paid work force commensurate with the homemakers' talents and abilities.

- (d) The commission may not charge a fee for participation in the program by a displaced homemaker.

**Sec. 304.003. Personnel; Office**

The commission shall use its personnel, services, facilities, and equipment to operate the job counseling program.

**Sec. 304.004. Cooperation by State Agencies and Political Subdivisions**

State agencies and political subdivisions of the state shall cooperate with the commission in obtaining suitable employment for displaced homemakers counseled by the commission.

**Sec. 304.005. Home Ownership Counseling for Displaced Workers**

- (a) The commission shall provide written notice in English and in Spanish of eligibility for home ownership counseling under federal law to each worker residing in this state who is eligible for home ownership counseling under 12 U.S.C. Section 1701x, as amended, and who:
  - (1) is covered by a certification of eligibility for adjustment assistance under 19 U.S.C. Section 2331, as amended; or
  - (2) is threatened to become totally or partially separated, or has become totally or partially separated, from a firm that is certified eligible for adjustment assistance under 19 U.S.C. Section 2341, as amended.
- (b) The notice must contain:
  - (1) a list of home ownership counseling organizations that:
    - (A) receive assistance under 12 U.S.C. Section 1701x, as amended; and
    - (B) serve the area in which the worker's home is located; or
  - (2) any toll-free telephone number through which the worker can obtain the list prescribed by Subdivision (1).
- (c) A firm located in this state that has requested a certification of eligibility for adjustment assistance under 19 U.S.C. Section 2341, as amended, shall notify the commission of that request.
- (d) In this section, "firm" has the meaning assigned by 19 U.S.C. Section 2351, as amended.

## **CHAPTER 305. TEXAS CAREER OPPORTUNITY GRANT PROGRAM**

### **Subchapter A. General Provisions**

#### **Sec. 305.001. Purpose**

The purpose of the Texas Career Opportunity Grant Program is to help ensure a qualified workforce to meet the needs of this state by reducing the financial barriers to postsecondary career education and training for economically disadvantaged Texans.

#### **Sec. 305.002. Definitions**

In this chapter:

- (1) **"Commission"** means the Texas Workforce Commission.
- (2) **"Coordinating board"** means the Texas Higher Education Coordinating Board.
- (3) **"Eligible institution"** means a career school or college in this state that:
  - (A) holds a certificate of approval under Chapter 132, Education Code; and
  - (B) is approved by the commission under Section 305.023 for its students to participate in the grant program established under this chapter.
- (4) **"Public technical institute"** has the meaning assigned by Section 61.003, Education Code.
- (5) **"Qualified education program"** means a postsecondary education program that meets the requirements provided by Section 305.024.

#### **Sec. 305.003. Memorandum of Understanding**

The commission and the coordinating board shall enter into a memorandum of understanding for the coordination and administration of the grant program established under Subchapter B. Functions assigned to the commission under this chapter may be assigned to the coordinating board pursuant to the memorandum of understanding.

### **Subchapter B. Grant Program**

#### **Sec. 305.021. Tuition Assistance Grant; Amount of Grant**

- (a) The commission may provide tuition assistance grants to Texas residents enrolled in a qualified education program at an eligible institution.

- (b) In selecting applicants to receive grants under this chapter and the amount of the grant for each applicant, the commission may consider:
- (1) the financial need and resources of an applicant;
  - (2) the state's need for workforce development in the applicant's proposed career field;
  - (3) the efficient use of the money available for grants;
  - (4) the fair allocation of grants to promote workforce development in different career fields;
  - (5) the opportunity of applicants from all regions of this state to receive financial assistance under this chapter; and
  - (6) any other factor the commission considers appropriate to further the purposes of this chapter.

**Sec. 305.022. Limitations on Grant Amount**

- (a) The amount of a grant under this chapter may not exceed the lower of:
- (1) the maximum grant amount, if any, specified by the legislature in an appropriation act; or
  - (2) the amount by which the tuition and required fees at the eligible institution attended exceeds the average amount of tuition and required fees that would be charged at a public technical institute, as determined by the commission based on information provided by the coordinating board.
- (b) The total amount of grants paid under this chapter on behalf of a student during a state fiscal year may not exceed an amount equal to 50 percent of the average state appropriation in the biennium preceding the biennium in which the grant is made for a full-time student or the equivalent at a public technical institute, as determined by the coordinating board and certified to the commission.
- (c) The amount of a grant to a part-time student shall be made on a pro rata basis in relation to the amount of the grant the person would be entitled to receive if enrolled as a full-time student.

**Sec. 305.023. Approval of Institutions**

The commission shall approve a career school or college for its students to participate in the grant program established under this chapter if the school or college:

- (1) has been accredited for not less than five years by an accrediting agency recognized by the United States Department of Education and maintains that accreditation;
- (2) has held a certificate of approval under Chapter 132, Education Code, for at least five years; and
- (3) offers one or more qualified education programs.

**Sec. 305.024. Qualified Education Programs**

For purposes of this chapter, a qualified education program is a postsecondary course of instruction in a specific career field that:

- (1) is at least one academic year in length as defined by the United States Department of Education; and
- (2) leads to a certificate, certification, degree, or diploma in the career field.

**Sec. 305.025. Nondiscrimination**

The commission in administering this chapter shall ensure compliance with Title VI, Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.), as amended, in regard to nondiscrimination under any program or activity receiving federal financial assistance.

**Sec. 305.026. Application; Eligibility for Grant**

- (a) To receive a grant under this chapter, a person must apply to the eligible institution in which the person enrolls in the manner provided by commission rule.
- (b) To be eligible to receive a grant under this chapter, an applicant must:
  - (1) be a Texas resident and meet the requirements to qualify as a Texas resident under Subchapter B, Chapter 54, Education Code, and the rules of the coordinating board for the payment of resident tuition at a public institution of higher education;
  - (2) be enrolled in a qualified education program at an eligible institution for at least one-half of a full course load;
  - (3) be required to pay more tuition and required fees than the amount required at a public technical institute and be charged not less than the regular tuition and

required fees paid by other students enrolled at the eligible institution the person attends;

- (4) establish financial need and eligibility for student financial assistance in accordance with procedures and regulations of the United States Department of Education for financial aid programs under Title IV, Higher Education Act of 1965 (20 U.S.C. Section 1070 et seq.), as amended;
- (5) not be in default on a loan made under the Federal Perkins Loan Program, Federal Family Education Loan Program, or William D. Ford Federal Direct Loan Program;
- (6) not owe a refund on a grant received under the federal Pell Grant program or the federal Supplemental Education Opportunity Grant program; and
- (7) comply with any other requirements adopted by the commission under this chapter.

**Sec. 305.027. Payment of Grant**

- (a) On receipt of an enrollment report for a student awarded a grant under this chapter and certification of the amount of the student's financial need from the approved institution, the commission shall certify the amount of the grant awarded to the student.
- (b) The grant shall be paid to the student through the eligible institution in which the student is enrolled.

**Sec. 305.028. Adoption and Distribution of Rules**

- (a) The commission may adopt reasonable rules to administer and enforce this chapter.
- (b) The commission shall distribute a copy of the rules to each eligible institution.

**Sec. 305.029. Annual Report**

The commission shall prepare and deliver to the legislature an annual report regarding the grant program established under this chapter. The report shall include for the period covered by the report:

- (1) the number of students who received grants under this chapter; and
- (2) the number of those students who attended each eligible institution, including information on the race or ethnicity of those students attending each institution.

## **CHAPTER 306. PROJECT RIO (REINTEGRATION OF OFFENDERS)**

### **Sec. 306.001. Definitions**

In this chapter:

- (1) **"Department"** means the Texas Department of Criminal Justice.
- (2) **"Correctional institutions division"** means the correctional institutions division of the department.
- (3) **"Project RIO"** means the project for reintegration of offenders.

### **Sec. 306.002. Project RIO**

The project for reintegration of offenders is a statewide employment referral program designed to reintegrate into the labor force persons sentenced to the correctional institutions division or committed to the Texas Youth Commission.

### **Sec. 306.003. Administration**

The department, the Texas Youth Commission, and the commission shall cooperate to maximize the effectiveness of Project RIO. For that purpose, the commission shall administer the project.

### **Sec. 306.004. Memorandum of Understanding--Adoption**

- (a) The department, the commission, and the Texas Youth Commission shall each adopt a memorandum of understanding that establishes the respective responsibilities of each agency and of the divisions within the department.
- (b) The commission shall coordinate the development of the memoranda of understanding. The department and the Texas Youth Commission shall adopt rules as necessary to implement their respective memoranda and may amend the memorandum and those rules as necessary.

### **Sec. 306.005. Memorandum of Understanding--Contents**

- (a) The memorandum of understanding between the department and the commission must establish the role of:
  - (1) the correctional institutions division in ascertaining and encouraging an inmate's chances for employment by:
    - (A) providing vocational and educational assessment for the person while incarcerated;



- (B) developing a skills enhancement program for the person while incarcerated, in cooperation with other governmental, educational, and private entities, using available public or private financial resources authorized by statute; and
  - (C) referring the person on release to the project through the person's parole officer or supervision officer;
- (2) the community justice assistance division and the parole division of the department in:
- (A) encouraging and referring persons to the project; and
  - (B) ensuring that those persons participate in the project and avail themselves of its services; and
- (3) the commission in developing and maintaining a statewide network for finding positions of employment that require the skills possessed by project participants and in helping those participants to secure employment.
- (b) The memorandum of understanding between the Texas Youth Commission and the commission must establish the roles of the institutional and community services division in the Texas Youth Commission and the role of the commission in the same manner the roles of the department and commission are established under Subsection (a).

**Sec. 306.006. Project Director**

- (a) The executive director shall designate the director of Project RIO to coordinate the efforts of the affected state agencies and expedite the delivery of services to participants in the project, including prospective employers.
- (b) The project director shall:
  - (1) propose, for adoption by the commission, standards and guidelines for the operation of the project;
  - (2) obtain information from appropriate state agencies and offices affiliated with the project to determine any necessary changes in the project;
  - (3) disseminate information statewide about the project; and
  - (4) train commission staff to assist in the operation of affiliated services.

**Sec. 306.007. Provision of Information on State Services for Ex-Offenders and Employers**

- (a) To assist in the reintegration into the labor force of persons formerly sentenced to the correctional institutions division or committed to the Texas Youth Commission, the commission through Project RIO shall provide:
- (1) to those persons:
    - (A) information from local workforce development boards on job training and employment referral services;
    - (B) information from the Department of State Health Services on substance abuse treatment services;
    - (C) information from the Texas Department of Housing and Community Affairs on housing services;
    - (D) information from the Texas Veterans Commission on services for veterans; and
    - (E) information on tax refund voucher programs under Subchapter H, Chapter 301; and
  - (2) to the employers and potential employers of those persons:
    - (A) information from the Texas Economic Development and Tourism Office on the enterprise zone program; and
    - (B) information from local workforce development boards on services listed in Section 2308.304, Government Code.
- (b) The commission shall adopt a memorandum of understanding with each of the following agencies that establishes the respective responsibilities of the commission and the agencies in providing information described by Subsection (a) to persons formerly sentenced to the institutional division or the state jail division of the Texas Department of Criminal Justice, to employers or potential employers of those persons, and to local workforce development boards:
- (1) the Department of State Health Services;
  - (2) the Texas Department of Housing and Community Affairs;
  - (3) the Texas Veterans Commission; and
  - (4) the Health and Human Services Commission.

**Sec. 306.008. Data Sharing**

- (a) To assist in the reintegration into the labor force of persons formerly sentenced to the correctional institutions division or committed to the Texas Youth Commission, the commission, the Texas Youth Commission, and the department shall establish a data interface that, at a minimum, provides to the commission:
  - (1) detailed information about persons released from a correctional facility who might benefit from post-release Project RIO services, including:
    - (A) demographic and identifying information;
    - (B) the person's address on release;
    - (C) a comprehensive state offense history, including the date of release from the correctional facility, sentence discharge date, and conditions of parole;
    - (D) assessment information;
    - (E) educational and work history;
    - (F) information related to participation in the work against recidivism program operated by the department's manufacturing and logistics division under the Texas Correctional Industries office; and
    - (G) other services provided under this title before release from the correctional facility; and
  - (2) referral information from the department and the Texas Youth Commission necessary to implement the provision of post-release employment services.
- (b) The data interface established under Subsection (a) must be designed to provide to a person's supervising officer on release information about the person's participation in employment services and entry into the workforce.
- (c) Information received from the Texas Youth Commission under this section is confidential and is not subject to disclosure under Chapter 552, Government Code.

## CHAPTER 307. EMPLOYMENT SERVICE

### Sec. 307.001. Employment Service

The commission is the agency of this state designated to cooperate with the United States Employment Service as necessary to perform the duties of this state under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.) required to establish and maintain free public employment offices.

### Sec. 307.002. Employment Services Agreements

- (a) To ensure establishment and maintenance of public employment offices under this chapter, the executive director may enter into an agreement with any political subdivision of the state or with a private or nonprofit organization, including a local workforce development board, and, as a part of the agreement, accept money, services, or quarters as a contribution to the employment service account.
- (b) Except as provided by Subsection (c), to establish and maintain, or assist in the establishment and maintenance of, public employment offices within a county or other political subdivision of this state, the commissioners court of the county or the governing body of the other political subdivision may enter into agreements with the employment service on terms and conditions agreed to by the commissioners court or other governing body and the employment service. The county or other political subdivision may employ means and appropriate and spend funds as necessary to establish and operate the public employment offices, and may provide, as part of the agreement, payment for:
  - (1) the rent of premises;
  - (2) services rendered;
  - (3) the purchase of equipment; and
  - (4) any other purpose considered advisable by the commissioners court or other governing body.
- (c) In an area in which a local workforce development board has been certified and a local plan approved by the governor, that board shall provide employment services in its local workforce development area, and a person employed by the commission to provide employment services on the day before the approved local plan takes effect shall be given preference in employment at a career development center administered by that board.

**Sec. 307.003. Employment Service Financing**

Money received by the state under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.) shall be deposited to the credit of the employment service account in the general revenue fund. The money in the account may be used by the commission as provided by this chapter and the Wagner-Peyser Act.

**CHAPTER 308. TEXANS WORK PROGRAM**

**Sec. 308.001. Legislative Intent**

It is the intent of the legislature that this chapter is enacted to enlist employers in a partnership with this state to assist recipients of public assistance in developing marketable work skills and obtaining employment.

**Sec. 308.002. Definitions**

In this chapter:

- (1) **"Division"** means the division of workforce development of the commission.
- (2) **"Employer"** has the meaning assigned by Section 61.001.
- (3) **"JOBS training program"** means the job opportunities and basic skills (JOBS) training program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682).
- (4) **"Local workforce development board"** means a board created under Subchapter F, Chapter 2308, Government Code.
- (5) **"Program"** means the Texans Work program established under this chapter.
- (6) **"Trainee"** means a recipient of food stamps under the food stamp program administered under Chapter 33, Human Resources Code, and financial assistance under Chapter 31, Human Resources Code, who:
  - (A) is eligible to participate in the JOBS training program; and
  - (B) receives on-the-job training through a training course offered under the program.
- (7) **"Training course"** means a course for the development of practical employment skills that is:
  - (A) offered to trainees by an employer who participates in the program; and
  - (B) approved as required by this chapter.

**Sec. 308.003. Texans Work Program**

- (a) The Texans Work program is created as an integrated system of on-the-job training for certain persons who receive food stamps under the food stamp program administered under Chapter 33, Human Resources Code, and financial assistance under Chapter 31, Human Resources Code, and are eligible to participate in the JOBS training program. The program shall be considered a means-tested program and shall be operated through courses conducted by participating employers and shall offer direct work experience and skills training.
- (b) The program shall be offered in each area of this state in which an employer is located who elects to participate and whose participation is approved by the local workforce development board or, if a local workforce development board does not exist in the employer's area, by the division.

**Sec. 308.004. Training Courses; Approval**

- (a) Each training course shall be designed by a local participating employer to meet the needs of that employer. The training course must instruct the trainee in a prearranged curriculum of skills that uses systems specific to and produced by the employer's industry.
- (b) The length of a training course may not be less than six months or more than 12 months unless an exception is approved by the division. The duration of a course shall be based on specific training needs.
- (c) An employer whose participation is approved under Section 308.003 shall submit to the division in the manner prescribed by the commission a description of the employer's proposed training course. The employer shall work with the division and the Texas Skill Standards Board to develop a training course that incorporates instruction in the skill standards applicable to that industry. A training course may not be used by an employer participating in the plan until the course is approved by the commission.

**Sec. 308.005. Powers and Duties of Commission and Division; Guidelines for Training Course Approval**

- (a) The commission shall adopt rules as necessary to implement the program, including establishing the criteria for determining which persons described by Section 308.003(a) may be required to participate in the program.
- (b) With the cooperation of the Texas Skill Standards Board, the commission shall develop guidelines for the approval of employer training courses.
- (c) In developing guidelines under Subsection (b), the commission shall condition approval on the expectation that a participating employer will develop job descriptions that are relevant to regular paid positions in the employer's workplace or that are available in the community in

which the employer is located. In determining whether to approve a particular training course, the commission shall specifically consider:

- (1) the administrative burden imposed by participation in the program by the participating employer;
  - (2) whether the proposed training reasonably may be expected to enhance the employability of individual trainees;
  - (3) whether the proposed training produces a realistic and usable level of skills;
  - (4) whether the proposed training is composed of a greater ratio of training-to-work than regular employees receive under analogous conditions;
  - (5) whether the employer has any intention of retaining successful trainees as regular employees;
  - (6) the extent to which the proposed training includes nonspecific work skills; and
  - (7) if the employer has previously participated in the program, the prior performance of the employer in meeting the guidelines described by this subsection.
- (d) The commission may develop incentives for employers who have completed a training course offered through the program to hire as a regular employee for a period of at least one year a trainee who has successfully completed the training course.

**Sec. 308.006. Powers and Duties of Texas Department of Human Services**

The Texas Department of Human Services shall provide to the commission and a local workforce development board information and technical assistance as necessary to implement the program.

**Sec. 308.007. Rights and Duties of Participating Employer**

- (a) Each employer who participates in the program shall provide a work-training position for trainees under a contract entered into with the local workforce development board or with the commission.
- (b) The employer shall interview and select the employer's trainees from a list of eligible clients that is provided to the employer by the local workforce development board or the commission.
- (c) In the operation of a training course, a participating employer may use training methods selected by the employer as long as those methods instruct the trainees in the applicable skill at the applicable standards.

- (d) An employer who participates in the program is not liable for the payment of payroll taxes or contributions to the unemployment compensation system for a trainee and is not obligated to provide health insurance coverage or retirement or pension benefits for the trainee. An employer is responsible to the JOBS training program only for quality training, skills certification, and reporting of attendance.
- (e) During the training course, the employer shall pay \$300 per month for each trainee to the commission in the manner prescribed by the commission. The commission shall deposit the amount in the general revenue fund to the credit of the Texas employment and training account.
- (f) A trainee is considered an employee of the employer for the purposes of Section 401.012.

**Sec. 308.008. Rights of Regular Employees**

- (a) Except as provided by Subsection (b), not more than 20 percent of an employer's workforce may consist of trainees under the program.
- (b) Subsection (a) does not apply to an employer who has fewer than 50 employees.
- (c) As a condition of participation in the program, an employer whose regular employees are subject to a collective bargaining agreement shall notify the applicable collective bargaining agent of the employer's intent to participate in the program. The employer shall provide the notice required under this subsection before accepting trainees at the employer's workplace.
- (d) A participating employer may not accept a trainee for participation in a training course conducted under the program if that participation will:
  - (1) result in:
    - (A) the displacement or partial displacement of a regular employee from an existing position;
    - (B) the elimination of a vacant position created by the laying off of a regular employee during the 90 days preceding the employer's participation in the program;
    - (C) the elimination of a position that would otherwise constitute a promotion for a regular employee; or
    - (D) a hiring freeze implemented by the employer; or
  - (2) impair a collective bargaining agreement in effect on the date that the employer proposes to begin participation in the program.



**Sec. 308.009. Rights and Duties of Participating Trainees**

- (a) Each trainee who participates in the program shall work during the training course not less than the minimum number of hours required under applicable federal law for work participation for recipients of public assistance.
- (b) Each trainee is entitled to:
  - (1) the rights provided under Chapters 21 and 101 as if the trainee were a regular employee; and
  - (2) participation in an administrative dispute resolution procedure conducted by the commission to resolve grievances involving participation in the program.
- (c) Each trainee shall receive a skill standards certification on successful completion of a training course offered under the program.

**Sec. 308.010. Account**

- (a) The Texas employment and training account is established as a special account in the general revenue fund. The account is composed of:
  - (1) employer contributions paid under Section 308.007; and
  - (2) state matching funds obtained through the block grant received by this state under the JOBS training program.
- (b) Money in the account may be used only for the payment of training stipends and for other training activities authorized under the program.

**Sec. 308.011. Training Stipend**

- (a) The state shall pay to each trainee who demonstrates satisfactory participation in a training program approved under this chapter a monthly training stipend in the manner prescribed by Subsection (c).
- (b) The training stipend is composed of \$600 paid to the trainee from the Texas employment and training account. In addition to the stipend, the trainee shall continue to receive the amount of benefits that the trainee is eligible to receive under the program of financial assistance under Chapter 31, Human Resources Code, and the food stamp program administered under Chapter 33, Human Resources Code.
- (c) The state may transfer the monthly training stipend to a trainee by electronic benefits transfer (EBT) to an account if that method is determined by the Texas Department of Human Services to be cost-effective.

- (d) The training stipend does not constitute income to the trainee for purposes of determining eligibility for and the amount of benefits received under Chapter 31, Human Resources Code. A trainee who participates in a training program in a satisfactory manner is entitled to full JOBS benefits and benefits under the financial assistance program and food stamp program during the training program. A trainee who terminates participation in the training program before the conclusion of the training loses eligibility for the training stipend and the JOBS benefits but remains eligible to receive benefits under the financial assistance program and food stamp program.
- (e) Excessive unexcused absences from participation subjects a trainee to a reduction in the training stipend in an amount set by the commission.
- (f) The training stipend shall be paid on the first workday of each month following the month in which the trainee participates in the training program.

**Sec. 308.012. Report; Records**

- (a) The commission shall collect information and maintain records regarding:
  - (1) the operation and outcome of the program;
  - (2) impediments identified by the commission that affect the successful operation of the program; and
  - (3) complaints or other comments regarding the program received by the commission from employers, trainees, regular employees, and local workforce development boards.
- (b) Information maintained by the commission under Subsection (a) is a public record.

## **CHAPTER 309. SELF-SUFFICIENCY FUND**

**Sec. 309.001. Definitions**

In this chapter:

- (1) **"Community-based organization"** means a private nonprofit organization that is representative of a community or a significant segment of a community and that provides education, vocational education or rehabilitation, job training, or internship services or programs. The term includes a neighborhood group or organization, community action agency, community development corporation, union-related organization, employer-related organization, faith-based organization, tribal government, or organization serving Native Americans.
- (2) **"Fund"** means the self-sufficiency fund created under Section 309.002.

### **Sec. 309.002. Self-Sufficiency Fund**

- (a) Subject to the availability of funds, the self-sufficiency fund is created as an account in the general revenue fund for use by public community and technical colleges, community-based organizations, and state extension agencies to develop for certain recipients of financial assistance under Chapter 31, Human Resources Code, customized job-training programs in which the recipients will be provided job training by:
  - (1) an entity that develops a job-training program under this section;
  - (2) a small or medium-sized business or trade union; or
  - (3) an informal partnership between an entity that develops a job-training program under this section and a small or medium-sized business network or consortium.
- (b) Money from the fund may also be used for support services as necessary for participants to prepare for and participate in training activities and to make the transition from training activities to employment.
- (c) The commission shall administer the fund. The executive director, or a person appointed by the executive director who is knowledgeable in the administration of grants, is responsible for the distribution of money from the fund.
- (d) To the greatest extent practicable, money from the fund shall be spent in all areas of the state.

### **Sec. 309.003. Job-Training Programs**

- (a) A job-training program financed by the fund:
  - (1) must be specifically designed to:
    - (A) ensure that participants meet applicable state and federal work requirements;
    - (B) enable participants to find and apply for existing jobs; and
    - (C) include the involvement of employers who provide assistance in setting curricula and standards for job-training programs developed with money from the fund and are committed to hiring graduates of the programs; and
  - (2) is considered a work or employment activity for purposes of Section 31.012, Human Resources Code.
- (b) An entity that receives money from the fund for a job-training program shall work in conjunction with employers to place graduates of the program in positions of employment in which the graduates will be earning wages sufficient to enable the graduates to become

independent of financial assistance under Chapter 31, Human Resources Code, and if applicable, assistance provided under the food stamp program administered by the Texas Department of Human Services under Chapter 33, Human Resources Code.

**Sec. 309.004. Rulemaking Authority**

The commission shall adopt rules to implement this chapter, including rules to determine which recipients of financial assistance under Chapter 31, Human Resources Code, are eligible to participate in job-training programs developed with money from the fund.

**CHAPTER 310. CHILD-CARE RESOURCE AND REFERRAL NETWORK**

**Sec. 310.001. Definitions**

In this chapter:

- (1) **"Member"** means a member of the child-care resource and referral network that provides child-care resource and referral services in this state.
- (2) **"Network"** means the child-care resource and referral network administered by a nonprofit public or private organization that contracts with the commission to provide child-care resource and referral services in this state.

**Sec. 310.002. Child-Care Resource and Referral Network**

- (a) The commission, through funds allocated to the commission as the agency designated to administer the grant under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. Section 9858 et seq.), as amended, and specifically appropriated to the commission for that purpose, shall:
  - (1) contract with a child-care resource and referral network to provide child-care resource and referral services in this state; and
  - (2) require the network to be administered in compliance with the requirements of the block grant program.
- (b) The commission shall use a system of competitive procurement to award a contract to a child-care resource and referral network that has proven experience in providing child-care resource and referral services.
- (c) To the extent funds from the block grant program are available for that purpose, the commission shall award the contract under this section in a manner that will allow for the provision of child-care resource and referral services throughout this state.

**Sec. 310.003. Statewide Child-Care Needs Assessment**

- (a) The network shall conduct a needs assessment to determine the supply of and demand for child-care services in this state and to identify discrepancies between that supply and demand.
- (b) Based on the needs assessment, the network shall make recommendations to the commission regarding collaborative solutions to address the identified child-care supply and demand discrepancies. The recommended solutions must involve collaboration between:
  - (1) local workforce development boards;
  - (2) community-based social services agencies;
  - (3) employers;
  - (4) child-care providers; and
  - (5) parents who are consumers of child-care services.

**Sec. 310.004. Resource Services**

The network, through its members, shall provide and continually update resource information regarding:

- (1) child-care and early childhood education services in this state; and
- (2) assistance in becoming a child-care provider, including information about:
  - (A) the general requirements for applying for and maintaining a license, listing, or registration under Chapter 42, Human Resources Code; and
  - (B) the availability of financial resources and educational, technical, and other training opportunities, including management skills training and continuing education programs for operators and employees of child-care facilities, regardless of whether the network or another person provides those opportunities.

**Sec. 310.005. Referral Services**

- (a) The network, through its members, shall provide referral services to:
  - (1) a person who is seeking child-care and early childhood education services; and
  - (2) an employer seeking child-care assistance for the employer or an employee through:

- (A) a consultation regarding the availability of child-care and early childhood education services; or
  - (B) specialized services for the employer or its employees.
- (b) In addition to providing referrals to child-care and early childhood education services, the network, through its members, shall provide:
  - (1) referrals to available support services, including:
    - (A) parenting education classes; and
    - (B) services for parents or children offered by health and human services agencies, as defined by Section 531.001, Government Code, or otherwise available in the community; and
  - (2) information for consumers of child-care and early childhood education services, including:
    - (A) information regarding early childhood development;
    - (B) criteria for identifying quality child-care and early childhood education services that support the healthy development of children; and
    - (C) other information that will assist consumers in making informed and effective choices regarding child-care and early childhood education services.

**Sec. 310.006. Advertisement of Services**

- (a) The network, through its members, shall inform parents, child-care consumers, child-care providers, and employers located in the member's service area of:
  - (1) the resource and referral services available from the network; and
  - (2) the methods by which a person may contact the member to access resource and referral services.
- (b) A member may provide the information under Subsection (a) through the media and alternative means, including:
  - (1) state and local community, job, and health fairs;
  - (2) public service announcements and advertisements;
  - (3) career development centers;

- (4) offices of health and human services agencies;
- (5) Texas workforce centers that comprise the Texas Workforce Network; and
- (6) direct contacts with employers and child-care providers.

**Sec. 310.007. Collection of Child-Care Data**

- (a) The network, through its members, shall:
  - (1) collect and continuously update statewide data regarding the supply of and demand for child-care and early childhood education services in this state;
  - (2) report the data to the commission each calendar quarter; and
  - (3) make the information available statewide.
- (b) The data required by this section must include a comprehensive compilation of all available child-care and early childhood education services in this state and information concerning unmet needs of consumers with respect to those services.
- (c) The commission and the Department of Protective and Regulatory Services shall provide assistance to the network and members of the network in collecting, aggregating, and updating the data required by this section.

**Sec. 310.008. Rules**

The commission may adopt rules necessary to implement this chapter.

## **CHAPTER 311. VOLUNTARY WORKFORCE TRAINING FOR CERTAIN STUDENTS**

**Sec. 311.001. Definitions**

In this chapter:

- (1) **"Agency"** means the Texas Education Agency.
- (2) **"Certified program"** means a career and technology secondary and postsecondary education program conducted under an agreement as described by Section 311.003 or a voluntary program certified by the agency in conjunction with the commission as meeting the standards prescribed by Section 311.002, and that:
  - (A) integrates a secondary school academic curriculum with private sector workplace training and a postsecondary curriculum;

- (B) places students in job internships;
  - (C) is designed to continue into postsecondary education and lead to the participant earning an associate's degree or a bachelor's degree;
  - (D) will result in teaching new skills and adding value to the wage-earning potential of participants and increasing a participant's long-term employability in this state; and
  - (E) meets recognized or accepted industry standards.
- (3) **"Participant"** means a person at least 16 years of age who is enrolled in a public or private secondary or postsecondary school, or an equivalent program, and who began to voluntarily participate in a certified voluntary workforce training program as part of secondary school education.
- (4) **"Sponsor"** means any person operating a certified program and in whose name the program is registered.

#### **Sec. 311.002. Certification Standards**

To be eligible for certification by the agency under this chapter, a program must:

- (1) be conducted under an organized, written plan embodying the terms and conditions of employment, job training, classroom instruction, and supervision of participants and be subscribed to by a sponsor who has undertaken to carry out the program;
- (2) comply with all state and federal laws, including laws pertaining to fair labor standards and workplace health and safety;
- (3) comply with recognized industry standards applicable to the program in which the participant is engaged; and
- (4) include an agreement by the employer to assign an employee to serve as a mentor for the participant.

#### **Sec. 311.003. Certified Program Agreements**

- (a) A certified program must be conducted under a signed written agreement between each participant and the employer. The agreement may include the following:
- (1) the name and signature of the participant, the sponsor, and the employer, and a parent or guardian of the participant if the participant is under 18 years of age;



- (2) a description of the career field in which the participant is to be trained, the academic and technical skills to be attained, and the beginning date and duration of the broad-based training; and
  - (3) the employer's agreement to provide paid employment, at a base wage not less than the minimum wage, for the participant during the participant's junior and senior years in high school and after the participant's first year of postsecondary education.
- (b) A participant's time spent in a program under Subsection (a) may not exceed 15 hours a week, without regard to whether the participant is paid for the time.
- (c) A participant may, but is not required to, enter into a postsecondary education agreement with the participant's employer. An agreement under this subsection must include:
- (1) the participant's agreement to pay half of the participant's wages to be held in trust to be applied toward the participant's postsecondary education and the employer's agreement to pay into the trust an additional amount equal to the amount paid by the participant;
  - (2) the participant's agreement to work for the employer for at least two years following the date of completion of the participant's postsecondary education;
  - (3) the employer's agreement to pay the participant during the period described by Subdivision (2) at least the prevailing wage for employees having a similar education or license and performing similar work and to provide other employee benefits to which employees performing similar work are entitled; and
  - (4) the participant's agreement to reimburse the employer if the participant fails to perform the two years of employment described by Subdivision (2) for the employer's contribution to the trust established under Subdivision (1), plus interest at the prime interest rate at the time the participant defaults on the agreement.
- (d) If a participant decides not to continue in the program before beginning the participant's postsecondary education, the participant and employer each shall be refunded, not later than the 30th day after the last date of participation in the program, their respective contributions to the trust established under Subsection (c)(1) and a pro rata share of the interest earned on the money in the trust.
- (e) The money held in trust under Subsection (c)(1) must be held in trust for the benefit of the participant under rules adopted by the agency. Payment into a trust approved under 29 U.S.C. Section 1103 for the benefit of the participant satisfies the requirement of this subsection. The fund must be specified in the agreement.
- (f) An employer who enters into an agreement under this section may not retain participants solely to replace the employer's current employees.

**Sec. 311.004. Rulemaking**

- (a) The agency and commission shall adopt rules as necessary to administer each entity's duties under this chapter. To the extent possible, the agency and commission shall cooperate with each other in adopting rules so that all rules adopted under this chapter are consistent and easily administered.
- (b) Rules adopted under this section must include a requirement that participation in a certified program under this chapter is voluntary.

**Sec. 311.005. Commission Duties; Local Workforce Development Boards**

- (a) The commission shall:
  - (1) administer its responsibilities under this chapter as part of the commission's workforce development system;
  - (2) cooperate with other state agencies as appropriate; and
  - (3) provide information and technical assistance to the agency, secondary and postsecondary schools, employers, local workforce development boards, and other entities.
- (b) A local workforce development board, working in partnership with other local and regional entities, shall provide to secondary and postsecondary schools and employers in the area in which the board is established information and technical assistance as necessary to implement this chapter.

[NOTE: S.B. 307, 83<sup>rd</sup> Legislature, repealed Chapter 312.]

**CHAPTER 313. REQUIREMENTS FOR PROVIDERS OF RELATIVE CHILDCARE**

(Note: As directed by the Legislature in Section 10, Senate Bill 76, 82nd Texas Legislature Regular Session, the Texas Workforce Commission shall ensure that payments made on or after November 1, 2011, to providers of relative child care, as defined by Section 313.001 below are made only to providers with respect to whom a background and criminal history check has been conducted as required by this chapter.)

**Sec. 313.001. Definitions**

In this chapter:

- (1) "Department" means the Department of Family and Protective Services.
- (2) "Relative child care" means child care that is:

- (A) funded wholly or partly from money received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. Section 9858 et seq.); and
  - (B) provided by a provider who:
    - (i) is at least 18 years of age;
    - (ii) complies with any federal or state requirements regarding subsidized child care that apply to the provider;
    - (iii) provides child-care services for less than 24 hours a day to a child who is, by marriage, blood relationship, or court decree:
      - (a) the grandchild of the provider;
      - (b) the great-grandchild of the provider;
      - (c) the sibling of the provider, and the child resides in a separate residence from the provider; or
      - (d) the niece or nephew of the provider; and
    - (iv) operates a listed family home under Chapter 42, Human Resources Code, that provides care for one or more children related to the provider and does not hold any other license or permit to provide child care under Chapter 42, Human Resources Code.
- (3) "Teen parent" means an individual 18 years of age or younger, or 19 years of age and fully enrolled in a secondary school in a program leading toward a high school diploma, who is the parent of a child.

**Sec. 313.002. Location of Care**

- (a) Except as provided by Subsections (b) and (c), relative child care must be provided in the child-care provider's home.
- (b) The commission shall allow relative child care in the child's home:
  - (1) for a disabled child and the child's siblings;
  - (2) for a child under 18 months of age and the child's siblings;
  - (3) for a child of a teen parent; and

- (4) when the parent's work schedule necessitates child-care services during the evening, overnight, or on the weekend and taking the child outside of the child's home would be disruptive to the child.
- (c) The commission may allow relative child care in the child's home if the commission determines that other child-care provider arrangements are not available in the community.

**Sec. 313.003. Listing as Family Home**

A relative child-care provider must list the provider's home with the department as a family home.

**Sec. 313.004. Notice of Background and Criminal History Checks**

The commission must provide notice of the background and criminal history check requirement to the parent or guardian of the child who will receive care through a relative child-care provider before the parent or guardian selects the provider.

**Sec. 313.005. Memorandum of Understanding**

The commission and the department shall adopt a memorandum of understanding regarding the administration and payment of costs of listing a relative child-care provider as required by this chapter.

## **CHAPTER 314. TEXAS BACK TO WORK PROGRAM**

**Sec. 314.001. Definition**

In this chapter, "qualified applicant" means a person who made less than \$40 per hour at the person's last employment before becoming unemployed.

**Sec. 314.002. Initiative Established**

- (a) The Texas Back to Work Program is established within the commission.
- (b) The purpose of the program is to establish public-private partnerships with employers to transition residents of this state from receiving unemployment compensation to becoming employed as members of the workforce.
- (c) An employer that participates in the initiative may receive a wage subsidy for hiring one or more qualified applicants who are unemployed at the time of hire.
- (d) The commission, for the purposes of this section, may use:
  - (1) money appropriated to the commission; and

- (2) money that is transferred to the commission from trustee programs within the office of the governor, including:
- (A) appropriated money from the Texas Enterprise Fund;
  - (B) available federal funds; and
  - (C) money from other appropriate, statutorily authorized funding sources.

**Sec. 314.003. Rules**

The commission may adopt rules as necessary to implement this chapter.

**CHAPTER 315. ADULT EDUCATION AND LITERACY PROGRAMS**

**Sec. 315.001. Definitions**

In this chapter:

- (1) **"Adult"** means any individual who is over the age of compulsory school attendance prescribed by Section 25.085, Education Code.
- (2) **"Adult education"** means services and instruction provided below the college level for adults by public school districts, public junior colleges, regional education service centers, nonprofit agencies, or community-based organizations.
- (3) **"Community-based organization"** has the meaning assigned by 20 U.S.C. Section 7801.

**Sec. 315.002. Commission Duties**

- (a) The commission shall:
  - (1) provide adequate staffing, including by hiring a director, to develop, administer, and support a comprehensive statewide adult education program and coordinate related federal and state programs for the education and training of adults;
  - (2) develop the mechanism and guidelines for the coordination of comprehensive adult education and related skill training services for adults with other entities, including public agencies and private organizations, in planning, developing, and implementing related programs;
  - (3) administer all state and federal funds for adult education and related skill training services in this state, other than funds that another entity is specifically authorized to administer under other law;
  - (4) prescribe and administer standards and accrediting policies for adult education;
  - (5) prescribe and administer rules for teacher certification for adult education;
  - (6) accept and administer grants, gifts, services, and funds from available sources for use in adult education;
  - (7) adopt or develop and administer a standardized assessment mechanism for assessing all adult education program participants who need literacy instruction, adult

basic education, or secondary education leading to an adult high school diploma or the equivalent;

- (8) monitor and evaluate educational and employment outcomes of students who participate in the commission's adult education and literacy programs; and
  - (9) provide, within the context of administering adult education and literacy programs, training opportunities for parents regarding how to be the primary teachers for their children and full partners in their children's education.
- (b) The assessment mechanism prescribed by Subsection (a)(7) must include an initial basic skills screening instrument and must provide comprehensive information concerning baseline student skills before and student progress after participation in an adult education program.
  - (c) Not later than December 1 of each even-numbered year, the commission shall report to the legislature regarding the educational and employment outcomes of students who participate in the commission's adult education and literacy programs.
  - (d) The commission may adopt rules for the administration of this chapter.

#### **Sec. 315.003. Provision of Adult Education Programs**

Adult education programs must be provided by public school districts, public junior colleges, regional education service centers, nonprofit agencies, and community-based organizations approved in accordance with state statutes and rules adopted by the commission. The programs must be designed to meet the education and training needs of adults to the extent possible using available public and private resources. Bilingual education may be used to instruct students who do not function satisfactorily in English whenever it is appropriate for those students' optimum development.

#### **Sec. 315.004. Adult Education Assessment**

The commission shall, in consultation with the Texas Higher Education Coordinating Board and the Texas Education Agency, review the standardized assessment mechanism required under Section 315.002(a)(7) and recommend any changes necessary to align the assessment with the assessments designated under Section 51.3062, Education Code, to allow for the proper placement of a student in an adult basic education course or to provide the student with the proper developmental or English as a second language coursework, as appropriate.

#### **Sec. 315.005. Adult Education and Literacy Advisory Committee**

- (a) In this section, "advisory committee" means the adult education and literacy advisory committee created under this section.
- (b) The commission shall establish an adult education and literacy advisory committee composed of not more than nine members appointed by the commission. Members of the

advisory committee must have expertise in the field of adult education and literacy and may include adult educators, providers, advocates, current or former adult education and literacy program students, and leaders in the nonprofit community engaged in literacy promotion efforts. The advisory committee's membership must include at least one representative of the business community and at least one representative of a local workforce development board.

- (c) The advisory committee shall:
  - (1) meet at least quarterly;
  - (2) report to the commission at least annually; and
  - (3) advise the commission on:
    - (A) the development of:
      - (i) policies and program priorities that support the development of an educated and skilled workforce in this state;
      - (ii) statewide curriculum guidelines and standards for adult education and literacy services that ensure a balance of education and workplace skill development;
      - (iii) a statewide strategy for improving student transitions to postsecondary education and career and technical education training; and
      - (iv) a centralized system for collecting and tracking comprehensive data on adult basic education and literacy program performance outcomes;
    - (B) the exploration of potential partnerships with entities in the nonprofit community engaged in literacy promotion efforts, entities in the business community, and other appropriate entities to improve statewide literacy programs; and
    - (C) any other issue the commission considers appropriate.
- (d) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

**Sec. 315.006. State Funding**

- (a) Funds shall be appropriated to implement statewide adult basic education, adult bilingual education, high school equivalency, and high school credit programs to eliminate illiteracy in this state and to implement and support a statewide program to meet the total range of adult



needs for adult education and related skill training. The commission shall ensure that public school districts, public junior colleges, regional education service centers, nonprofit agencies, and community-based organizations have direct and equitable access to those funds.

- (b) In addition to any amount appropriated under Subsection (a), the legislature may appropriate an additional amount to the commission for the purpose of skill training in direct support of industrial expansion and new business development in locations, industries, and occupations designated by the commission, if the training supports the basic purposes of this chapter. To support the basic purposes of this chapter, the legislature may also appropriate an additional amount to the commission for skill training that is conducted to support the expansion of civilian employment opportunities on United States military reservations.

**Sec. 315.007. Performance Incentive Funding**

- (a) The commission by rule shall develop and establish a performance-based process for annually awarding funds to entities that deliver adult education and literacy services under this chapter. The process must be designed to reward those entities demonstrating exemplary performance in the delivery of services.
- (b) In developing the process for awarding funds under this section, the commission shall prescribe:
  - (1) criteria, including fiscal and programmatic performance criteria, to be used to evaluate the performance by the entities described by Subsection (a); and
  - (2) procedures for taking corrective action, including contract termination or the discontinuation of an award of funds, against an entity for the entity's failure to satisfy the performance criteria prescribed under Subdivision (1).

**Sec. 315.008. Service Provider Contracts: Competitive Procurement Requirement**

The commission shall use a competitive procurement process to award a contract to a service provider of an adult education program.

<b>Able to work</b> .....	85, 87, 146
<b>Academic instruction combined with work experience [Sec. 201.069(2)]</b> .....	27
<b>Acceptance or requirement of waiver prohibited [Sec. 207.072]</b> .....	101
<b>Access to criminal history record information [Sec. 301.042]</b> .....	157
<b>Access to records by Railroad Retirement Board [Sec. 301.083]</b> .....	168
<b>Accident disability plan, payment as wages</b> .....	32, 33
<b>Account(s)</b>	
Employment Service [Sec. 307.003] .....	227
from which benefits and refunds are paid [Sec. 203.026].....	38
Texas employment and training [Sec. 308.010] .....	231
<b>Accounting for governmental employers [Sec. 204.104]</b> .....	71
<b>Acquisition</b>	
effect of business [Sec. 201.022] .....	16
effective date [Sec. 204.082] .....	65
liability effects [Sec. 204.086].....	68
of experience-rated employer [Chapter 204, Subchapter E] .....	64
<b>Act</b>	
Administrative Procedure [Sec. 301.0615].....	160
Child Care and Development Block Grant, of 1990 [Sec. 310.002(a)] .....	234
Employee Retirement Income Security, of 1974 [Sec. 301.104(3)(C)] .....	171
Fair Labor Standards, of 1938 [Sec. 209.047(a)(3)] .....	112
Federal Unemployment Tax .....	15, 17, 23, 31, 32, 92, 99, 103, 129
Food Stamp, of 1977 .....	104
Higher Education, of 1965 [Sec. 305.026(b)(4)] .....	221
Immigration and Nationality [Sec. 207.043(a)(3)] .....	92
Job Training Partnership.....	160, 200
Migrant and Seasonal Agricultural Worker Protection [Sec. 204.009(e)] .....	51
of Congress, reciprocal agreements [Sec. 211.006(a)] .....	119
of Congress, service eligibility [Sec. 201.061] .....	23
Personal Responsibility and Work Opportunity Reconciliation, of 1996 [Sec. 302.004] .....	184
Railroad Unemployment Insurance [Sec. 209.042(a)(2)] .....	111
Robert T. Stafford Disaster Relief and Emergency Assistance [Sec. 204.022(a)(6)] .....	52
Social Security.....	35, 37, 40, 42, 99, 102, 103, 161, 227
Sunset [Sec. 301.008] .....	155
Texas Unemployment Compensation [Chapter 201].....	13
Texas Unemployment Compensation, enforcement of [Chapter 213].....	126
Trade, of 1974 .....	88, 114, 199, 205
Wagner-Peyser .....	150, 160, 161, 226, 227
Workforce Investment, of 1998 .....	193, 199
<b>Actively seeking work</b>	
extended benefits [Sec. 209.043].....	111
regular benefits [Sec.207.021(a)].....	85
<b>Address for mail service, designated by employer [Sec. 208.003]</b> .....	106
<b>Adequate or timely response</b>	
chargeback requirement.....	106, 121
definition of [Sec. 208.004(d)].....	106
good cause [Sec. 208.004(e)].....	107
reimbursing employer [Sec.215.013(d)] .....	75
<b>Adequate or timely response [Sec. 208.004(a-1)]</b> .....	106
<b>Adjustment</b>	
of benefits [Sec. 207.006].....	83
or refund for employer's overpayment [Chapter 213, Subchapter E] .....	138
or refund on commission initiative [Sec. 213.075] .....	139
to tax rate for experience-rated employers [Chapter 204, Subchapter D] .....	60
<b>Administration</b>	
fund [Sec. 203.151] .....	41
funding for workforce training and services [Sec. 302.061].....	203
of Commission [Chapter 301, Subchapter B] .....	155

of Project Rio [Sec. 306.003] .....	222
<b>Administration fund</b>	
definition of [Sec. 203.001(1)] .....	35
disposition of money in [Sec. 203.005] .....	36
liability for [Sec. 203.003] .....	35
reimbursement of [Sec. 203.154] .....	42
use of [Sec. 203.152] .....	42
<b>Administrative Procedure Act, application of [Sec. 301.0615] .....</b>	<b>160</b>
<b>Admissibility of certified copy of commission record [Sec. 213.003] .....</b>	<b>127</b>
<b>Admissibility of report or audit [Sec. 213.004] .....</b>	<b>127</b>
<b>Adult</b>	
definition of [Sec. 315.001(1)] .....	244
<b>Adult education</b>	
definition of [Sec. 315.001(2)] .....	244
<b>Adult education and literacy [Chapter 301, Subchapter J] .....</b>	<b>175</b>
<b>Adult education and literacy programs</b>	
advisory committee [Sec. 315.005] .....	245
assessment .....	245
commission duties [Sec. 315.002] .....	244
competitive procurement requirement [Sec. 315.008] .....	247
contracts [Sec. 315.008] .....	247
definitions [Sec. 315.001] .....	244
funding .....	184, 205
performance incentive funding [Sec. 315.007] .....	247
provision of programs [Sec. 315.003] .....	245
state funding [Sec. 315.006] .....	246
<b>Advances from federal trust fund</b>	
application and administration of [Chapter 203, Subchapter C] .....	40
interest payment on [Sec. 203.105(a)(1)] .....	41
limit on application [Sec. 203.101] .....	40
<b>Adverse facts affecting claim [Sec. 208.004] .....</b>	<b>106</b>
<b>Advertisement of services, child care network [Sec. 310.006] .....</b>	<b>236</b>
<b>Advisory committee</b>	
definition of [Sec. 302.013(a)] .....	195
local workforce development board [Sec. 302.013] .....	195
members [Sec. 302.013(c)] .....	195
<b>Advisory or nontenured policy-making position [Sec. 201.063(a)(1)(E)] .....</b>	<b>24</b>
<b>Affected unit, definition of [Sec. 215.001(1)] .....</b>	<b>142</b>
<b>Affidavit of denial [Sec. 213.034] .....</b>	<b>133</b>
<b>Affiliation with labor organization [Sec. 207.048(d)(1)(A)] .....</b>	<b>97</b>
<b>Affinity or consanguinity, degree of [Sec. 204.081(4)] .....</b>	<b>64</b>
<b>Agency</b>	
administrator, definition of [Sec. 301.041(b)] .....	157
definition of [Sec. 311.001(1)] .....	237
organization and methods of procedure [Sec. 301.061(b)(2)] .....	160
personnel [Chapter 301, Subchapter C] .....	157
<b>Agent</b>	
collective bargaining .....	144, 230
insurance [Sec. 201.071] .....	29
labor .....	18, 22, 50
<b>Agent-driver .....</b>	<b>19</b>
<b>Agreement</b>	
certified program, voluntary workforce training [Sec. 311.003] .....	238
child support [Sec. 207.093(a)(2)] .....	103
collective bargaining .....	144, 230
education program [Sec. 311.001(2)] .....	237
employment services [Sec. 307.002] .....	226
of employee to serve as mentor [Sec. 311.002(4)] .....	238
postsecondary education [Sec. 311.003(c)] .....	239
with respect to unemployment compensation .....	21, 88, 102, 104

withholding [Sec. 207.114(a)(2)] .....	104
<b>Aircraft, service on .....</b>	<b>22</b>
<b>Alien agricultural worker, nonresident [Sec. 201.078] .....</b>	<b>32</b>
<b>Aliens, payment of benefits to [Sec. 207.043] .....</b>	<b>92</b>
<b>Allocation formulas for child care development funds, evaluation of [Sec. 302.0042] .....</b>	<b>186</b>
<b>Allocation of</b>	
benefit costs [Sec. 205.014] .....	75
chargebacks [Sec. 204.021] .....	51
funds, block grant program [Chapter 302, Subchapter D] .....	203
<b>Alternative dispute resolution policy and negotiated rulemaking [Sec. 301.0682] .....</b>	<b>165</b>
<b>American employer, definition of [Sec. 201.043(e)] .....</b>	<b>21</b>
<b>Americans with Disabilities Act [Sec. 301.155(b)(1)] .....</b>	<b>174</b>
<b>Amount approved for legal services [Sec. 207.007(b)] .....</b>	<b>84</b>
<b>Amount available for workforce training .....</b>	<b>203</b>
<b>Amount of</b>	
benefits payable .....	39, 104, 146
bonus and duration of wage supplementation, child care program [Sec. 302.006(e)] .....	191
child care training scholarships [Sec. 302.006(a)] .....	190
extended benefits [Sec. 209.061] .....	114
maximum and minimum unemployment benefits .....	81, 83
refund, limitation [Sec. 301.103] .....	170
reimbursements [Sec. 205.013] .....	75
surety bond .....	78, 134
tuition assistance grant [Sec. 305.021] .....	218
<b>Analysis, workforce development programs [Sec. 302.083] .....</b>	<b>207</b>
<b>Annual Report of Commission</b>	
discrimination complaints data [Sec. 301.156(c)] .....	175
effectiveness of federal programs [Sec. 302.007] .....	192
publication of [Sec. 301.066] .....	162
requirements [Sec. 301.065] .....	162
<b>Annual statement showing benefits paid by commission [Sec. 205.041(d)] .....</b>	<b>79</b>
<b>Annuity paid by employer .....</b>	<b>32, 33</b>
<b>Annuity, receipt of [Sec. 207.050] .....</b>	<b>99</b>
<b>Appeal</b>	
bond not required [Sec. 212.210] .....	126
Commission's final decision refusing adjustment or refund [Sec. 213.073] .....	139
exhaustion of Commission remedies [Sec. 212.203] .....	125
from chargeback decision to commission .....	55
from claim determination of unemployment insurance - timeliness .....	107, 122
from unemployment claim determination .....	106, 122
pending, payment of benefits [Sec. 212.004] .....	120
procedure, disputed unemployment claims [Sec. 212.001] .....	119
proceeding records [Sec. 212.002] .....	119
<b>Appeal tribunals</b>	
action by [Sec. 212.102] .....	123
additional duties [Sec. 301.071] .....	166
commission review of decision [Sec. 212.151] .....	124
establishment of [Sec. 212.101] .....	123
final commission decision [Sec. 212.104] .....	123
notice of actions [Sec. 212.103] .....	123
removal or transfer of claim pending before [Sec. 212.105] .....	123
<b>Appeal tribunals [Chapter 212, Subchapter C] .....</b>	<b>123</b>
<b>Application</b>	
by reimbursing employers to establish a group account .....	77, 78
for advance from federal trust fund [Sec. 203.101] .....	40
for tax refund voucher [Sec. 301.106] .....	171
of provisions relating to regular benefits [Sec. 209.002] .....	108
of Sunset Act [Sec. 301.008] .....	155
requirements for participation in additional programs [Sec. 303.005] .....	213
to adjust contribution payments .....	138, 139

to labor agent [Sec. 204.009].....	50
to transfer compensation experience [Sec. 204.084] .....	65
tuition assistance grant [Sec. 305.026] .....	220
withholding from unemployment benefits for uncollected overissuances of food stamps [Sec. 207.112].....	104
<b>Appointment of executive director of commission [Sec. 301.041] .....</b>	<b>157</b>
<b>Apprenticeship program.....</b>	<b>199, 205</b>
<b>Apprenticeship training program, service in [Sec. 201.069(2)(B)] .....</b>	<b>27</b>
<b>Approval of</b>	
employer plan, shared work program [Sec. 215.021] .....	143
group account, effective date [Sec. 205.021].....	77
institutions participating in tuition assistance grant program [Sec. 305.023].....	220
or denial of shared work plan, notice [Sec. 215.023].....	145
training courses under Texans work program.....	228
transfer of compensation experience [Sec. 204.084] .....	65
<b>Assessment</b>	
and training under skills development fund.....	210, 211, 213
collection of contribution by civil suit or notice of [Chapter 213, Subchapter C] .....	131
definition in skills development fund [Sec. 303.001(b)].....	210
final [Sec. 213.051(a)].....	133
finality of [Sec. 213.032(d)] .....	132
for incarcerated person [Sec. 306.005(a)(1)(A)].....	222
not contested [Sec. 213.032(e)] .....	132
of local workforce development boards oversight and management [Sec. 302.048] .....	202
payment of costs .....	133
service of notice [Sec. 213.032] .....	132
statewide child care needs [Sec. 310.003] .....	235
unemployment obligation [Sec. 203.105].....	40
willful attempt to evade provisions [Sec. 213.033(d)] .....	132
<b>Asset, definition of [Sec. 213.059(j)] .....</b>	<b>138</b>
<b>Assets</b>	
belonging to delinquent person.....	136, 137
disposition of.....	137
of employer distributed under court order [Sec. 213.006] .....	128
transfer to the commission [Sec. 213.059(g)].....	137
<b>Assignment of benefits prohibited [Sec. 207.075] .....</b>	<b>101</b>
<b>Assignment of each employer to major group for tax contribution purposes [Sec. 204.004] .....</b>	<b>49</b>
<b>Assistance</b>	
for displaced workers .....	217
housing resources [Sec. 302.0038] .....	184
job retention and reemployment [Sec. 302.003].....	180
persons receiving public or financial .....	149, 161, 189, 192, 193, 194, 227, 231, 232, 233, 234
program for persons with dependent children.....	163, 216
transportation.....	183
<b>Athletes, payment of benefits to [Sec. 207.042] .....</b>	<b>92</b>
<b>At-risk parents, child care services [Sec. 302.0041(b)(3)] .....</b>	<b>185</b>
<b>Attendance of witnesses [Sec. 301.071(a)(4)] .....</b>	<b>166</b>
<b>Attorney general representation [Sec. 212.207(2)].....</b>	<b>126</b>
<b>Attorney general, designation to represent commission [Sec. 213.001] .....</b>	<b>126</b>
<b>Audit</b>	
from books of employer [Sec. 213.004(a)(3)] .....	127
of commission's financial transactions [Sec. 301.022].....	156
of employer [Sec. 213.055] .....	135
<b>Authority</b>	
definition of [Sec. 203.252(a)(1)] .....	44
of commission [Sec. 302.021] .....	198
rulemaking, self-sufficiency fund [Sec. 309.004].....	234
to conduct an investigation, assemble information, etc. [Sec. 301.071(b)].....	166
to use commission official seal and facsimile signature [Sec. 301.024] .....	157
<b>Available for/to work .....</b>	<b>85, 93</b>
<b>Average and median weekly wage levels of trainees [Sec. 303.006(d)] .....</b>	<b>215</b>

Average weekly wage .....	81
Awards and incentives [Sec. 301.0611] .....	160

**B**

<b>Back pay award</b>	
liability for [Sec. 210.003] .....	117
notice of reduction [Sec. 210.001] .....	116
reimbursement by employer for reduction [Sec. 210.002] .....	116
<b>Back pay awards [Chapter 210, Subchapter A] .....</b>	<b>116</b>
<b>Balance sheet of money in compensation fund [Sec. 301.065(b)(1)] .....</b>	<b>162</b>
<b>Bankruptcy case [Sec. 213.033(b)(2)] .....</b>	<b>132</b>
<b>Base</b>	
of operations [Sec. 201.043(a)(2)(A)] .....	20
period employer, notice to [Sec. 209.085] .....	115
period, definition of [Sec. 201.011(1)] .....	13
age not less than minimum wage [Sec. 311.003(a)(3)] .....	239
<b>Benefit claims [Chapter 208] .....</b>	<b>105</b>
<b>Benefit(s)</b>	
Account, money credited to [Sec. 203.024(a)] .....	37
Account, requisitions from Federal Trust Fund [Sec. 203.023] .....	37
Account, unexpended balance [Sec. 203.027] .....	38
adjustment of [Sec. 207.006] .....	83
amount of maximum and minimum .....	81, 83
amount, definition of [Sec. 201.011(3)] .....	13
definition of [Sec. 201.011(2)] .....	13
definition of, child support obligations [Sec. 207.091(1)] .....	102
duration of [Sec. 207.005] .....	83
effectively charged [Sec. 204.046] .....	59
eligibility conditions [Sec. 207.021] .....	85
exemptions [Sec. 207.075] .....	101
exhaustion of regular [Sec. 209.042] .....	110
extended [Chapter 209, Subchapter A] (see Extended benefits) .....	107
filing claims, information notices [Sec. 208.001] .....	105
for partial unemployment [Sec. 207.003] .....	82
for total unemployment [Sec. 207.002] .....	81
forfeiture or cancellation of [Sec. 214.003] .....	140
fraudulently avoiding contribution or payment of [Sec. 214.004] .....	141
fraudulently obtaining [Sec. 214.001] .....	139
liability for improperly obtaining [Sec. 214.002] .....	140
limitations on [Sec. 215.043] .....	146
maximum amount [Sec. 207.005] .....	83
paid, recovery of [Sec. 212.006] .....	121
payment of [Chapter 207, Subchapter A, Sec. 207.001] .....	81
payment of from compensation fund [Sec. 205.018] .....	76
period, definition of [Sec. 201.011(4)] .....	13
prohibition of chargeback on reversal of determination or decision [Sec. 212.005] .....	120
ratio [Sec. 204.044] .....	58
under JOBS, financial assistance program, and food stamp program [Sec. 308.011(d)] .....	232
wage credits .....	75, 82
wage credits, definition of [Sec. 207.004(d)(1)] .....	83
waiting period for [Sec. 207.021(b)] .....	86
withheld for child support obligation [Sec. 207.093(a)] .....	102
year, definition of [Sec. 201.011(5)] .....	13
<b>Bilingual forms, interpreter services [Sec. 301.064] .....</b>	<b>161</b>
<b>Blind individual, definition of employment [Sec. 201.067(b)] .....</b>	<b>26</b>
<b>Blind individual, exception for services [Sec. 201.067(a)] .....</b>	<b>25</b>
<b>Block grant(s)</b>	
application of funding [Sec. 302.062(g)] .....	204
for child care and development [Sec. 310.002(a)] .....	234
funding to certified local workforce development boards [Sec. 302.023] .....	200

process [Sec. 302.062(a)] .....	203
program [Chapter 302, Subchapter D] .....	203
programs and workforce services, integration of [Sec. 302.065] .....	205
state matching funds under JOBS training program [Sec. 308.010(a)(2)] .....	231
to local workforce development areas [Sec. 302.062] .....	203
<b>Board, local workforce development, definition of</b> .....	<b>150, 227</b>
<b>Bond</b>	
administrative expenses, definition of [Sec. 203.252(a)(3)] .....	44
appeal – not required [Sec. 212.210] .....	126
definition of [Sec. 203.252(a)(2)] .....	44
exemption from taxation [Sec. 203.261] .....	49
for reimbursing employer [Sec. 205.031] .....	78
for unpaid judgment or final assessment [Sec. 213.051] .....	133
issuance of by authority [Sec. 203.254] .....	46
issuance, request for [Sec. 203.253] .....	45
liability of comptroller [Sec. 203.003] .....	35
obligations [Sec. 203.105(a)(2)] .....	41
obligations, definition of [Sec. 203.252(a)(4)] .....	45
obligations, personal liability [Sec. 203.262] .....	49
obligations, state not to impair [Sec. 203.260] .....	48
payments [Sec. 203.257] .....	47
person that handles money for commission .....	157, 178
proceeds [Sec. 203.255] .....	46
surety .....	78, 133
<b>Bonuses for professional child care training [Sec. 302.006]</b> .....	<b>190</b>
<b>Branch or division, for whom claimant last worked</b> .....	<b>105, 121</b>
<b>Broker, definition of [Sec. 201.072(1)(A)]</b> .....	<b>29</b>
<b>Business community, partnership with [Sec. 301.069]</b> .....	<b>165</b>
<b>Business, definition of [Sec. 301.003(a)(1)]</b> .....	<b>151</b>

**C**

<b>Calendar</b>	
days used to calculate benefit period [Sec. 201.011(4)] .....	13
quarter, definition of [Sec. 201.011(6)] .....	14
quarters used in computing rate of insured unemployment [Sec. 209.023(1)(B)] .....	110
quarters used to calculate base period [Sec. 201.011(1)] .....	13
weeks used to calculate benefit year [Sec. 201.011(5)] .....	13
year for which refund claimed [Sec. 301.103(b)] .....	170
year in which application for tax refund voucher can be submitted [Sec. 301.106] .....	171
<b>Camp, service in [Sec. 201.069(3)]</b> .....	<b>27</b>
<b>Cancellation of benefits paid and remaining [Sec. 214.003]</b> .....	<b>140</b>
<b>Career</b>	
and technology education [Sec. 301.0611(2)] .....	160
ladder for commission employees [Sec. 301.044] .....	158
school and college programs [Sec. 302.021(a)(1)] .....	199
school, participation in tuition assistance grant Program [Sec. 305.023] .....	220
<b>Caseworker functions [Sec. 302.065]</b> .....	<b>205</b>
<b>Cash wages</b> .....	<b>17, 22</b>
<b>Ceiling and floor of compensation fund [Sec. 204.061]</b> .....	<b>60</b>
<b>Certification</b>	
evidence of, by community-based organization [Sec. 303.003(h)] .....	212
for refund for wages paid or incurred [Sec. 301.105] .....	171
of eligibility for adjustment assistance for displaced workers .....	217
other child-care [Sec. 302.005(g)(1)] .....	190
requirements for refund for wages paid or incurred [Sec. 301.104(2)] .....	171
skill standards [Sec. 308.009(c)] .....	231
standards, for voluntary workforce training program [Sec. 311.002] .....	238
<b>Certified</b>	
Child-Care Professional Credential .....	190, 191
copies of commission records .....	41, 168

copy of commission record, admissibility of [Sec. 213.003] .....	127
firm eligible for adjustment assistance [Sec. 304.005(a)(2)] .....	217
local workforce development board .....	200, 203, 226
program agreements, voluntary workforce training program [Sec. 311.003] .....	238
program, definition of in voluntary workforce training program [Sec. 311.001(2)] .....	237
<b>Cessation of coverage [Sec. 206.005] .....</b>	<b>80</b>
<b>Chair of commission, definition of [Sec. 301.001(d)(1)] .....</b>	<b>149</b>
<b>Charge(s)</b>	
fees for services based on service level options [Sec. 302.002(f)] .....	179
for copy of record furnished by commission [Sec. 301.082(b)] .....	168
of claimant's benefits to account of employer .....	51, 58, 59, 115
to governmental employer [Sec. 209.084] .....	115
to reimbursing employer [Sec. 209.082] .....	115
to taxed employer [Sec. 209.083] .....	115
<b>Chargeback(s)</b>	
appeal from decision to court [Sec. 204.026] .....	55
computation of benefit ratio [Sec. 204.044] .....	58
definition of [Sec. 201.011(7)] .....	14
exclusions from [Sec. 204.022] .....	51
maximum potential – increase [Sec. 209.085(a)] .....	115
notice of [Sec. 204.023] .....	55
notice, protest, and appeal [Sec. 204.027] .....	55
on reversal of determination or decision allowing benefits prohibited [Sec. 212.005] .....	120
used in determining employer's benefit ratio [Sec. 209.083(a)] .....	115
waiver of right to protest [Sec. 208.004] .....	106
<b>Chargeback(s) [Chapter 204, Subchapter B] .....</b>	<b>51</b>
<b>Child care</b>	
advertisement of services [Sec. 310.006] .....	236
and Development Block Grant Act of 1990 [Sec. 310.002(a)] .....	234
assist low-income, at-risk parents [Sec. 302.0041(b)(3)] .....	185
collection of data [Sec. 310.007] .....	237
competitive procurement to award contract [Sec. 310.002(b)] .....	234
delivery of services, management by board [Sec. 302.043(c)] .....	201
demonstration project grants [Sec. 302.0041] .....	185
development funds, evaluation of allocation formulas [Sec. 302.0042] .....	186
discounted rate for services [Sec. 302.005(i)] .....	190
electronic validation of services and attendance .....	189
fraud, waste, and abuse, correction of .....	176
fraud, waste, and abuse, detection of .....	175
fraud, waste, and abuse, prevention of .....	175
funds [Sec. 302.004] .....	184
history of delivering high-quality care [Sec. 302.005(c)(2)] .....	189
home-based services [Sec. 302.0041(b)(1)(A)] .....	185
listing as family home .....	242
location of providers of relative child care .....	241
member of resource and referral network [Sec. 310.001(1)] .....	234
memorandum of understanding .....	242
needs assessment [Sec. 310.003] .....	235
network, definition of [Sec. 310.001(2)] .....	234
notice of background and criminal history checks .....	242
professional training scholarships, bonuses, and wage supplementation [Sec. 302.006] .....	190
program, evaluation of effectiveness [Sec. 302.0043] .....	186
recruiting and retaining providers [Sec. 302.0041(b)(2)] .....	185
referral and education services [Sec. 310.005] .....	235
requirements for providers of relative child care .....	240
resource and referral network .....	234
resource services [Sec. 310.004] .....	235
rules [Sec. 310.008] .....	237
services at nontraditional times [Sec. 302.0041(b)(1)(B)] .....	185
services to link programs [Sec. 302.0041(b)(1)(C)] .....	185
services, notice regarding termination [Sec. 302.0046] .....	188



solutions to address supply and demand discrepancies [Sec. 310.003(b)]	235
subsidy for training participant	189, 190
supply and demand for services	235
training center pilot programs [Sec. 302.003]	189
<b>Child support</b>	
agency notification to state or local enforcement agency [Sec. 207.092(b)]	102
agreement [Sec. 207.093(a)(2)]	103
definition of enforcement agency, state or local [Sec. 207.091(3)]	102
disclosure of obligations [Sec. 207.092]	102
obligation, definition of [Sec. 207.091(2)]	102
obligations	101, 102
payment of withheld amounts to state or local enforcement agency [Sec. 207.093(b)]	103
reimbursements to commission for administrative costs [Sec. 207.093(c)]	103
withholding by commission [Sec. 207.093]	102
<b>Church, service in [Sec. 201.066]</b>	<b>25</b>
<b>Civil</b>	
or criminal proceeding [Sec. 213.003]	127
Rights Division [Chapter 301, Subchapter I]	172
rights division, definition of [Sec. 301.151(2)]	172
suit, collection of contribution by [Chapter 213, Subchapter C]	131
<b>Civil action</b>	
payment of costs [Sec. 213.035]	133
precedence over other [Sec. 212.208]	126
statement as evidence [Sec. 213.034]	133
to enforce provisions of Texas Unemployment Compensation Act [Sec. 213.001]	126
<b>Civilian - federal employee</b>	<b>108</b>
<b>Claim</b>	
combining wages and employment [Sec. 211.003(1)]	118
determination [Chapter 208, Subchapter B]	107
determination by examiner on own motion [Sec. 212.052]	122
filed or residence in another state or country [Sec. 207.024]	88
filing of [Chapter 208, Subchapter A]	105
for benefits	85, 105
of delinquent person [Sec. 213.059(b)]	136
required information notices [Sec. 208.001]	105
<b>Class A misdemeanor</b>	
failure or refusal to make contribution or other payment [Sec. 214.005]	141
fraudulently avoiding contribution or payment of benefits [Sec. 214.004]	141
fraudulently obtaining benefits or other payment [Sec. 214.001]	139
general offenses [Sec. 214.007]	142
offenses regarding reports and records [Sec. 214.006]	141
solicits, discloses, receives, uses, authorizes, permits, participates in, or acquiesces in use of, unemployment compensation information [Sec. 301.085]	169
Violation of Confidentiality of employment information and records [Sec. 301.081(d)]	168
<b>Clearing account</b>	
composition and use of [Sec. 203.022]	37
deposits	37
money credited to [Sec. 203.024(a)]	37
<b>Client accessibility, workforce training [Sec. 302.022]</b>	<b>200</b>
<b>Collaboration with local boards [Sec. 302.064]</b>	<b>205</b>
<b>Collateral estoppel doctrine inapplicable [Sec. 213.007]</b>	<b>128</b>
<b>Collection of</b>	
child care data [Sec. 310.007]	237
contribution by civil suit or notice of assessment [Chapter 213, Subchapter C]	131
contribution, penalty, or interest from successor [Sec. 204.086]	68
contribution, penalty, or interest through court action [Sec. 213.052(a)]	134
delinquent reimbursement [Sec. 205.016]	76
past due contributions	121, 140
<b>Collection remedies [Sec. 213.008]</b>	<b>128</b>
<b>College</b>	

Credit for Heroes Program .....	180
fraternity or sorority, service in .....	17, 24
local junior, district(s) .....	212
service performed in the employ of [Sec. 201.069(1)] .....	26
technical .....	210, 211, 213, 215, 233
<b>College Credit for Heroes .....</b>	<b>180</b>
<b>Combination of wages and employment [Sec. 211.003].....</b>	<b>118</b>
<b>Commencement of judicial review, defendants [Sec. 212.201] .....</b>	<b>124</b>
<b>Commerce, interstate or foreign [Sec. 211.005] .....</b>	<b>119</b>
<b>Commission</b>	
administration [Chapter 301, Subchapter B].....	155
administration of programs.....	200
administration of Project RIO [Sec. 306.003].....	222
administrative dispute resolution procedure [Sec. 308.009(b)(2)] .....	231
annual report [Sec. 301.065].....	162
appeal of determination refusing adjustment or refund to employer [Sec. 213.073] .....	139
audit of employer's books [Sec. 213.004(a)(3)] .....	127
authority [Sec. 302.021] .....	198
cause or proceeding before [Sec. 301.073(a)].....	167
certification that employee is recipient of financial assistance [Sec. 301.105] .....	171
complaints against [Sec. 301.023] .....	156
composition of [Sec. 301.002(a)] .....	151
considered party to judicial review [Sec. 212.206].....	125
definition of.....	14, 149, 218
denial of application to transfer compensation experience [Sec. 204.084(d)] .....	66
designated to implement Wagner-Peyser Act and Job Training Partnership Act in Texas .....	160
directives, flexibility rating system [Sec. 302.047].....	202
divisions and division directors [Sec. 301.009] .....	155
duties, local workforce development boards [Sec. 311.005] .....	240
employees accountable to executive director [Sec. 301.047] .....	159
enforcement of additional tax lien [Sec. 213.058] .....	136
enforcement of out-of-state judgment [Sec. 213.009] .....	128
finality of decision [Sec. 212.153].....	124
functions [Sec. 301.0015].....	150
general powers and duties [Chapter 301, Subchapter D] .....	159
information accessible by Internet [Sec. 301.0681(1)] .....	164
information provided to employees [Sec. 301.043] .....	158
initiative to make adjustment or refund [Sec. 213.075] .....	139
investigative and subpoena powers [Sec. 301.071] .....	166
judicial review of decision [Chapter 212, Subchapter E].....	124
long-term and short-term objectives [Sec. 301.065(b)(2)].....	162
membership requirements [Sec. 301.002] .....	151
money paid to [Sec. 203.004] .....	35
notice of action [Sec. 212.152] .....	124
official seal, use of facsimile signature and seal [Sec. 301.024].....	157
powers and duties imposed and conferred for enforcement of other liens [Sec. 213.058(c)] .....	136
powers and duties to implement Texans Work Program [Sec. 308.005] .....	228
required publications [Sec. 301.066] .....	162
requirement to collect information and maintain records for Texans work program [Sec. 308.012].....	232
review of appeal proceedings [Chapter 212, Subchapter D].....	124
rules, adoption of [Sec. 205.025] .....	78
rules, publication of [Sec. 301.066].....	162
staff, powers and duties [Sec. 301.041(c)].....	157
subpoena(s).....	166, 167
termination of employer's election .....	74, 78
Texas Workforce, organization of [Chapter 301, Subchapter A].....	149
<b>Commission approval of</b>	
application to transfer compensation experience [Sec. 204.084(c)].....	65
election of employing unit .....	20, 22, 73, 80
employer's shared work plan .....	143, 144, 145
surety bond .....	78, 134

<b>Commission authorization to</b>	
bring suit for collection [Sec. 204.086(b)]	68
charge against special administration fund [Sec. 203.202(c)]	43
conduct investigation, assemble information, or require submission of testimony [Sec. 301.071(b)]	166
make findings and determine issues [Sec. 301.062]	160
<b>Commission members</b>	
acceptance of donations [Sec. 301.021]	155
appointment of [Sec. 301.002(b)]	151
appointment of executive director [Sec. 301.041(a)]	157
chair, definition of [Sec. 301.001(d)(1)]	149
chair, designation and service of [Sec. 301.006]	153
disqualification for [Sec. 301.004]	153
removal of [Sec. 301.007]	153
restrictions [Sec. 301.003]	151
terms, vacancy [Sec. 301.005]	153
training [Sec. 301.0075]	154
<b>Commission on Human Rights</b>	<b>159, 172</b>
<b>Commission, Health and Human Services [Sec. 306.007(b)(4)]</b>	<b>224</b>
<b>Commission, Texas Real Estate</b>	<b>29, 30</b>
<b>Commission, Texas Rehabilitation [Sec. 302.021(d)]</b>	<b>200</b>
<b>Commission-approved training</b>	<b>87</b>
chargeback [Sec.204.022(e)]	54
leaving unsuitable work [Sec. 207.045(j)]	95
<b>Commission-driver</b>	<b>19</b>
<b>Communicable disease, refusal to serve individual with [Sec. 207.053]</b>	<b>100</b>
<b>Community in schools program [Sec. 302.062(g)(4)]</b>	<b>204</b>
<b>Community-based organization</b>	<b>210, 232</b>
definition of	244
<b>Commutation agreement invalid [Sec. 207.071]</b>	<b>100</b>
<b>Compel attendance of witnesses, production of items as evidence [Sec. 301.071(a)(4)]</b>	<b>166</b>
<b>Compelled to testify or produce evidence [Sec. 301.073(b)]</b>	<b>167</b>
<b>Compelling work-related reason to separate from employment [Sec. 207.046]</b>	<b>95</b>
<b>Compensation as used in definition of wages [Sec. 303.006(a)(12)]</b>	<b>214</b>
<b>Compensation experience</b>	
acquisition of predecessor employer [Sec. 204.083]	65
application to transfer [Sec. 204.084]	65
approval of transfer [Sec. 204.084]	65
commission denial of application to transfer [Sec. 204.084(d)]	66
definition of [Sec. 204.081(1)]	64
<b>Compensation fund, definition of [Sec. 201.011(9)] (see Unemployment compensation fund)</b>	<b>14</b>
<b>Complaints</b>	
against Commission [Sec. 301.023]	156
commission procedures [Sec. 301.066(b)]	162
discrimination [Sec. 301.156]	174
received about Texans work program [Sec. 308.012(a)(3)]	232
<b>Comprehensive language services program [Sec. 301.064]</b>	<b>161</b>
<b>Comptroller</b>	
awards and incentives [Sec. 301.0611]	160
bond liability [Sec. 203.003]	35
duties of [Sec. 203.002]	35
uniform service regions [Sec. 303.006(b)]	214
<b>Computation of tax rates</b>	<b>59, 60, 62, 63</b>
<b>Conduct of hearings and appeals [Sec. 212.001]</b>	<b>119</b>
<b>Conduct, standards of [Sec. 301.043]</b>	<b>158</b>
<b>Confidentiality of</b>	
agency records [Sec. 301.084]	168
computer terminal information [Sec. 301.042(c)(2)]	158
employment information and records	
violation of, Class A misdemeanor [Sec. 301.081(d)]	168

employment information and records [Sec. 301.081(c)]	168
<b>Conformity with federal statutes [Sec. 201.101]</b>	<b>34</b>
<b>Consanguinity or affinity, degree of [Sec. 204.081(4)]</b>	<b>64</b>
<b>Consortium of junior college districts</b>	<b>212</b>
<b>Consortiums, small and medium-sized business</b>	<b>211, 233</b>
<b>Contempt</b>	<b>134, 167</b>
<b>Continued liability for reimbursement [Sec. 205.015]</b>	<b>76</b>
<b>Continuity of care program</b>	<b>199, 205</b>
<b>Contract</b>	
between commission and for-profit entity	156
child care resource and referral network [Sec. 310.002(b)]	234
child-care facility to act as training center [Sec. 302.005(c)]	189
educational institution [Sec. 207.041(a)(2)]	91
interagency [Sec. 302.002(c)]	178
with persons to collect delinquencies [Sec. 203.202(a)(6)]	43
with Texas Department of Transportation [Sec. 301.063(f)]	161
work-training position for trainees [Sec. 308.007(a)]	229
<b>Contribution rate</b>	
average, established by industry [Sec. 204.005]	49
establishment of major group [Sec. 204.005]	49
governmental employers [Sec. 204.103]	70
initial [Sec. 204.006]	50
special for agriculture employers [Sec. 204.007]	50
successor employer [Sec. 204.085]	67
<b>Contribution(s)</b>	
by governmental entity [Sec. 205.001]	73
collection of past due, delinquent	121, 157
collection of, from successor employer [Sec. 204.086]	68
definition of [Sec. 201.011(10)]	14
determination of amount due from employer [Sec. 213.055]	135
failure or refusal to make [Sec. 214.005]	141
fraudulently avoiding [Sec. 214.004]	141
general provisions [Chapter 204, Subchapter A]	49
governmental employers	70
in-kind, definition of [Sec. 303.006(a)(4)]	214
nonliability for payment, Texans work program [Sec. 308.007(d)]	230
not deducted from wages	49, 70
past due from governmental employer [Sec. 204.105]	71
priority of claim [Sec. 213.006]	128
required on wages for employment paid [Sec. 204.002]	49
to employment service account [Sec. 307.002(a)]	226
used to calculate deficit ratio [Sec. 204.064(c)]	62
used to compute benefit ratio [Sec. 204.044(c)]	58
voluntary [Sec. 204.048]	59
<b>Control or direction, free from</b>	<b>19, 28, 30</b>
<b>Conveyance, assignment, or transfer of refund [Sec. 301.108]</b>	<b>172</b>
<b>Cooperation by state agencies and political subdivisions, displaced homemakers [Sec. 304.004]</b>	<b>217</b>
<b>Cooperation, state and federal and with other agencies [Sec. 301.063]</b>	<b>160</b>
<b>Coordinating board, definition of [Sec. 305.002(2)]</b>	<b>218</b>
<b>Copies of commission records [Sec. 301.082]</b>	<b>168</b>
<b>Copies of commission records, certified</b>	<b>41, 127</b>
<b>Corporate officers, disqualification for benefits [Sec. 207.051]</b>	<b>99</b>
<b>Correctional institutions division, definition of [Sec. 306.001(2)]</b>	<b>222</b>
<b>Costs</b>	
adjudged against state or commission [Sec. 213.005]	128
for training, under skills development fund [Sec. 303.003(c)]	212
of civil action [Sec. 213.035]	133
<b>Cotton ginning employer [Sec. 204.007(a)(2)]</b>	<b>50</b>
<b>Council, definition of [Sec. 301.001(d)(3)]</b>	<b>149</b>
<b>Counseling for displaced homemakers or workers</b>	<b>216, 217</b>

<b>County clerk's fee for recording release of lien [Sec. 213.036(c)]</b> .....	<b>133</b>
<b>Courier/delivery service [Sec. 201.073]</b> .....	<b>30</b>
<b>Course, on-the-job training [Sec. 308.002(6)(B)]</b> .....	<b>227</b>
<b>Courses conducted by participating employers under Texans Work Program [Sec. 308.003(a)]</b> .....	<b>228</b>
<b>Court</b>	
chargeback appeal to [Sec. 204.026] .....	55
costs, liability for.....	133, 134, 135
injunction.....	134
of competent jurisdiction .....	124, 134, 139
order to produce records [Sec. 301.072].....	166
order, priority of claim for contribution [Sec. 213.006].....	128
proceeding in collection matters [Sec. 213.009(a)] .....	128
<b>Coverage</b>	
election of.....	21, 73, 79, 80
health care insurance, for trainees.....	215, 230
of political subdivision [Sec. 201.026] .....	17
of state employees .....	79
termination of [Sec. 206.004] .....	80
unemployment insurance [Chapter 206].....	79
yearly [Sec. 206.001].....	79
<b>Covered employee of professional employer organization [Sec. 207.045(i)]</b> .....	<b>94</b>
<b>Credit</b>	
agreement, definition of [Sec. 203.252(a)(5)].....	45
payment of reimbursement by employer [Sec. 210.002(d)].....	116
tax.....	17, 62
<b>Criminal</b>	
actions, prosecution of [Sec. 213.002].....	127
history record information, access to [Sec. 301.042] .....	157
offense for violation of benefit rights [Sec. 207.074] .....	101
offense, violation of fees limitations charged against claimants [Sec. 207.007].....	84
<b>Criteria</b>	
for facility to participate in pilot child care training center program [Sec. 302.005(j)] .....	190
for granting waivers [Sec. 302.063].....	205
<b>Crop preparation services [Sec. 204.007(a)(1)]</b> .....	<b>50</b>
<b>Customary occupation</b> .....	<b>84, 112</b>
<b>Customized assessment and training</b> .....	<b>210, 211, 213</b>
<b>Customized assessment and training costs [Sec. 303.002(b)]</b> .....	<b>211</b>
<b>D</b>	
<b>Deadline for warrants</b> .....	<b>117</b>
<b>Death benefits paid by employer [Sec. 201.082(2)]</b> .....	<b>32</b>
<b>Debt</b>	
improper transfer or disposition of [Sec. 213.059(f)] .....	137
owed by employer to state [Sec. 213.054] .....	135
owed commission, liability for [Sec. 204.086] .....	68
state [Sec. 203.259] .....	48
<b>Deduction from wages prohibited</b> .....	<b>33, 49, 70, 101</b>
<b>Defamation of character, action for [Sec. 301.074]</b> .....	<b>167</b>
<b>Default on certified program agreement [Sec. 311.003(c)(4)]</b> .....	<b>239</b>
<b>Defendants required in judicial review of commission decision [Sec. 212.201]</b> .....	<b>124</b>
<b>Defendants, proper service of [Sec. 212.206(d)]</b> .....	<b>126</b>
<b>Deficit</b>	
assessment [Sec. 204.063] .....	61
ratio, computation of [Sec. 204.064] .....	61
tax rate, computation of [Sec. 204.063(b)] .....	61
<b>Definitions</b>	
administration fund [Sec. 203.001(1)] .....	35
adult [Sec. 315.001(1)] .....	244
adult education [Sec. 315.001(2)].....	244

advisory committee [Sec. 302.013(a)]	195
affected unit [Sec. 215.001(1)]	142
agency [Sec. 311.001(1)]	237
agency administrator [Sec. 301.041]	157
American employer [Sec. 201.043(e)]	21
asset [Sec. 213.059(j)]	138
authority [Sec. 203.252(a)(1)]	44
base period [Sec. 201.011(1)]	13
benefit [Sec. 201.011(2)]	13
benefit amount [Sec. 201.011(3)]	13
benefit period [Sec. 201.011(4)]	13
benefit wage credits [Sec. 207.004(d)(1)]	83
benefit year [Sec. 201.011(5)]	13
benefit, child support obligations [Sec. 207.091(1)]	102
bond [Sec. 203.252(a)(2)]	44
bond administrative expenses [Sec. 203.252(a)(3)]	44
bond obligations [Sec. 203.252(a)(4)]	45
broker [Sec. 201.072(1)(A)]	29
Business [Sec. 301.003(a)(1)]	151
calendar quarter [Sec. 201.011(6)]	14
certified program in voluntary workforce training program [Sec. 311.001(2)]	237
chair of commission [Sec. 301.001(1)]	149
chargeback [Sec. 201.011(7)]	14
child support enforcement agency, state or local [Sec. 207.091(3)]	102
child support obligation [Sec. 207.091(2)]	102
commission [Sec. 201.011(8)]	14
Commission, Texas Workforce	149, 218
community-based organization	210, 232, 244
compensation experience [Sec. 204.081(1)]	64
compensation fund [Sec. 201.011(9)]	14
contribution [Sec. 201.011(10)]	14
coordinating board [Sec. 305.002(2)]	218
Correctional institutions division [Sec. 306.001(2)]	222
council [Sec. 301.001(d)(3)]	149
credit agreements [Sec. 203.252(a)(5)]	45
department [Sec. 306.001(1)]	222
director	172, 177
displaced homemaker [Sec. 304.001]	216
division, civil rights [Sec. 301.151(2)]	172
division, workforce development	177, 227
educational service agency [Sec. 207.041(e)]	91
eligibility period [Sec. 209.001(1)]	107
eligible institution [Sec. 305.002(3)]	218
employee [Sec. 303.006(a)(1)]	214
employer	
business acquisition [Sec. 201.022]	16
domestic service worker [Sec. 201.027]	17
election to be [Sec. 201.024]	17
farm and ranch laborer [Sec. 201.028]	18
state, political subdivision [Sec. 201.026]	17
tax-exempt nonprofit organization [Sec. 201.023]	16
under federal law [Sec. 201.025]	17
under skills development fund program [Sec. 303.006(a)(2)]	214
under Texans work program [Sec. 308.002(2)]	227
employer [Sec. 201.021]	16
employing unit [Sec. 201.011(11)]	14
employment	
arrangement with agency [Sec. 201.062]	23
as product demonstrator [Sec. 201.070]	28
blind individuals [Sec. 201.067(b)]	26
delivery service [Sec. 201.073]	30
domestic service [Sec. 201.064]	24

exceptions to [Chapter 201, Subchapter E] .....	23
fishing vessel [Sec. 201.075].....	31
general [Sec. 201.041].....	19
government service [Sec. 201.063(a)].....	23
insurance agent [Sec. 201.071] .....	29
landman [Sec. 201.077].....	31
office [Sec. 201.011(12)] .....	14
on vessel or aircraft [Sec. 201.045].....	22
performed entirely outside Texas [Sec. 201.043(c)] .....	20
real estate broker [Sec. 201.072].....	29
rehabilitative service, work relief, blind individuals [Sec. 201.067] .....	25
religious service [Sec. 201.066] .....	25
service .....	108
by inmate [Sec. 201.074] .....	31
by relative [Sec. 201.065] .....	25
in hospital [Sec. 201.068] .....	26
of student [Sec. 201.069] .....	26
performed in and outside of Texas [Sec. 201.043].....	20
under reciprocal agreement [Sec. 201.044].....	22
exceptions to wages [Sec. 201.082].....	32
executive director [Sec. 301.001(d)(5)].....	150
existing employer [Sec. 303.006(a)(3)] .....	214
extended benefit [Sec. 209.001(2)].....	108
family violence .....	54, 96
family violence center .....	54, 96
federal trust fund [Sec. 203.001(2)].....	35
firm [Sec. 304.005(d)] .....	217
fringe benefit [Sec. 215.001(2)].....	143
fund [Sec. 309.001(2)].....	232
human rights commission [Sec. 301.151(3)] .....	172
immediate family.....	54, 96
improper benefit [Sec. 214.002(b)].....	140
incidental service [Sec. 201.043(f)].....	21
Indian tribe [Sec. 201.011(26)].....	15
initial claim [Sec. 201.011(13)] .....	14
in-kind contribution [Sec. 303.006(a)(4)] .....	214
institution of higher education [Sec. 201.011(14)] .....	14
job [Sec. 303.006(a)(5)].....	214
job matching services information.....	168, 169
JOBS training program [Sec. 308.002(3)] .....	227
knowingly [Sec. 204.081(6)] .....	65
labor agent [Sec. 204.009(e)].....	51
large employer [Sec. 303.006(a)(6)].....	214
last work .....	105
legal process [Sec. 207.093] .....	103
local workforce development board .....	150, 227
lower-division institution of higher education [Sec 303.003] .....	212
mail [Sec. 201.011(15)].....	15
manual [Sec. 204.001].....	49
medium employer [Sec. 303.006(a)(7)].....	214
member, child-care resource and referral network [Sec. 310.001(1)].....	234
micro-employer [Sec. 303.006(a)(8)] .....	214
misconduct [Sec. 201.012] .....	15
network, child-care resource and referral [Sec. 310.001(2)].....	234
nonrecipient parent [Sec. 302.001(3)].....	177
normal weekly hours of work [Sec. 215.001(3)] .....	143
partial unemployment [Sec. 201.091(b)] .....	34
participant [Sec. 311.001(3)] .....	238
participating employee [Sec. 215.001(4)].....	143
participating employer [Sec. 215.001(5)] .....	143
pay period [Sec. 201.076(d)] .....	31
person [Sec. 204.081(2)] .....	64

premises [Sec. 207.048(f)].....	98
professional employer organization [Sec. 201.030].....	19
program, skills development fund [Sec. 303.006(a)(9)] .....	214
program, Texans work [Sec. 308.002(5)] .....	227
Project RIO [Sec. 306.001(3)] .....	222
public technical institute [Sec. 305.002(4)] .....	218
qualified education program .....	218
regular benefits [Sec. 209.001(3)] .....	108
reimbursement [Sec. 201.011(16)] .....	15
reimbursing employer [Sec. 201.011(17)] .....	15
relative child care .....	240
secretary .....	108, 161
security sensitive position [Sec. 301.042(c)] .....	158
self-sufficiency fund [Sec. 309.001].....	232
severance pay .....	98
sexual assault .....	54, 96
shared work	
benefit [Sec. 215.001(6)].....	143
plan [Sec. 215.001(7)].....	143
program [Sec. 215.001(8)] .....	143
small employer [Sec 303.006(a)(10)] .....	214
special administration fund [Sec. 203.001(3)] .....	35
sponsor [Sec. 311.002(4)].....	238
stalking .....	54, 96
state [Sec. 201.011(18)].....	15
state agency [Sec. 207.111(1)].....	104
state unemployment compensation law [Sec. 209.001(5)] .....	108
substantially common management or control [Sec. 204.081(3)].....	64
substantially common ownership [Sec. 204.081(4)].....	64
successor employing units .....	69
suitable employment [Sec. 207.023(c)] .....	88
suitable work for extended benefits [Sec. 209.047] .....	112
taxed employer [Sec. 201.011(19)].....	15
teen parent .....	241
temporary employee [Sec. 201.011(20)] .....	15
temporary help firm [Sec. 201.011(21)] .....	15
Texas trade association [Sec. 301.003(a)(2)].....	151
total unemployment [Sec. 201.091(a)] .....	33
trainee, recipient of food stamps [Sec. 308.002(6)] .....	227
trainee, skills development fund [Sec. 303.006(a)(11)] .....	214
training [Sec 215.001(9)].....	143
training course [Sec. 308.002(7)] .....	227
transfer of trade or business [Sec. 204.081(5)] .....	64
uncollected overissuance [Sec. 207.111(2)] .....	104
unemployment benefits.....	104, 119
unemployment compensation information [Sec. 301.085] .....	168, 169
United States [Sec. 201.011(22)].....	15
valid claim [Sec. 201.011(23)] .....	15
wages	
all forms of compensation or remuneration [Sec. 303.006(a)(12)].....	214
as assigned in Chapter 201, Subchapter F .....	82, 83
general [Sec. 201.081].....	32
meaning assigned by Internal Revenue Code [Sec. 301.101].....	170
warrant [Sec. 201.011(24)].....	15
week [Sec. 201.011(25)].....	15
work supplement program [Sec. 302.005(1)] .....	190
workforce development [Sec. 302.001] .....	177
<b>Delegation of authority by executive director [Sec. 301.041(c)(2)].....</b>	<b>157</b>
<b>Delinquency [Sec. 213.059] .....</b>	<b>136</b>
<b>Delivery of services to Project RIO participants [Sec. 306.006(a)].....</b>	<b>223</b>
<b>Delivery, newspaper service [Sec. 201.073] .....</b>	<b>30</b>
<b>Delivery/courier service [Sec. 201.073] .....</b>	<b>30</b>



<b>Demonstration project [Sec. 203.025(c)]</b> .....	<b>38</b>
<b>Denial of</b>	
benefits based on services performed by aliens [Sec. 207.043(d)] .....	92
employment [Sec. 301.042].....	157
shared work plan, notice [Sec. 215.023].....	145
<b>Department of Protective and Regulatory Services</b> .....	<b>189, 237</b>
<b>Department of State Health Services [Sec. 306.007(b)(1)]</b> .....	<b>224</b>
<b>Department, definition of [Sec. 306.001(1)]</b> .....	<b>222</b>
<b>Deposit(s)</b>	
in benefit account .....	37
of funds [Sec. 203.004].....	35
to employment and training account [Sec. 308.007(e)] .....	230
to general revenue fund .....	170, 230
<b>Depositions, taken by appeal tribunal [Sec. 301.071(a)(2)]</b> .....	<b>166</b>
<b>Designated representative of commission</b> .....	<b>126, 127, 132, 141</b>
<b>Designation and duties of commission chair [Sec. 301.006]</b> .....	<b>153</b>
<b>Designation of</b>	
commission to implement Wagner-Peyser Act and JTPA .....	160
employees to participate in shared work plan [Sec. 215.001(1)] .....	142
entity to implement duties imposed under Wagner-Peyser Act [Sec. 301.001(d)(4)].....	150
local workforce development area [Sec. 302.062(e)] .....	204
<b>Destruction of records [Sec. 301.084]</b> .....	<b>168</b>
<b>Determination</b>	
by examiner on examiner's own motion [Sec. 212.052].....	122
by examiner on notification of last employer [Sec. 212.051] .....	121
effect of previous employment [Sec. 213.011] .....	129
extended benefit period .....	108, 110
final [Sec. 212.004(a)] .....	120
final, appeal [Sec. 212.053] .....	122
suitable work .....	84, 112
year's contribution rate for industry [Sec. 204.005(b)] .....	50
<b>Direct seller, service as [Sec. 201.070(2)]</b> .....	<b>28</b>
<b>Director(s)</b>	
definition of.....	172, 177
of commission divisions [Sec. 301.009(c)].....	155
of Project RIO [Sec. 306.006(a)] .....	223
<b>Disabilities, persons with [Sec. 302.021(d)]</b> .....	<b>200</b>
<b>Disability</b>	
disqualification for benefits [Sec. 207.045(d)(3)].....	93
disqualification for receipt of compensation [Sec. 207.049(2)].....	98
plan, payment as wages .....	32, 33
<b>Disaster declaration</b> .....	<b>52</b>
<b>Discharge for misconduct</b> .....	<b>93, 113</b>
<b>Discharged from obligation or liability to delinquent person [Sec. 213.059(i)]</b> .....	<b>138</b>
<b>Disclosure</b>	
notice to food stamp agency [Sec. 207.113] .....	104
of child support obligation [Sec. 207.092].....	102
of employee information .....	54, 96
<b>Discrimination complaints [Sec. 301.156]</b> .....	<b>174</b>
<b>Displaced homemaker(s)</b>	
cooperation by state agencies and political subdivisions [Sec. 304.004].....	217
definition of [Sec. 304.001] .....	216
job counseling program .....	199, 204, 216, 217
prohibition of fee for participation in program [Sec. 304.002(d)] .....	217
<b>Displaced workers, home ownership counseling [Sec. 304.005]</b> .....	<b>217</b>
<b>Displacement of regular employee from existing position [Sec. 308.008(d)(1)(A)]</b> .....	<b>230</b>
<b>Dispute resolution of claims [Chapter 212]</b> .....	<b>119</b>
<b>Dispute resolution procedure conducted by commission [Sec. 308.009(b)(2)]</b> .....	<b>231</b>
<b>Disputed claims, rights of parties [Sec. 212.001]</b> .....	<b>119</b>

<b>Disqualification for benefits</b>	
alien status [Sec. 207.043] .....	92
and exceptions to [Chapter 207, Subchapter C] .....	91
claim filed or residence in another state or country [Sec. 207.024] .....	88
continues until .....	93, 96, 99, 100
covered employee of professional employer organization [Sec. 207.045(i)] .....	94
disability [Sec. 207.045(d)(3)] .....	93
discharged for misconduct connected with last work [Sec. 207.044(a)] .....	93
failure to apply for, accept, or return to work [Sec. 207.047] .....	96
individual who resigns to accept other work [Sec. 207.045(g)] .....	94
injury [Sec. 207.045(d)(2)] .....	93
involuntary separation [Sec. 207.046] .....	95
labor dispute [Sec. 207.048] .....	97
medically verified illness [Sec. 207.045(d)(1)] .....	93
medically verified illness of minor child [Sec. 207.045(e)] .....	94
military personnel who do not reenlist [Sec. 207.045(f)] .....	94
move with spouse [Sec. 207.045(c)] .....	93
pregnancy or termination of pregnancy .....	89, 93
receipt of disability compensation [Sec. 207.049(2)] .....	98
receipt of pension or annuity [Sec. 207.050] .....	99
receipt of remunerations [Sec. 207.049] .....	98
refusal to serve individual with communicable disease [Sec. 207.053] .....	100
sale of business [Sec. 207.051] .....	99
temporary employee of temporary help firm [Sec. 207.045(h)] .....	94
voluntarily left last work without good cause connected with work [Sec. 207.045(a)] .....	93
<b>Disqualification to serve as commission member [Sec. 301.004] .....</b>	<b>153</b>
<b>Distance of work from individual's residence [Sec. 207.008(a)(5)] .....</b>	<b>84</b>
<b>Division of workforce development, general provisions [Chapter 302, Subchapter A] .....</b>	<b>177</b>
<b>Documentary or oral testimony [Sec. 301.071(b)] .....</b>	<b>166</b>
<b>Domestic service, definition of [Sec. 201.064] .....</b>	<b>24</b>
<b>Domestic service, employer of [Sec. 201.027] .....</b>	<b>17</b>
<b>Donations to the commission, acceptance and limitations of [Sec. 301.021] .....</b>	<b>155</b>
<b>Drug screening or testing</b>	
as a condition of initial eligibility [Sec. 207.026] .....	89
suitable work [Sec.207.021(b-1)] .....	86
<b>Duration of</b>	
a training course [Sec. 308.004(b)] .....	228
benefits .....	83, 107
group account [Sec. 205.022] .....	77
wage supplementation, child care program [Sec. 302.006(e)] .....	191
<b>Duties of commission and executive director [Sec. 301.061] .....</b>	<b>159</b>
<b>E</b>	
<b>Early childhood development education services [Sec. 310.005] .....</b>	<b>235</b>
<b>Early education</b>	
childhood .....	189, 191, 201
expanding quality [Sec. 302.0045(a)] .....	188
<b>Earned</b>	
income tax credit [Sec. 301.067] .....	162
wage credits .....	70, 75, 115
wages equal to six times individual's benefit amount .....	93, 97, 100
<b>Earning associate's or bachelor's degree [Sec. 311.001(2)(C)] .....</b>	<b>238</b>
<b>Earnings, previous [Sec. 207.008(a)(3)] .....</b>	<b>84</b>
<b>Education</b>	
adult and literacy [Chapter 301, Subchapter J] .....	175
coordination funds under JTPA [Sec. 302.021(c)] .....	200
financial barriers to postsecondary career [Sec. 305.001] .....	218
to enhance employability, earnings, and standard of living [Sec. 301.001(b)(2)] .....	149
<b>Educational</b>	
institutions, services in [Sec. 207.041] .....	91

materials on federal earned income tax credit .....	162, 163
service agency, definition of [Sec. 207.041(e)] .....	91
<b>Effect</b>	
of notice of assessment [Sec. 213.032] .....	132
of trade readjustment allowances [Sec. 209.063] .....	114
on replenishment ratio [Sec. 205.018] .....	76
<b>Effective date of group account [Sec. 205.021] .....</b>	<b>77</b>
<b>Effective date of shared work plan [Sec. 215.024] .....</b>	<b>145</b>
<b>Effectively charged benefits [Sec. 204.046] .....</b>	<b>59</b>
<b>Effectiveness of subsidized child care program [Sec. 302.0043] .....</b>	<b>186</b>
<b>Efficiency Pilot Program .....</b>	<b>163</b>
<b>Elected official [Sec. 201.063(a)(1)(A)] .....</b>	<b>23</b>
<b>Election of</b>	
collection remedies [Sec. 213.008] .....	128
employer to participate in Texans Work program [Sec. 308.003(b)] .....	228
successor employing unit to become employer [Sec. 204.084(c)(4)] .....	66
<b>Election of coverage .....</b>	<b>21, 73, 79, 80</b>
as employer [Sec. 206.002] .....	79
by nonprofit organization [Sec. 205.002] .....	73
effective period .....	73
employing unit .....	20, 22, 73, 80
regarding services not constituting employment [Sec. 206.003] .....	80
termination by commission [Sec. 205.003] .....	74
termination of .....	73, 80
withdrawal of [Sec. 205.002(e)] .....	73
<b>Election to</b>	
be employer [Sec. 201.024] .....	17
become reimbursing employer [Chapter 205, Subchapter A] .....	73
have federal income tax withheld from benefits [Sec. 207.101(a)] .....	103
make voluntary payment of contributions [Sec. 204.048(a)] .....	59
<b>Electronic benefits transfer (EBT) of monthly training stipend [Sec. 308.011(c)] .....</b>	<b>231</b>
<b>Electronic transfer system [Sec. 201.011(15)] .....</b>	<b>15</b>
<b>Eligibility</b>	
conditions, benefit [Sec. 207.021] .....	85
criteria for facility to participate in pilot child care training center program [Sec. 302.005(j)] .....	190
period, extended benefits, definition of [Sec. 209.001(1)] .....	107
<b>Eligibility for</b>	
child-care demonstration project grant [Sec. 302.0041(c)] .....	185
displaced workers adjustment assistance .....	217
extended benefits [Sec. 209.041] .....	110
home ownership counseling .....	217
refund for wages paid or incurred [Sec. 301.104] .....	170
tuition assistance grant [Sec. 305.026] .....	220
<b>Eligible for certification, voluntary workforce training program [Sec. 311.002] .....</b>	<b>238</b>
<b>Eligible institution, definition of [Sec. 305.002(3)] .....</b>	<b>218</b>
<b>Employability</b>	
enhance .....	149, 192, 229
long-term [Sec. 311.001(2)(D)] .....	238
of individual trainees [Sec. 308.005(c)(2)] .....	229
<b>Employee</b>	
agreement to serve as mentor [Sec. 311.002(4)] .....	238
benefit provided by employer [Sec. 215.001(2)] .....	143
certified as recipient of medical or financial assistance and services [Sec. 301.105] .....	171
definition of [Sec. 303.006(a)(1)] .....	214
designation to participate in shared work plan [Sec. 215.001(1)] .....	142
displacement or partial displacement [Sec. 308.008(d)(1)(A)] .....	230
eligibility for shared work benefits [Sec. 215.041] .....	146
liability for overpayment resulting from back pay award [Sec. 210.003] .....	117
of state, elected or appointed [Sec. 213.054(2)] .....	135
participating in shared work plan, definition of [Sec. 215.001(4)] .....	143

receiving financial assistance, tax refund for wages paid [Chapter 301, Subchapter H].....	170
records of employing unit, offense, penalty [Sec. 301.081] .....	167
Retirement Income Security Act of 1974 [Sec. 301.104(3)(C)] .....	171
welfare benefit plan [Sec. 301.104(3)(C)] .....	171
<b>Employer</b>	
agreement to provide paid employment [Sec. 311.003(a)(3)].....	239
appeal of commission determination refusing adjustment or refund [Sec. 213.073] .....	139
assistance in setting curricula and standards [Sec. 309.003(a)(1)(C)] .....	233
audit of [Sec. 213.055] .....	135
business acquisition, definition of [Sec. 201.022] .....	16
cease to be .....	80
chargebacks [Chapter 204, Subchapter B].....	51
definition of under skills development fund program [Sec. 303.006(a)(2)].....	214
definition of under Texans work program [Sec. 308.002(2)].....	227
develop job descriptions for training participants [Sec. 308.005(c)] .....	228
election to be [Sec. 201.024] .....	17
election to participate in Texans Work program [Sec. 308.003(b)].....	228
evaluation of workforce needs and requirements [Sec. 303.001(b)].....	210
federal work opportunity tax credit and state tax refund [Sec. 301.0671] .....	163
general definition of [Sec. 201.021] .....	16
large, definition of [Sec. 303.006(a)(6)] .....	214
mailing address [Sec. 208.003].....	106
medium, definition of [Sec. 303.006(a)(7)] .....	214
micro-, definition of [Sec. 303.006(a)(8)] .....	214
of domestic service worker [Sec. 201.027].....	17
of farm and ranch laborer .....	18, 50
of temporary employee [Sec. 201.029].....	18
participating in shared work plan, definition of [Sec. 215.001(5)] .....	143
payment of contribution required [Sec. 204.002] .....	49
payment to JOBS trainee [Sec. 308.007(e)].....	230
penalties and interest [Chapter 213, Subchapter B].....	130
plan for shared work, approval required [Sec. 215.021].....	143
proposed training course [Sec. 308.004(c)] .....	228
provision of information on state services for ex-offenders and [Sec. 306.007].....	224
relocation of worksite [Sec. 303.003(c)].....	212
rights and duties, Texans work program [Sec. 308.007].....	229
selection of trainees [Sec. 308.007(b)] .....	229
selection of training methods [Sec. 308.007(c)] .....	229
small, definition of [Sec. 303.006(a)(10)] .....	214
sole liability for overpayment resulting from back pay award [Sec. 210.003].....	117
state, political subdivision [Sec. 201.026] .....	17
successor, collection of contribution, penalty, or interest from [Sec. 204.086] .....	68
taxed, charges to [Sec. 209.083].....	115
tax-exempt nonprofit organization [Sec. 201.023] .....	16
under Federal law [Sec. 201.025] .....	17
<b>Employer-employee relationship [Sec. 204.009(a)].....</b>	<b>50</b>
<b>Employing unit</b>	
definition of [Sec. 201.011(11)] .....	14
employee records of - offense, penalty [Sec. 301.081].....	167
that maintains two or more separate establishments [Sec. 201.021(c)] .....	16
<b>Employment</b>	
and training account [Sec. 308.010] .....	231
arrangement with other agency [Sec. 201.062].....	23
as driver [Sec. 201.042].....	19
as salesman [Sec. 201.042(2)] .....	19
assistance program for certain parents [Sec. 302.0035].....	183
combination of with wages [Sec. 211.003].....	118
definition of [Chapter 201, Subchapter D] .....	19
delivery service, newspaper delivery service [Sec. 201.073].....	30
domestic service [Sec. 201.064] .....	24
effect of previous employment determination .....	129
exceptions to [Chapter 201, Subchapter E].....	23

farm and ranch labor [Sec. 201.047].....	22
foreign government service [Sec. 201.063(a)(3)] .....	24
government service [Sec. 201.063(a)] .....	23
included and excluded service in pay period [Sec. 201.076] .....	31
Indian tribe [Sec. 201.048] .....	23
last separation from [Sec. 204.022] .....	51
location of service [Sec. 201.043] .....	20
monitoring history of public assistance recipients [Sec. 302.012].....	194
office, definition of [Sec. 201.011(12)] .....	14
on vessel or aircraft [Sec. 201.045] .....	22
performed entirely outside Texas [Sec. 201.043(c)] .....	20
plan and postemployment strategies [Sec. 302.0025].....	179
programs.....	199, 205
records open to inspection by commission [Sec. 301.081(a)].....	167
rehabilitative service, work relief [Sec. 201.067] .....	25
religious service [Sec. 201.066].....	25
service	
agreements [Sec. 307.002] .....	226
as insurance agent [Sec. 201.071] .....	29
as product demonstrator, salesman [Sec. 201.070].....	28
as real estate broker [Sec. 201.072].....	29
by inmate [Sec. 201.074] .....	31
by landman [Sec. 201.077].....	31
by relative [Sec. 201.065] .....	25
contribution to [Sec. 307.002(a)] .....	226
definition of.....	108, 150
financing [Sec. 307.003] .....	227
funds [Sec. 302.004] .....	184
in hospital [Sec. 201.068].....	26
of student [Sec. 201.069] .....	26
on fishing vessel [Sec. 201.075].....	31
referrals to suitable work [Sec. 209.045].....	112
service program [Sec. 302.021(a)(13)] .....	199
Services Referral Program [Sec. 302.0026].....	179
to assist employee or agent [Sec. 201.046].....	22
transition from training activities [Sec. 309.002(b)].....	233
<b>Employment information for secondary school students [Sec. 203.014].....</b>	<b>196</b>
<b>Employment service [Sec. 307.001] .....</b>	<b>226</b>
<b>Employment services to nonrecipient parents</b>	
provisions of [Sec. 302.015].....	196
<b>Employment-counseling program for inmates [Sec. 302.021(a)(10)] .....</b>	<b>199</b>
<b>Employment-related educational programs.....</b>	<b>149, 198</b>
<b>Enforcement</b>	
against Indian tribe [Sec. 213.060] .....	138
agency, child support [Sec. 207.091(3)] .....	102
of subpoena [Sec. 301.072] .....	166
of Texas unemployment compensation act [Chapter 213].....	126
remedies against employer [Chapter 213, Subchapter D].....	133
<b>English and Spanish forms and information [Sec. 301.064(c)] .....</b>	<b>162</b>
<b>Enrolled and regular attending classes at school, college, or university [Sec. 201.069(1)] .....</b>	<b>26</b>
<b>Enrollment in program leading to high school diploma or equivalent [Sec. 302.005(e)(1)] .....</b>	<b>189</b>
<b>Enrollment process to determine applicant's eligibility for workforce training [Sec. 302.022].....</b>	<b>200</b>
<b>Enterprise zone program [Sec. 306.007(a)(2)(A)] .....</b>	<b>224</b>
<b>Entitled to</b>	
benefits .....	81, 99, 141
benefits under unemployment compensation law of Canada [Sec. 209.042(a)(3)].....	111
partial benefits .....	82, 147
trainee rights and participation [Sec. 308.009(b)].....	231
<b>Entitlement to extended benefits [Sec. 215.044] .....</b>	<b>147</b>
<b>Equal</b>	
Employment Opportunity Commission [Sec. 301.155(d)] .....	174

employment opportunity policies [Sec. 301.045] .....	158
treatment for benefits [Sec. 207.076] .....	102
<b>Estimated taxable wages if report not filed [Sec. 213.056] .....</b>	<b>135</b>
<b>Estoppel doctrine [Sec. 213.007] .....</b>	<b>128</b>
<b>Evaluation of allocation formulas for child care development funds [Sec. 302.0042] .....</b>	<b>186</b>
<b>Evaluation of effectiveness of subsidized child care program [Sec. 302.0043] .....</b>	<b>186</b>
<b>Evidence</b>	
considered necessary in connection with disputed claim [Sec. 301.071(a)(4)] .....	166
copies of commission documents [Sec. 213.003] .....	127
limitation on use of [Sec. 213.007] .....	128
of certification, license, or registration as community-based organization [Sec. 303.003(h)] .....	212
or testimony, documentary or otherwise [Sec. 301.073(a)] .....	167
ordered production of [Sec. 301.072(a)] .....	166
prima facie .....	127, 132
production of [Sec. 301.073(b)] .....	167
rule [Sec. 212.202] .....	125
submitted in a case [Sec. 212.152(1)] .....	124
<b>Examiners [Chapter 212, Subchapter B] .....</b>	<b>121</b>
<b>Exception(s) to</b>	
and disqualification for benefits [Chapter 207, Subchapter C] .....	91
commission rulings unnecessary [Sec. 212.202] .....	125
deposit of funds [Sec. 203.004] .....	35
employment [Chapter 201, Subchapter E] .....	23
length of training course [Sec. 308.004(b)] .....	228
requirement to accept or apply for suitable work [Sec. 209.046] .....	112
wages [Sec. 201.082] .....	32
<b>Excessive unexcused absences from training participation [Sec. 308.011(e)] .....</b>	<b>232</b>
<b>Excluded service [Chapter 201, Subchapter E] .....</b>	<b>23</b>
<b>Excluded service in pay period [Sec. 201.076] .....</b>	<b>31</b>
<b>Executive director</b>	
and agency personnel [Chapter 301, Subchapter C] .....	157
appointment of [Sec. 301.041(a)] .....	157
appointment of directors of commission divisions [Sec. 301.009(c)] .....	155
authority to enter into contracts .....	178, 179
authority to establish additional commission divisions [Sec. 301.009(b)] .....	155
commission employees accountable to [Sec. 301.047] .....	159
definition of [Sec. 301.001(d)(5)] .....	150
general powers and duties [Chapter 301, Subchapter D] .....	159
powers and duties of [Chapter 301, Subchapter C] .....	157
<b>Exhaustion of</b>	
employer's administrative remedies [Sec. 204.026(a)] .....	55
regular benefits [Sec. 209.042] .....	110
remedies in benefit appeal proceeding [Sec. 212.203] .....	125
<b>Existing employer, definition of [Sec. 303.006(a)(3)] .....</b>	<b>214</b>
<b>Ex-offenders and employers, provision of information on state services for [Sec. 306.007] .....</b>	<b>224</b>
<b>Expenses paid with scholarship [Sec. 302.006(b)] .....</b>	<b>191</b>
<b>Experience</b>	
identifiable and segregable part of predecessor's [Sec. 204.084(c)(3)] .....	65
rate employer entitled to .....	61, 62, 63
rate, recomputation of [Sec. 204.048(d)] .....	60
rating [Sec. 204.041] .....	56
rating, waiver of all rights to [Sec. 204.084(c)(2)] .....	65
<b>Experience-rated</b>	
employer, acquisition of [Chapter 204, Subchapter E] .....	64
employer, adjustment to tax rate [Chapter 204, Subchapter D] .....	60
organization, trade, or business - acquisition of [Sec. 204.083] .....	65
<b>Expiration or termination of shared work plan [Sec. 215.024] .....</b>	<b>145</b>
<b>Ex-service member .....</b>	<b>108</b>
<b>Extended benefits .....</b>	<b>107, 147</b>
accept or apply for suitable work [Sec. 209.044] .....	111

charges to governmental employers [Sec. 209.084] .....	115
definition of [Sec. 209.001(2)] .....	108
disqualifications for .....	113
duration of ineligibility, work requirements [Sec. 209.048] .....	113
effect of trade readjustment allowances [Sec. 209.063] .....	114
eligibility period, definition of [Sec. 209.001(1)] .....	107
eligibility requirements [Chapter 209, Subchapter C] .....	110
entitlement to [Sec. 215.044] .....	147
federal funding of [Sec. 209.025] .....	110
financing of [Chapter 209, Subchapter E] .....	114
ineligibility due to disqualification [Sec. 209.049] .....	113
maximum total amount [Sec. 209.062] .....	114
'off' indicator week .....	109
'on' indicator week .....	109
period, beginning and ending dates [Sec. 209.021] .....	108
public announcement of period [Sec. 209.024] .....	110
referral to suitable work [Sec. 209.045] .....	112
restrictions on denial of [Sec. 209.046] .....	112
under an interstate claim [Sec. 209.050] .....	113
weekly amount [Sec. 209.061] .....	114

## F

<b>Facsimile signature and seal, authority to use [Sec. 301.024] .....</b>	<b>157</b>
<b>Failure or refusal to make contribution or other payment [Sec. 214.005] .....</b>	<b>141</b>
<b>Failure to</b>	
apply for, accept, or return to work [Sec. 207.047] .....	96
complete job .....	28, 30
keep records, penalty for [Sec. 213.023] .....	131
make reports [Sec. 213.056] .....	135
obey court order [Sec. 301.072(b)] .....	167
submit certain reports, effect of [Sec. 205.016] .....	76
<b>Fair</b>	
employment and housing practices [Sec. 301.155(b)(3)] .....	174
employment practice agency [Sec. 301.153(f)] .....	173
hearing, opportunity for .....	123, 141
labor standards [Sec. 311.002(2)] .....	238
Labor Standards Act of 1938 [Sec. 209.047(a)(3)] .....	112
<b>False report to commission [Sec. 213.023(2)] .....</b>	<b>131</b>
<b>False representation [Sec. 214.004(a)] .....</b>	<b>141</b>
<b>Family</b>	
violence or stalking .....	52, 95
violence, definition of .....	54, 96
<b>Family violence center, definition of .....</b>	<b>54, 96</b>
<b>Farm and ranch</b>	
labor as employment [Sec. 201.047] .....	22
labor contract [Sec. 204.009(b)] .....	51
laborer, employer of .....	18, 50
<b>Fast start program [Sec. 302.0032] .....</b>	<b>181</b>
<b>Federal</b>	
and state cooperation [Sec. 301.063] .....	160
child care development funds [Sec. 302.006(f)] .....	191
civilian employee .....	108
earned income tax credit .....	162, 163
Family Education Loan Program [Sec. 305.026(b)(5)] .....	221
government, share of extended benefits [Sec. 209.081(b)] .....	114
income tax assistance .....	162, 163
law requirements [Sec. 207.094] .....	103
law, employer under [Sec. 201.025] .....	17
participation rates and requirements [Sec. 302.004] .....	184
Perkins Loan Program [Sec. 305.026(b)(5)] .....	221
statutes, conformity with [Sec. 201.101] .....	34

unemployment compensation law .....	22, 23
work opportunity tax credit [Sec. 301.0671] .....	163
<b>Federal trust fund</b>	
advances from [Chapter 203, Subchapter C] .....	40
definition of [Sec. 203.001(2)] .....	35
deposits .....	37, 38
discontinuance of [Sec. 203.032] .....	39
requisitions from [Sec. 203.023] .....	37
<b>Federal Unemployment Tax Act .....</b>	<b>15, 17, 31, 32, 92, 99</b>
<b>Fee(s)</b>	
abstract of judgment, assessment [Sec. 213.036] .....	133
copy of record furnished by commission [Sec. 301.082(b)] .....	168
for participation in program by displaced homemaker [Sec. 304.002(d)] .....	217
for services based on service level options [Sec. 302.002(f)] .....	179
legal, commission approval of [Sec. 207.007(b)] .....	84
limitation, legal representation, criminal offense, penalty [Sec. 207.007] .....	84
of sheriff or constable who serves subpoena [Sec. 301.071(c)] .....	166
<b>Filing</b>	
and recording fees [Sec. 213.036(a)] .....	133
benefit claim [Chapter 208, Subchapter A] .....	105
of action [Sec. 212.204] .....	125
suit in Travis County [Sec. 213.052] .....	134
<b>Final assessment [Sec. 213.025] .....</b>	<b>131</b>
<b>Final commission decision [Sec. 212.104] .....</b>	<b>123</b>
<b>Finality of commission decision [Sec. 212.153] .....</b>	<b>124</b>
<b>Financial barriers to postsecondary career education [Sec. 305.001] .....</b>	<b>218</b>
<b>Financial literacy [Sec. 302.0027] .....</b>	<b>180</b>
<b>Financial obligations for unemployment compensation fund [Chapter 203, Subchapter F] .....</b>	<b>44</b>
<b>Financing</b>	
and funds [Chapter 203] .....	35
employment service [Sec. 307.003] .....	227
extended benefits [Chapter 209, Subchapter E] .....	114
<b>Findings necessary to determine extended benefit period .....</b>	<b>108, 109</b>
<b>Findings, commission authorization to make [Sec. 301.062] .....</b>	<b>160</b>
<b>Fingerprints, request for [Sec. 301.042] .....</b>	<b>157</b>
<b>Firm, certified eligible for adjustment assistance [Sec. 304.005(a)(2)] .....</b>	<b>217</b>
<b>Firm, definition of [Sec. 304.005(d)] .....</b>	<b>217</b>
<b>Fishing vessel, service on [Sec. 201.075] .....</b>	<b>31</b>
<b>Flexibility rating system [Sec. 302.047] .....</b>	<b>202</b>
<b>Floor and ceiling of compensation fund [Sec. 204.061] .....</b>	<b>60</b>
<b>Food stamp(s)</b>	
act of 1977 .....	104
administrative costs attributable to repayment of uncollected overissuances of [Sec. 207.112] .....	104
agency, required disclosure, notice to [Sec. 207.113] .....	104
employment and training program [Sec. 302.021(a)(17)] .....	200
program, benefits under [Sec. 308.011(d)] .....	232
trainee, definition of [Sec. 308.002(6)] .....	227
withholding from unemployment benefits for uncollected overissuances of [Sec. 207.111] .....	104
<b>Foreign government, service for .....</b>	<b>24</b>
<b>Foreign or interstate commerce [Sec. 211.005] .....</b>	<b>119</b>
<b>Forfeiture of benefits paid and remaining [Sec. 214.003] .....</b>	<b>140</b>
<b>Forfeiture of right to employ [Sec. 213.051] .....</b>	<b>133</b>
<b>Formula, shared work benefits [Sec. 215.042] .....</b>	<b>146</b>
<b>Fraud penalty</b>	
assessed [Sec. 214.003(a)(2)] .....	140
collection and deposit [Sec. 214.003(d)] .....	141
fair hearing [Sec. 214.003(c)] .....	141
<b>Fraud penalty [Sec. 203.201(b)] .....</b>	<b>43</b>
<b>Fraudulently avoiding contribution or payment of benefits [Sec. 214.004] .....</b>	<b>141</b>



<b>Fraudulently obtaining benefits or other payment [Sec. 214.001]</b> .....	139
<b>Fringe benefit, definition of [Sec. 215.001(2)]</b> .....	143
<b>Full-time hours [Sec. 201.091(e)]</b> .....	34
<b>Fund, obligation trust [Sec. 203.102]</b> .....	40
<b>Fund, self-sufficiency [Chapter 309] (see Self-sufficiency fund)</b> .....	232
<b>Funding</b>	
for person who participates in training through pilot program .....	190
guidelines and strategies for boards [Sec. 302.064(b)] .....	205
scholarships and bonuses or wage supplementation [Sec. 302.006(f)] .....	191
<b>Funds</b>	
and financing [Chapter 203] .....	35
deposit and use of [Sec. 203.004] .....	35
for job training, employment services, child care [Sec. 302.004] .....	184
for transportation assistance [Sec. 302.0037] .....	183
obligated from skills development fund [Sec. 302.002(e)] .....	178

## G

### General

counsel to commission [Sec. 301.004] .....	153
offense [Sec. 214.007] .....	142
revenue fund(s) .....	76, 170, 211, 230, 231, 233
tax rate .....	50, 56, 61
tax rate table [Sec. 204.042] .....	57
tax rate table, extension of [Sec. 204.043] .....	58

### Good cause

failure to contact employer [Sec. 207.045(i)(2)] .....	95
to apply for, accept, or return to work [Sec. 207.047(a)] .....	96
to terminate shared work plan [Sec. 215.024(c)] .....	145

### Government assistance as parent of dependent children [Sec. 304.001(4)(B)] .....

### Government election official or worker [Sec. 201.063(a)(1)(F)] .....

### Government service [Sec. 201.063] .....

### Governmental employer(s)

accounting for [Sec. 204.104] .....	71
delinquent [Sec. 205.017] .....	76
extended benefit charges to [Sec. 209.084] .....	115
past due contributions, penalty [Sec. 204.105] .....	71
rate of contributions [Sec. 204.103] .....	70
reports and records [Sec. 204.106] .....	71
special contributions [Sec. 204.101] .....	70

### Governmental entity, reimbursements or contributions by [Sec. 205.001] .....

### Governmental pension [Sec. 207.050] .....

### Governor

and/or legislature, information provided to by commission .....	38, 42, 159, 162, 178, 187, 188, 215
appointment of commission members .....	151, 153
approval of local plan .....	200, 203, 204, 226
biennial report to legislature [Sec. 301.045(c)] .....	159
designation of commission chair [Sec. 301.006(a)] .....	153

### Grant(s)

administration of .....	212, 233
and loans to establish person's own child-care business [Sec. 302.005(g)(3)] .....	190
child care demonstration project [Sec. 302.0041] .....	185
Child-care demonstration project, eligibility [Sec. 302.0041(c)] .....	185
issued under skills development fund [Sec. 303.005] .....	213
program, tuition assistance [Chapter 305, Subchapter B] .....	218
Texas Career Opportunity, Program [Chapter 305] .....	218
tuition assistance [Sec. 305.021] .....	218

### Gratuity considered wages [Sec. 201.081(2)] .....

### Gross receipts of student [Sec. 201.069(3)(A)(ii)] .....

<b>Group accounts</b> .....	77
duration and termination [Sec. 205.022] .....	77

member's reimbursement amount [Sec. 205.023] .....	77
reports and records of members [Sec. 205.024] .....	77

**Guidelines for**

allowing boards to exercise flexibility [Sec. 302.064(b)] .....	205
functions of commission and staff [Sec. 301.0015] .....	150
job placement incentive program [Sec. 302.009(b)] .....	193
operation of Project RIO [Sec. 306.006(b)(1)] .....	223
postemployment services [Sec. 302.010] .....	193
training course approval [Sec. 308.005] .....	228

**H**

<b>Head Start program [Sec. 302.0041(b)(1)(C)] .....</b>	<b>185</b>
--	------------

**Health**

benefit plan approved by commissioner of insurance [Sec. 301.104(3)(B)] .....	171
insurance as employee benefit [Sec. 215.001(2)] .....	143
plan provided by health maintenance organization [Sec. 301.104(3)(A)] .....	171
safety, and morals [Sec. 207.008(a)(1)] .....	84

<b>Health and Human Services Commission [Sec. 306.007(b)(4)] .....</b>	<b>224</b>
--	------------

**Hearing**

application of Administrative Procedure Act [Sec. 301.0615(a)] .....	160
disputed claim .....	119
officer employed or appointed by commission [Sec. 301.071] .....	166
record of proceedings [Sec. 212.002] .....	119

<b>High school diploma or equivalent [Sec. 302.005(e)(1)] .....</b>	<b>189</b>
---	------------

<b>High school, participants in [Sec. 311.003(a)(3)] .....</b>	<b>239</b>
--	------------

<b>Higher Education Act of 1965 [Sec. 305.026(b)(4)] .....</b>	<b>221</b>
--	------------

<b>Hire recipients of financial assistance program [Sec. 301.0671(b)] .....</b>	<b>163</b>
---	------------

<b>Hiring freeze implemented by employer [Sec. 308.008(d)(1)(D)] .....</b>	<b>230</b>
--	------------

<b>History of public assistance recipients [Sec. 302.012] .....</b>	<b>194</b>
---	------------

<b>Holiday recess or vacation period [Sec. 207.041(d)] .....</b>	<b>91</b>
--	-----------

<b>Holiday, paid [Sec. 215.001(2)] .....</b>	<b>143</b>
--	------------

<b>Home ownership counseling for displaced workers [Sec. 304.005] .....</b>	<b>217</b>
---	------------

<b>Homemaker, displaced [Sec. 304.001] (see Displaced homemakers) .....</b>	<b>216</b>
---	------------

<b>Hospital, service in [Sec. 201.068] .....</b>	<b>26</b>
--	-----------

**Hours**

customary full-time [Sec. 201.091(e)] .....	34
minimum number required for trainee [Sec. 308.009(a)] .....	231
of work, normal weekly .....	143, 144, 146
reduced number of, under approved shared work plan .....	143, 147
reduction in [Sec. 201.091(d)] .....	34
reduction in work, in lieu of layoffs [Sec. 215.022(a)(2)] .....	144
substantially less favorable to individual [Sec. 207.008(b)(2)] .....	85

<b>Housing needs, unmet .....</b>	<b>184</b>
-----------------------------------	------------

<b>Housing resources [Sec. 302.0038] .....</b>	<b>184</b>
--	------------

<b>Human Rights Commission .....</b>	<b>159, 172</b>
--------------------------------------	-----------------

commissioners [Sec. 301.153(c)] .....	173
director [Sec. 301.154] .....	174
fair employment practice agency [Sec. 301.153(f)] .....	173
general provisions [Sec. 301.152] .....	173
governance [Sec. 301.153] .....	173
investigator training program, procedures manual [Sec. 301.155] .....	174
members [Sec. 301.153(a)] .....	173
policies [Sec. 301.153(e)] .....	173

**I**

<b>Illness or injury, medically verifiable .....</b>	<b>13, 52, 93</b>
--	-------------------

<b>Immediate family, definition of .....</b>	<b>54, 96</b>
--	---------------

<b>Immigration and Nationality Act [Sec. 207.043(a)(3)] .....</b>	<b>92</b>
---	-----------

<b>Impaired by age, physical or mental deficiency or injury [Sec. 201.067(a)(1)] .....</b>	<b>25</b>
--	-----------

<b>Improper benefit, definition of [Sec. 214.002(b)]</b> .....	<b>140</b>
<b>Incentive(s)</b>	
and awards [Sec. 301.0611] .....	160
for employers, Texans work program [Sec. 308.005(d)] .....	229
programs for job creation, attraction, and expansion [Sec. 301.001(b)(4)] .....	149
to attract exceptional service providers [Sec. 302.046(b)(1)] .....	202
to provide customized assessment and training [Sec. 303.001(a)] .....	210
<b>Incidental service, definition of [Sec. 201.043(f)]</b> .....	<b>21</b>
<b>Included service in pay period [Sec. 201.076]</b> .....	<b>31</b>
<b>Income tax</b>	
assistance sites [Sec. 301.067] .....	162
exempt from payment [Sec. 303.001(b)(2)(B)] .....	210
exempt under IRS Code .....	16, 210
withholding from benefits [Sec. 207.101] .....	103
<b>Income, training stipend [Sec. 308.011(d)]</b> .....	<b>232</b>
<b>Incrimination of person [Sec. 301.073(a)]</b> .....	<b>167</b>
<b>Independent contractor, employment as</b> .....	<b>19, 29</b>
<b>Indian tribe</b>	
charges to [Sec. 209.0845] .....	115
definition of [Sec. 201.011(26)] .....	15
election to become reimbursing employer [Sec. 205.001(a)] .....	73
enforcement against [Sec. 213.060] .....	138
loss of reimbursement option .....	74, 129
notice to [Sec. 213.010] .....	129
payment of benefits [Sec. 207.009] .....	85
payment of contributions by [Sec. 204.010] .....	51
reimbursement election [Sec. 205.004] .....	74
service for .....	23, 24
<b>Individual employment plan [Sec. 302.0025]</b> .....	<b>179</b>
<b>Industry standards</b> .....	<b>238, 239</b>
<b>Ineligibility due to disqualification [Sec. 209.049]</b> .....	<b>113</b>
<b>Ineligibility to serve on workforce development board [Sec. 302.043(a)]</b> .....	<b>201</b>
<b>Information</b>	
and data for evaluation system [Sec. 302.082] .....	207
and marketing campaign [Sec. 302.008] .....	192
file about complaints filed with commission [Sec. 301.023(a)] .....	156
not previously available to make claim determination [Sec. 212.054(a)] .....	122
on earned income tax credit [Sec. 301.067] .....	162
provided to governor and/or legislature by commission .....	38, 42, 159, 162, 178, 187, 188, 215
<b>Information, Unemployment Compensation [Sec. 301.085]</b> .....	<b>168, 169</b>
<b>Initial claim for benefits</b>	
definition of [Sec. 201.011(13)] .....	14
determination [Sec. 208.021] .....	107
mailing requirements of notice [Sec. 208.002] .....	105
notice of determination [Sec. 208.022] .....	107
<b>Initial contribution rate [Sec. 204.006]</b> .....	<b>50</b>
<b>Initiatives by commission [Sec. 302.0045]</b> .....	<b>188</b>
<b>Injunction</b>	
restraining certain violations [Sec. 213.052] .....	134
to prohibit employer from employing individuals in Texas [Sec. 213.051(c)] .....	134
violation of [Sec. 213.053] .....	134
<b>Injury, disqualification for benefits [Sec. 207.045(d)(2)]</b> .....	<b>93</b>
<b>Inmate employment-counseling program [Sec. 302.021(a)(10)]</b> .....	<b>199</b>
<b>Inmate, service by [Sec. 201.074]</b> .....	<b>31</b>
<b>In-person sales [Sec. 201.070(2)(A)(i)]</b> .....	<b>28</b>
<b>Inspection or copying of records [Sec. 214.006(a)(2)]</b> .....	<b>141</b>
<b>Inspector General of the United States Department of Labor [Sec. 301.042(c)(4)]</b> .....	<b>158</b>
<b>Institution of higher education, definition of [Sec. 201.011(14)]</b> .....	<b>14</b>
<b>Instructor of persons in real estate [Sec. 201.072(2)]</b> .....	<b>30</b>

<b>Instrumentality of a state</b> .....	<b>17, 73, 75, 115</b>
<b>Insurance</b>	
agent, service as [Sec. 201.071].....	29
health care coverage, workers' compensation - for trainees .....	215, 230
paid by employer .....	32, 33
<b>Insured unemployment rate</b> .....	<b>108, 109</b>
<b>Integrate secondary school academic curriculum with private sector workplace training [Sec. 311.001(2)(A)]</b> .....	<b>237</b>
<b>Integrated</b>	
system of on-the-job training [Sec. 308.003(a)] .....	228
vocational and language training programs [Sec. 302.007(b)(5)].....	192
workforce development system [Sec. 301.001(a)].....	149
<b>Integration of block grant programs and workforce services [Sec. 302.065]</b> .....	<b>205</b>
<b>Interest</b>	
additional, on judgment or final assessment [Sec. 213.025] .....	131
and penalties, employer [Chapter 213, Subchapter B].....	130
collection of, from successor employer [Sec. 204.086] .....	68
on adjustment or refund [Sec. 213.074].....	139
on past due contributions [Sec. 213.021].....	130
payment on advances from federal trust fund .....	41, 43
prime rate when participant defaults on agreement [Sec. 311.003(c)(4)] .....	239
pro rata share of [Sec. 311.003(d)] .....	239
<b>Intern in hospital, service as [Sec. 201.068(2)]</b> .....	<b>26</b>
<b>Internet access to commission information [Sec. 301.0681(1)]</b> .....	<b>164</b>
<b>Internet website</b> .....	<b>203, 207</b>
<b>Internship services or programs</b> .....	<b>210, 232</b>
<b>Internships, job [Sec. 311.001(2)(B)]</b> .....	<b>238</b>
<b>Interpreter services [Sec. 301.064]</b> .....	<b>161</b>
<b>Interstate claim for extended benefits [Sec. 209.050]</b> .....	<b>113</b>
<b>Intra-state or foreign commerce [Sec. 211.005]</b> .....	<b>119</b>
<b>Intra-agency posting of all non-entry level positions [Sec. 301.044]</b> .....	<b>158</b>
<b>Invalid commutation agreement [Sec. 207.071]</b> .....	<b>100</b>
<b>Investigative powers of commission [Sec. 301.071]</b> .....	<b>166</b>
<b>Investment earnings and excessive revenue collections [Sec. 203.258]</b> .....	<b>48</b>
<b>Involuntary separation</b> .....	<b>53, 93, 95</b>

**J**

**Job**

counseling for displaced homemakers .....	204, 216, 217
creation, attraction, and expansion [Sec. 301.001(b)(4)] .....	149
definition of [Sec. 303.006(a)(5)] .....	214
description for security sensitive position [Sec. 301.042(b)] .....	157
descriptions for training participants developed by employer [Sec. 308.005(c)] .....	228
internships [Sec. 311.001(2)(B)] .....	238
matching services information.....	168, 169
Placement Incentive Program [Sec. 302.009] .....	192
retention and reemployment assistance [Sec. 302.003] .....	180
subsidies for welfare recipients [Sec. 302.005(l)].....	190
training and employment referral services information [Sec. 306.007(a)(1)(A)].....	224
Training Partnership Act .....	160, 200
training program [Sec. 302.021(a)(7)] .....	199
training programs under self-sufficiency fund.....	233
training, employment, and employment-related educational programs – consolidation of [Sec. 301.001(a)] .....	149
training, funds [Sec. 302.004].....	184
training, start-up or emergency funds [Sec. 303.003(b)] .....	211
<b>Job matching services information</b> .....	<b>168, 169</b>
<b>JOBS training program</b>	
definition of [Sec. 308.002(3)] .....	227
eligible to participate in .....	227, 228

employer payment to trainee [Sec. 308.007(e)]	230
liability and responsibility of employer [Sec. 308.007(d)]	230
state matching funds [Sec. 308.010(a)(2)]	231
trainee's entitlement to full benefits [Sec. 308.011(d)]	232
training stipend [Sec. 308.011]	231
<b>Judgment</b>	
for past due contributions [Sec. 213.025]	131
on assessment [Sec. 213.032(e)]	132
recovery of amount of contribution and interest [Sec. 213.025]	131
<b>Judicial</b>	
notice of commission seal [Sec. 301.024(a)]	157
proceeding seeking collection [Sec. 213.004(a)]	127
proceeding, venue for [Sec.213.009(b)]	128
<b>Judicial review</b>	
commission considered party to [Sec. 212.206]	125
not applicable until commission remedies exhausted [Sec. 212.203(a)]	125
of commission decision [Chapter 212, Subchapter E]	124
of notice of assessment [Sec. 213.032]	132
of protest to chargeback determination [Sec. 204.026]	55
petition for	120
representation of commission [Sec. 212.207]	126
standard of [Sec. 212.202]	125
<b>Judiciary, member of [Sec. 201.063(a)(1)(C)]</b>	<b>24</b>
<b>K</b>	
<b>Knowingly fails to disclose material fact</b>	<b>140, 141</b>
<b>Knowingly makes false statement or representation [Sec. 214.001(a)(1)]</b>	<b>139</b>
<b>Knowingly, definition of [Sec. 204.081(6)]</b>	<b>65</b>
<b>Knowledge of work, actual or constructive [Sec. 201.046(a)]</b>	<b>22</b>
<b>L</b>	
<b>Labor</b>	
agent	18, 22, 50
agent, definition of [Sec. 204.009(e)]	51
farm and ranch [Sec. 201.021(b)] (see Farm and ranch)	16
market area, prevailing wage for occupation in [Sec. 303.002(b)(2)]	211
market information [Sec. 301.001(b)(2)]	149
market information system [Sec. 302.002(a)(14)]	178
organization	97
organization, bona fide [Sec. 207.008(b)(3)]	85
shortage in occupation in which training is provided [Sec. 303.002(b)(1)]	211
standard provisions [Sec. 209.047(c)]	113
<b>Labor dispute</b>	
disqualification for benefits [Sec. 207.048]	97
failure to accept and perform work during continuance of [Sec. 207.048(c)]	97
not participating in, financing, or directly interested in [Sec. 207.048(b)]	97
premises of	97
<b>Landman, service by [Sec. 201.077]</b>	<b>31</b>
<b>Language services program [Sec. 301.064]</b>	<b>161</b>
<b>Language training programs [Sec. 302.007(b)(5)]</b>	<b>192</b>
<b>Large employer, definition of [Sec. 303.006(a)(6)]</b>	<b>214</b>
<b>Last employer</b>	<b>105</b>
<b>Last known address</b>	<b>107, 122</b>
<b>Last work</b>	<b>105</b>
<b>Laying off regular employee [Sec. 308.008(d)(1)(B)]</b>	<b>230</b>
<b>Layoffs [Sec. 215.022(a)(2)]</b>	<b>144</b>
<b>Leaving work voluntarily [Sec. 207.045]</b>	<b>93</b>
<b>Legal process, definition of [Sec. 207.093(d)]</b>	<b>103</b>
<b>Legal representation of claimants [Sec. 207.007]</b>	<b>84</b>

<b>Legislation, federal and state [Sec. 302.002(a)(2)] .....</b>	<b>177</b>
<b>Legislative</b>	
appropriation .....	40, 42, 211
body, member of [Sec. 201.063(a)(1)(B)] .....	24
Budget Board [Sec. 301.065(b)(3)] .....	162
intent, skills development fund [Sec. 303.003(e)] .....	212
intent, Texans work program [Sec. 308.001] .....	227
<b>Legislature and/or governor, information provided to by commission ...</b>	<b>38, 42, 159, 162, 178, 187, 188, 215</b>
<b>Length of training course [Sec. 308.004(b)] .....</b>	<b>228</b>
<b>Length of unemployment [Sec. 207.008(a)(4)] .....</b>	<b>84</b>
<b>Levy on property [Sec. 213.059] .....</b>	<b>136</b>
<b>Liability for</b>	
improperly obtaining benefits [Sec. 214.002] .....	140
interest on past due contributions [Sec. 213.021] .....	130
payment of payroll taxes or contributions for JOBS program trainee [Sec. 308.007(d)] .....	230
reimbursement [Sec. 205.015] .....	76
reimbursements by group members [Sec. 205.023] .....	77
<b>Liability of</b>	
employee and employer for overpayment resulting from back pay award [Sec. 210.003] .....	117
employing unit for payment of taxes [Sec. 201.025(1)] .....	17
successor for predecessor's debt [Sec. 204.086] .....	68
<b>Liability, no personal [Sec. 203.262] .....</b>	<b>49</b>
<b>Lien</b>	
additional tax [Sec. 213.058] .....	136
on property .....	135, 136
release of .....	133, 136
<b>Limitation(s) on</b>	
advances from federal trust fund [Sec. 203.101] .....	40
amount of refund [Sec. 301.103] .....	170
benefits .....	39, 104, 146
collections [Sec. 213.033] .....	132
conveyance, assignment, or transfer of refund [Sec. 301.108] .....	172
costs recovered by public community or technical college from state funds [Sec. 303.002(a)] .....	210
fees charged to claimant for legal representation [Sec. 207.007] .....	84
grants issued under skills development fund [Sec. 303.005] .....	213
transfer from obligation trust fund [Sec. 203.104] .....	40
tuition assistance grant amount [Sec. 305.022] .....	219
<b>Literacy</b>	
and adult education [Chapter 301, Subchapter J] .....	175
program [Sec. 302.021(a)(12)] .....	199
<b>Loans to establish person's own child-care business [Sec. 302.005(g)(3)] .....</b>	<b>190</b>
<b>Lobbying activity, effect of [Sec. 301.004] .....</b>	<b>153</b>
<b>Location of</b>	
service [Sec. 201.043] .....	20
service for unemployment insurance purposes [Sec. 211.001] .....	117
service of state employees [Sec. 211.002] .....	118
<b>Long-term commitment to early childhood care profession [Sec. 302.005(e)(3)] .....</b>	<b>189</b>
<b>Low-income parents, child care services [Sec. 302.0041(b)(3)] .....</b>	<b>185</b>

**M**

<b>Mail service address designated by employer [Sec. 208.003] .....</b>	<b>106</b>
<b>Mail, definition of [Sec. 201.011(15)] .....</b>	<b>15</b>
<b>Mailing requirements of commission findings and decision [Sec. 212.105(c)] .....</b>	<b>123</b>
<b>Mailing requirements of determinations [Sec. 212.051(b)] .....</b>	<b>121</b>
<b>Maintenance and operation of workforce development evaluation system [Sec. 302.081] .....</b>	<b>206</b>
<b>Management of compensation fund on discontinuance of federal trust fund [Sec. 203.032] .....</b>	<b>39</b>
<b>Management or control, substantially common, definition of [Sec. 204.081(3)] .....</b>	<b>64</b>
<b>Manual, definition of [Sec. 204.001] .....</b>	<b>49</b>
<b>Material fact, nondisclosure or misrepresentation of .....</b>	<b>140</b>

<b>Maximum</b>	
amount of benefits .....	81, 83
extended benefit amount [Sec. 209.062] .....	114
potential chargebacks .....	55, 106, 115
<b>Means-tested program [Sec. 308.003(a)] .....</b>	<b>228</b>
<b>Measures for higher-wage jobs [Sec. 302.009(b)(1)] .....</b>	<b>193</b>
<b>Medical benefits paid by employer [Sec. 201.082(2)] .....</b>	<b>32</b>
<b>Medically verifiable injury or illness .....</b>	<b>13, 52</b>
<b>Medically verified illness, disqualification for benefits [Sec. 207.045(d)(1)] .....</b>	<b>93</b>
<b>Medium employer, definition of [Sec. 303.006(a)(7)] .....</b>	<b>214</b>
<b>Member of</b>	
child care resource and referral network [Sec. 310.001(1)] .....	234
judiciary [Sec. 201.063(a)(1)(C)] .....	24
legislative body [Sec. 201.063(a)(1)(B)] .....	24
workforce development board [Sec. 302.043] .....	201
<b>Memorandum of understanding, Project RIO .....</b>	<b>222, 224</b>
<b>Mentor [Sec. 311.002(4)] .....</b>	<b>238</b>
<b>Mentoring and postemployment case management [Sec. 302.011] .....</b>	<b>194</b>
<b>Merit pay for commission employees [Sec. 301.041(d)] .....</b>	<b>157</b>
<b>Methods of required collection [Sec. 213.031] .....</b>	<b>131</b>
<b>Micro-employer, definition of [Sec. 303.006(a)(8)] .....</b>	<b>214</b>
<b>Migrant and Seasonal Agricultural Worker Protection Act [Sec. 204.009(e)] .....</b>	<b>51</b>
<b>Migrant worker .....</b>	<b>18, 22</b>
<b>Military personnel who do not reenlist [Sec. 207.045(f)] .....</b>	<b>94</b>
<b>Military service .....</b>	<b>52, 53</b>
<b>Minimum amount of benefits .....</b>	<b>81, 83</b>
<b>Minimum wage .....</b>	<b>112, 239</b>
<b>Minister, service performed by [Sec. 201.066] .....</b>	<b>25</b>
<b>Minor, service of [Sec. 201.065] .....</b>	<b>25</b>
<b>Misclassification of certain workers</b>	
contracts with governmental entities [Sec. 214.008(a)] .....	142
penalty for .....	142
subcontractors [Sec. 214.008(b)] .....	142
<b>Misconduct</b>	
connected with work [Sec. 201.091(d)] .....	34
definition of [Sec. 201.012] .....	15
discharge for [Sec. 207.044] .....	93
<b>Misrepresentation .....</b>	<b>139, 140, 141</b>
<b>Modification of shared work plan [Sec. 215.025] .....</b>	<b>145</b>
<b>Money paid to commission [Sec. 203.004] .....</b>	<b>35</b>
<b>Monitoring employment history of public assistance recipients [Sec. 302.012] .....</b>	<b>194</b>
<b>Motion for rehearing before the commission [Sec. 204.026(a)] .....</b>	<b>55</b>
<b>Motion for rehearing in benefit appeal proceeding [Sec. 212.153(2)] .....</b>	<b>124</b>
<b>Move with spouse, disqualification [Sec. 207.045(c)] .....</b>	<b>93</b>

**N**

<b>Natural disaster .....</b>	<b>52</b>
<b>Necessary work-related reason to separate from employment [Sec. 207.046] .....</b>	<b>95</b>
<b>Need-based formula to allocate funds [Sec. 302.004] .....</b>	<b>184</b>
<b>Negotiated rulemaking and alternative dispute resolution policy [Sec. 301.0682] .....</b>	<b>165</b>
<b>Network, child care resource and referral .....</b>	<b>234</b>
<b>Networks, small and medium-sized business .....</b>	<b>211, 233</b>
<b>Newspaper delivery service [Sec. 201.073] .....</b>	<b>30</b>
<b>Nondisclosure or misrepresentation [Sec. 214.002(b)(1)] .....</b>	<b>140</b>
<b>Nondiscrimination, under program or activity receiving federal financial assistance [Sec. 305.025] .....</b>	<b>220</b>
<b>Nonliability for payment of contributions, Texans work program [Sec. 308.007(d)] .....</b>	<b>230</b>
<b>Nonliability of state [Sec. 203.031] .....</b>	<b>39</b>

<b>Nonprofit organization</b>	
community-based .....	210, 232
election by [Sec. 205.002] .....	73
tax-exempt [Sec. 201.023] .....	16
<b>Nonresident alien agricultural worker, service by [Sec. 201.078] .....</b>	<b>32</b>
<b>Nontenured policy-making or advisory position [Sec. 201.063(a)(1)(E)] .....</b>	<b>24</b>
<b>Non-treasury funds, reimbursement from [Sec. 205.019] .....</b>	<b>76</b>
<b>Normal weekly hours of work .....</b>	<b>143, 144, 146</b>
<b>North American Industrial Classification System Manual [Sec. 204.001] .....</b>	<b>49</b>
<b>Notice</b>	
employer must post claim information [Sec. 208.001] .....	105
protest, and appeal—notice sent at time of claim [Sec. 204.027] .....	55
regarding termination of certain child-care services [Sec. 302.0046] .....	188
to employer [Sec. 208.003] .....	106
to Indian tribes [Sec.213.010] .....	129
to taxed base period employer [Sec. 209.085] .....	115
<b>Notice of</b>	
appeal tribunal action [Sec. 212.103] .....	123
approval or denial of shared work plan [Sec. 215.023] .....	145
assessment, collection of contribution by [Chapter 213, Subchapter C] .....	131
assessment, service [Sec. 213.032] .....	132
back pay award reduction [Sec. 210.001] .....	116
claim determination .....	107, 121
commission action [Sec. 212.152] .....	124
decision to protesting employer [Sec. 204.025(a)] .....	55
increase in maximum potential chargeback [Sec. 209.085(b)] .....	116
initial claim .....	55, 105
levy [Sec. 213.059] .....	136
lien [Sec. 213.057(e)] .....	136
petition [Sec. 212.206] .....	125
potential chargeback [Sec. 204.023] .....	55
<b>Nurse, service as a student [Sec. 201.068(1)] .....</b>	<b>26</b>
<b>O</b>	
<b>Oaths, administered by appeal tribunal [Sec. 301.071(a)(1)] .....</b>	<b>166</b>
<b>Obligation assessment [Sec. 203.105] .....</b>	<b>40</b>
<b>Obligation assessment, revenue collected [Sec. 203.258] .....</b>	<b>48</b>
<b>Obligation Trust Fund .....</b>	<b>40</b>
<b>Obligations, repayment of [Sec. 203.256] .....</b>	<b>47</b>
<b>Occupational shortage study; report [Sec. 302.019] .....</b>	<b>198</b>
<b>Off indicator weeks, state [Sec. 209.022] .....</b>	<b>109</b>
<b>Offense [Sec. 301.085] .....</b>	<b>168, 169</b>
<b>Offenses</b>	
general [Sec. 214.007] .....	142
penalties, and sanctions [Chapter 214] .....	139
regarding reports, records [Sec. 214.006] .....	141
<b>Official acts, certified by appeal tribunal [Sec. 301.071(a)(3)] .....</b>	<b>166</b>
<b>Official seal of commission [Sec. 301.024] .....</b>	<b>157</b>
<b>Offset against state warrant [Sec. 213.054] .....</b>	<b>135</b>
<b>Offset for overpayment of unemployment benefits [Sec. 211.004] .....</b>	<b>118</b>
<b>On indicator weeks, state [Sec. 209.022] .....</b>	<b>109</b>
<b>On-the-job training .....</b>	<b>227, 228</b>
<b>Oral or documentary testimony [Sec. 301.071(b)] .....</b>	<b>166</b>
<b>Out-of-state employees, coverage of [Sec. 205.042] .....</b>	<b>79</b>
<b>Out-of-state judgment, enforcement of [Sec. 213.009] .....</b>	<b>128</b>
<b>Outreach activities [Sec. 302.044] .....</b>	<b>201</b>
<b>Overpayment</b>	
application for adjustment [Sec. 213.072] .....	139
hearing for recovery of [Sec. 211.004(b)] .....	118



liability for [Sec. 210.003].....	117
of benefits by reimbursing employer [Sec. 210.002(d)] .....	116
of unemployment compensation benefits, liability for [Sec. 210.002(b)] .....	116
offset for [Sec. 211.004] .....	118
<b>Oversight and management of local funds and service delivery [Sec. 302.048] .....</b>	<b>202</b>
<b>Ownership, substantially common</b>	
definition of [Sec. 204.081(4)] .....	64
<b>P</b>	
<b>Partial displacement of regular employee from existing position [Sec. 308.008(d)(1)(A)] .....</b>	<b>230</b>
<b>Partial unemployment.....</b>	<b>33, 82, 97, 147</b>
<b>Participant(s)</b>	
child care training subsidy .....	189, 190
definition of [Sec. 311.001(3)] .....	238
<b>Participating</b>	
employee, definition of [Sec. 215.001(4)] .....	143
employer, definition of [Sec. 215.001(5)] .....	143
employer's report on plan operation [Sec. 215.026] .....	145
in labor dispute [Sec. 207.048(b)] .....	97
<b>Participation in additional programs, application requirements [Sec. 303.005].....</b>	<b>213</b>
<b>Partnership with business community [Sec. 301.069].....</b>	<b>165</b>
<b>Partnership with state [Sec. 308.001].....</b>	<b>227</b>
<b>Past due contributions.....</b>	<b>71, 130, 131, 140</b>
<b>Patient in hospital, service of [Sec. 201.068].....</b>	<b>26</b>
<b>Pay period, definition of [Sec. 201.076].....</b>	<b>31</b>
<b>Payment after age 65 [Sec. 201.082(8)] .....</b>	<b>33</b>
<b>Payment of</b>	
benefits .....	50, 81
benefits pending appeal [Sec. 212.004] .....	120
contributions by governmental employers [Sec. 204.101].....	70
reimbursement [Sec. 205.012].....	75
tuition assistance grant [Sec. 305.027] .....	221
waiting period claim [Sec. 207.021(c)].....	86
<b>Pell Grant program [Sec. 305.026(b)(6)] .....</b>	<b>221</b>
<b>Penalty [Sec. 301.085].....</b>	<b>168, 169</b>
<b>Penalty(ies)</b>	
and interest, employer [Chapter 213, Subchapter B] .....	130
application for adjustment [Sec. 213.072] .....	139
collection of, from successor employer [Sec. 204.086] .....	68
offenses, and sanctions [Chapter 214] .....	139
refund of [Sec. 203.203] .....	44
<b>Penalty(ies) for</b>	
continuing violation [Sec. 213.024].....	131
disobeying subpoena [Sec. 301.072] .....	166
failure to file report [Sec. 213.022].....	130
misclassification of certain workers [Sec. 214.008] .....	142
other violations [Sec. 213.023].....	131
violation of benefit rights [Sec. 207.074] .....	101
violation of fees limitations charged against claimants [Sec. 207.007] .....	84
<b>Pension benefits for trainee [Sec. 308.007(d)] .....</b>	<b>230</b>
<b>Pension, receipt of [Sec. 207.050] .....</b>	<b>99</b>
<b>Performance</b>	
evaluations based on measurable job tasks [Sec. 301.041(d)] .....	157
measures to evaluate local workforce development boards [Sec. 302.048(c)].....	203
reports [Sec. 302.043(d)] .....	201
<b>Perjury [Sec. 301.073(b)] .....</b>	<b>167</b>
<b>Person</b>	
definition of [Sec. 204.081(2)] .....	64
<b>Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Sec. 302.004].....</b>	<b>184</b>

<b>Personnel of agency [Sec. 301.041]</b> .....	<b>157</b>
<b>Petition</b>	
notice of [Sec. 212.206].....	125
service of [Sec. 212.206(b)].....	125
service, notice of assessment [Sec. 213.032(c)].....	132
<b>Photostatic copies of commission records</b> .....	<b>41, 168</b>
<b>Pilot program</b>	
child care training center [Sec. 302.003] .....	189
efficiency [Sec. 301.068].....	163
<b>Plan regarding lack of service providers [Sec. 302.046]</b> .....	<b>202</b>
<b>Policy on technological solutions [Sec. 301.0681]</b> .....	<b>164</b>
<b>Policy statement to ensure equal employment opportunity [Sec. 301.045(a)]</b> .....	<b>158</b>
<b>Political subdivision</b>	
as employer [Sec. 201.026] .....	17
coverage of [Sec. 201.026].....	17
excluded service for [Sec. 201.063(a)(1)].....	23
<b>Postemployment</b>	
case management and mentoring [Sec. 302.011].....	194
services guidelines [Sec. 302.010].....	193
strategies and employment plan [Sec. 302.0025] .....	179
<b>Poster about filing claim for unemployment benefits [Sec. 208.001]</b> .....	<b>105</b>
<b>Postsecondary education agreement [Sec. 311.003(c)]</b> .....	<b>239</b>
<b>Postsecondary vocational and technical job-training programs [Sec. 302.021(a)(3)]</b> .....	<b>199</b>
<b>Powers and duties of Texas Department of Human Services [Sec. 308.006]</b> .....	<b>229</b>
<b>Powers of commission and executive director [Sec. 301.061]</b> .....	<b>159</b>
<b>Predecessor employer, acquisition of [Sec. 204.083]</b> .....	<b>65</b>
<b>Pregnancy or termination of pregnancy [Sec. 207.025]</b> .....	<b>89</b>
<b>Pregnancy, disqualification for benefits [Sec. 207.045(d)(4)]</b> .....	<b>93</b>
<b>Premises, definition of [Sec. 207.048(f)]</b> .....	<b>98</b>
<b>Preponderance of evidence [Sec. 207.043(c)]</b> .....	<b>92</b>
<b>Prevailing wage [Sec. 311.003(c)(3)]</b> .....	<b>239</b>
<b>Prevailing wage for occupation in local labor market area [Sec. 303.002(b)(2)]</b> .....	<b>211</b>
<b>Previous employment determination</b> .....	<b>129</b>
<b>Prima facie evidence</b> .....	<b>127, 132, 133</b>
<b>Priority of claim for contribution [Sec. 213.006]</b> .....	<b>128</b>
<b>Private nonprofit organization</b> .....	<b>210, 232</b>
<b>Privilege against self-incrimination [Sec. 301.073(b)]</b> .....	<b>167</b>
<b>Product demonstrator, service as [Sec. 201.070(1)]</b> .....	<b>28</b>
<b>Production of books, papers, etc. as evidence [Sec. 301.071(a)(4)]</b> .....	<b>166</b>
<b>Professional Employer Organization [Sec. 201.030]</b> .....	<b>19</b>
<b>Professional employer organization, covered employee of [Sec. 207.045(i)]</b> .....	<b>94</b>
<b>Profiling system established by commission [Sec. 207.021(a)(8)]</b> .....	<b>86</b>
<b>Program(s)</b>	
apprenticeship.....	199, 205
career school and college [Sec. 302.021(a)(1)].....	199
College Credit for Heroes.....	180
community in schools [Sec 302.062(g)(4)] .....	204
continuity of care.....	199, 205
definition of.....	214, 227
employment.....	199, 205
employment assistance for certain parents [Sec. 302.0035] .....	183
employment service [Sec. 302.021(a)(13)].....	199
Federal Perkins Loan, Federal Family Education Loan, William D. Ford Federal Direct Loan [Sec. 305.026(b)(5)].....	221
federal Supplemental Education Opportunity Grant [Sec. 305.026(b)(6)] .....	221
food stamp employment and training [Sec. 302.021(a)(17)] .....	200
funded under temporary assistance for needy families [Sec. 302.021(a)(16)] .....	199
inmate employment-counseling [Sec. 302.021(a)(10)].....	199
job placement incentive [Sec. 302.009].....	192
job training [Sec. 302.021(a)(7)] .....	199

job-counseling for displaced homemakers.....	199, 204, 216, 217
literacy [Sec. 302.021(a)(12)].....	199
Pell Grant [Sec. 305.026(b)(6)].....	221
postsecondary vocational and technical job-training [Sec. 302.021(a)(3)].....	199
reintegration of offenders.....	199, 205
senior citizens employment.....	199, 205
skills enhancement [Sec. 306.005(a)(1)(B)].....	223
statewide employment referral, Project RIO [Sec. 306.002].....	222
Texans work [Chapter 308].....	227
Texas Back to Work.....	242
Texas Career Opportunity Grant [Chapter 305].....	218
to conduct full service career development centers and school-to-work transition services [Sec. 302.021(b)(2)].....	200
trade adjustment assistance.....	199
tuition assistance grant [Sec. 305.021].....	218
work and family policies.....	199, 204
<b>Prohibited deduction from wages [Sec. 207.073].....</b>	<b>101</b>
<b>Prohibition of</b>	
assignment of benefits [Sec. 207.075].....	101
deduction of contributions from wages.....	49, 70
fee for participation in displaced homemakers program [Sec. 304.002(d)].....	217
<b>Prohibitions against denial of benefits.....</b>	<b>87, 88</b>
<b>Project RIO</b>	
administration of [Sec. 306.003].....	222
definitions of.....	222
effectiveness of [Sec. 306.003].....	222
information on state services [Sec. 306.007].....	224
memorandum of understanding.....	222
project director [Sec. 306.006].....	223
referral program [Sec. 306.002].....	222
roles of institutional and community services division [Sec. 306.005(b)].....	223
standards and guidelines for operation of [Sec. 306.006(b)(1)].....	223
statewide network for finding employment for participants [Sec. 306.005(a)(3)].....	223
vocational and educational assessment [Sec. 306.005(a)(1)(A)].....	222
<b>Project RIO [Chapter 306].....</b>	<b>222</b>
<b>Promote and monitor services to persons with disabilities [Sec. 302.021(d)].....</b>	<b>200</b>
<b>Prosecution of criminal actions [Sec. 213.002].....</b>	<b>127</b>
<b>Protection of benefit rights [Chapter 207, Subchapter D].....</b>	<b>100</b>
<b>Protest</b>	
administrative review of [Sec. 204.025].....	55
judicial review of chargeback determination [Sec. 204.026].....	55
of potential chargebacks.....	55
<b>Providers, child care [Sec. 302.0041(b)(2)].....</b>	<b>185</b>
<b>Provisions relating to regular benefits [Sec. 209.002].....</b>	<b>108</b>
<b>Public</b>	
announcement of extended benefit period [Sec. 209.024].....	110
financial assistance, persons receiving.....	149, 161, 189, 192, 193, 194, 227, 231, 232, 233, 234
record, information maintained by commission [Sec. 308.012(b)].....	232
technical institute, definition of [Sec. 305.002(4)].....	218
<b>Publications of commission [Sec. 301.066].....</b>	<b>162</b>
<b>Purpose of Texas Career Opportunity Grant Program [Sec. 305.001].....</b>	<b>218</b>

**Q**

<b>Qualified education program, definition of.....</b>	<b>218, 220</b>
<b>Qualifying wage credits [Sec. 207.021(a)(5)].....</b>	<b>85</b>
<b>Quality initiatives by commission [Sec. 302.0045].....</b>	<b>188</b>
<b>Quorum of commission [Sec. 212.105(b)].....</b>	<b>123</b>

**R**

<b>Railroad Retirement Board, access to records [Sec. 301.083].....</b>	<b>168</b>
---	------------

<b>Railroad Unemployment Insurance Act [Sec. 209.042(a)(2)]</b> .....	<b>111</b>
<b>Ranch and farm</b>	
labor as employment [Sec. 201.047] .....	22
labor contract [Sec. 204.009(b)] .....	51
laborer, employer of [Sec. 201.028] .....	18
<b>Rate adjustments [Sec. 204.067]</b> .....	<b>63</b>
<b>Rate of insured unemployment</b> .....	<b>108, 109</b>
<b>Real estate broker or salesperson, services by [Sec. 201.072(1)]</b> .....	<b>29</b>
<b>Reasonable assurance, return to employ of educational institution [Sec. 207.041(a)(2)]</b> .....	<b>91</b>
<b>Receipt of remunerations [Sec. 207.049]</b> .....	<b>98</b>
<b>Receiver appointed by court to provide compliance with granted injunctions [Sec. 213.053]</b> .....	<b>134</b>
<b>Reciprocal agreement</b>	
by federal agency [Sec. 211.006].....	119
for state employees working outside of state [Sec. 205.042] .....	79
service under [Sec. 201.044] .....	22
<b>Reciprocal arrangement</b>	
for overpayment of benefits [Sec. 211.004(a)] .....	118
location of service for unemployment insurance purposes [Chapter 211, Sec. 211.001].....	117
reimbursements [Sec. 203.030] .....	39
<b>Reciprocal treatment to individual acquiring rights under Act of Congress [Sec. 211.006(a)]</b> .....	<b>119</b>
<b>Record(s)</b>	
access by Railroad Retirement Board [Sec. 301.083].....	168
copies of [Sec. 301.082] .....	168
destruction of [Sec. 301.084].....	168
failure to keep [Sec. 213.023].....	131
<b>Record(s) of</b>	
employer [Chapter 301, Subchapter F].....	167
employing units [Sec. 301.081] .....	167
proceedings in connection with disputed claim [Sec. 212.002] .....	119
<b>Recovery of</b>	
benefits paid [Sec. 212.006] .....	121
customized assessment and training costs [Sec. 303.002(b)].....	211
improper benefits [Sec. 214.002(a)] .....	140
<b>Redetermination by examiner [Sec. 212.054]</b> .....	<b>122</b>
<b>Redetermination request for or appeal by claimant [Sec. 208.023]</b> .....	<b>107</b>
<b>Reduction in hours [Sec. 201.091(d)]</b> .....	<b>34</b>
<b>Reduction in work hours in lieu of layoffs [Sec. 215.022(a)(2)]</b> .....	<b>144</b>
<b>Reemployment assistance [Sec. 302.003]</b> .....	<b>180</b>
<b>Reemployment services</b> .....	<b>38, 86</b>
<b>Referral services, child care and early childhood development [Sec. 310.005]</b> .....	<b>235</b>
<b>Referrals to suitable work [Sec. 209.045]</b> .....	<b>112</b>
<b>Refund</b>	
amount of, limitation [Sec. 301.103] .....	170
application for [Sec. 301.106] .....	171
of contributions to federal instrumentality [Sec. 203.029].....	39
of penalties [Sec. 203.203] .....	44
or credit of overpayment [Sec. 213.071] .....	138
state tax [Sec. 301.0671].....	163
<b>Refusal</b>	
of work .....	84, 96
to accept new work [Sec. 207.008(b)] .....	84
to serve individual with communicable disease [Sec. 207.053].....	100
<b>Registration for work [Sec. 207.021(a)(1)]</b> .....	<b>85</b>
<b>Regular benefits, definition of [Sec. 209.001(3)]</b> .....	<b>108</b>
<b>Regular benefits, exhaustion of [Sec. 209.042]</b> .....	<b>110</b>
<b>Rehabilitation program [Sec. 201.067(a)(1)(A)]</b> .....	<b>25</b>
<b>Reimbursement(s)</b>	
billing [Sec. 205.013] .....	75
by governmental entity [Sec. 205.001] .....	73

collection of delinquent [Sec. 205.016] .....	76
definition of [Sec. 201.011(16)] .....	15
from non-treasury funds [Sec. 205.019] .....	76
from or to compensation fund under reciprocal arrangement [Sec. 203.030] .....	39
of unemployment compensation administration fund [Sec. 203.154] .....	42
payment of [Sec. 205.012] .....	75
to compensation fund by employer [Sec. 210.002(c)] .....	116
<b>Reimbursing employer</b>	
application to establish group account .....	77, 78
charges to [Sec. 209.082] .....	115
collection of delinquent reimbursement, effect of failure to submit certain reports [Sec. 205.016] .....	76
continued liability [Sec. 205.015] .....	76
definition of [Sec. 201.011(17)] .....	15
election to be [Sec. 205.041] .....	79
proportionate allocation of benefit costs [Sec. 205.014] .....	75
surety bond [Sec. 205.031] .....	78
waiver of rights [Sec. 205.011] .....	74
<b>Reintegrate into labor force</b> .....	222, 224
<b>Reintegration of Offenders (RIO) [Chapter 306]</b> .....	222
<b>Reintegration of offenders program</b> .....	199, 205
<b>Relative, service by [Sec. 201.065]</b> .....	25
<b>Release of lien [Sec. 213.036(c)]</b> .....	133
<b>Religious service [Sec. 201.066]</b> .....	25
<b>Remedies, exhaustion of [Sec. 212.203]</b> .....	125
<b>Removal of claim pending before appeal tribunal [Sec. 212.105]</b> .....	123
<b>Removal of commission members [Sec. 301.007]</b> .....	153
<b>Remuneration other than cash [Sec. 201.082(7)]</b> .....	33
<b>Repayment, Commission's financial obligations [Sec. 203.256]</b> .....	47
<b>Replacement warrants [Sec. 210.011]</b> .....	117
<b>Replenishment</b>	
ratio, computation of [Sec. 204.045] .....	58
ratio, payments used in determining [Sec. 209.082] .....	115
tax [Sec. 204.062] .....	61
<b>Report(s)</b>	
and records of governmental employers [Sec. 204.106] .....	71
annual, Texas Career Opportunity Grant Program [Sec. 305.029] .....	221
discrimination complaints [Sec. 301.156] .....	174
failure to file .....	130, 135
findings regarding effectiveness of child care program [Sec. 302.0043(f)] .....	187
highlight practices in quality early education [Sec. 302.0045(a)] .....	188
of attendance under JOBS training program [Sec. 308.007(d)] .....	230
on system to monitor employment history of public assistance recipients [Sec. 302.012(d)] .....	195
records for Texans work program [Sec. 308.012] .....	232
to commission by employing units [Sec. 301.081(b)] .....	167
<b>Reporting requirements [Sec. 303.006]</b> .....	213
<b>Representation in court [Sec. 213.001]</b> .....	126
<b>Representation of commission, judicial action [Sec. 212.207]</b> .....	126
<b>Requalification for benefits</b> .....	93, 100
<b>Requalification for extended benefits [Sec. 209.048]</b> .....	113
<b>Request for redetermination or appeal by claimant [Sec. 208.023]</b> .....	107
<b>Requirement to seek work [Sec. 209.043]</b> .....	111
<b>Requisitioned money, use of [Sec. 203.025]</b> .....	37
<b>Requisitions from federal trust fund [Sec. 203.023]</b> .....	37
<b>Reserve in compensation fund [Sec. 203.028]</b> .....	38
<b>Resignation from employment to accept other work [Sec. 207.045(g)]</b> .....	94
<b>Resource services, child care [Sec. 310.004]</b> .....	235
<b>Retention and reemployment assistance [Sec. 302.003]</b> .....	180
<b>Retirement pay, receipt of [Sec. 207.050]</b> .....	99
<b>Retirement plan for employees [Sec. 201.082(2)]</b> .....	32

<b>Retroactive payment of benefits [Sec. 207.041(c)]</b> .....	<b>91</b>
<b>Revenue collections and investment earnings [Sec. 203.258]</b> .....	<b>48</b>
<b>Review of appeal tribunal decision [Sec. 212.151]</b> .....	<b>124</b>
<b>Right(s)</b>	
and duties of participating employer, Texans work program [Sec. 308.007] .....	229
and duties of participating trainees, Texans work program [Sec. 308.009] .....	231
lost by cessation of coverage [Sec. 206.005] .....	80
of regular employees [Sec. 308.008] .....	230
<b>Risk assessment [Sec. 205.019(d)]</b> .....	<b>77</b>
<b>Robert T. Stafford Disaster Relief and Emergency Assistance Act [Sec. 204.022(a)(6)]</b> .....	<b>52</b>
<b>Rule(s)</b>	
adoption and distribution of [Sec. 305.028] .....	221
adoption of [Sec. 302.005(b)] .....	189
child care [Sec. 310.008] .....	237
Commission adoption of [Sec. 205.025] .....	78
Commission, tax refunds [Sec. 301.107] .....	172
hearings conducted by telephone conference [Sec. 212.106] .....	124
<b>Rulemaking</b>	
and alternative dispute resolution policy [Sec. 301.0682] .....	165
authority of commission, self-sufficiency fund [Sec. 309.004] .....	234
voluntary workforce training program [Sec. 311.004] .....	240
<b>S</b>	
<b>Sale of business [Sec. 207.051]</b> .....	<b>99</b>
<b>Sales representative [Sec. 201.070(3)]</b> .....	<b>29</b>
<b>Sales, in-person [Sec. 201.070(2)(A)(i)]</b> .....	<b>28</b>
<b>Salesman</b> .....	<b>19, 28</b>
<b>Salesman, product demonstrator [Sec. 201.070]</b> .....	<b>28</b>
<b>Sanctions</b>	
by board against service provider [Sec. 302.046(b)(2)] .....	202
penalties, and offenses [Chapter 214] .....	139
plan [Sec. 302.045] .....	201
<b>Scholarships for professional child care training [Sec. 302.006]</b> .....	<b>190</b>
<b>School</b>	
personnel, benefits [Sec. 207.041] .....	91
service performed in the employ of [Sec. 201.069(1)] .....	26
<b>Seasonal employer [Sec. 215.022(b)]</b> .....	<b>145</b>
<b>Seasonal worker [Sec. 201.028]</b> .....	<b>18</b>
<b>Secondary school students, employment information for [Sec. 302.014]</b> .....	<b>196</b>
<b>Secretary, definition of</b> .....	<b>108, 161</b>
<b>Security sensitive position, definition of [Sec. 301.042(c)]</b> .....	<b>158</b>
<b>Security sensitive position, deny employment [Sec. 301.042]</b> .....	<b>157</b>
<b>Seeking work, requirement [Sec. 209.043]</b> .....	<b>111</b>
<b>Selection of employer's trainees [Sec. 308.007(b)]</b> .....	<b>229</b>
<b>Selection of employer's training methods [Sec. 308.007(c)]</b> .....	<b>229</b>
<b>Self-funded or self-insured employee welfare benefit plan [Sec. 301.104(3)(C)]</b> .....	<b>171</b>
<b>Self-incrimination [Sec. 301.073]</b> .....	<b>167</b>
<b>Self-sufficiency fund</b>	
administration of [Sec. 309.002(c)] .....	233
creation, responsibilities [Sec. 309.002] .....	233
definition of [Sec. 309.001(2)] .....	232
informal partnership [Sec. 309.002(a)(3)] .....	233
job training programs [Sec. 309.003] .....	233
participant transition from training activities to employment [Sec. 309.002(b)] .....	233
rulemaking authority of commission [Sec. 309.004] .....	234
state and federal work requirements [Sec. 309.003(a)(1)(A)] .....	233
<b>Self-sufficiency fund [Chapter 309]</b> .....	<b>232</b>
<b>Self-sufficiency standard [Sec. 302.012(c)(6)]</b> .....	<b>195</b>

<b>Self-sufficiency wage</b> .....	<b>193</b>
<b>Senior citizens employment program</b> .....	<b>199, 205</b>
<b>Separate accounts, unemployment compensation fund [Sec. 203.021]</b> .....	<b>36</b>
<b>Separation</b>	
from last employment [Sec. 204.022] .....	51
involuntary .....	93, 95
medically verified illness [Sec. 204.022(a)(5)] .....	52
<b>Service</b>	
defining employment, wages, and exemptions [Sec. 201.043] .....	20
eligible under Act of Congress [Sec. 201.061] .....	23
level options [Sec. 302.002(f)] .....	179
of driver or salesman [Sec. 201.042] .....	19
of student [Sec. 201.069] .....	26
properly completed [Sec. 212.206(d)] .....	126
providers, lack of [Sec. 302.046] .....	202
under arrangement with agency [Sec. 201.062] .....	23
<b>Services in an educational institution [Sec. 207.041]</b> .....	<b>91</b>
<b>Severance pay</b> .....	<b>98</b>
<b>Sexual assault</b>	
chargeback [Sec.204.022(a)(11)] .....	52
definition of .....	54, 96
involuntary separation [Sec. 207.046(a)(1)] .....	95
<b>Shared work</b>	
chargeback [Sec. 204.022(f)] .....	54
definitions [Sec. 215.001] .....	142
limitations on benefits [Sec. 215.043] .....	146
program, definition of [Sec. 215.001(8)] .....	143
unemployment compensation program .....	142, 143
<b>Shared work benefits</b>	
definition of [Sec. 215.001(6)] .....	143
employee's eligibility for [Sec. 215.041] .....	146
exhaustion of, entitlement to extended [Sec. 215.044] .....	147
formula [Sec. 215.042] .....	146
maximum total payable [Sec. 215.043(a)] .....	146
round to next highest dollar [Sec. 215.042(b)] .....	146
<b>Shared work plan</b>	
approval [Sec. 215.021] .....	143
approval or denial, notice [Sec. 215.023] .....	145
definition of [Sec. 215.001(7)] .....	143
designation of employees to participate in [Sec. 215.001(1)] .....	142
effective date, expiration or termination [Sec. 215.024] .....	145
implemented to subsidize seasonal employer [Sec. 215.022(b)] .....	145
modification of [Sec. 215.025] .....	145
operation, employer's report on [Sec. 215.026] .....	145
participating employee, definition of [Sec. 215.001(4)] .....	143
participating employer, definition of [Sec. 215.001(5)] .....	143
reduced hours [Sec. 215.043(c)] .....	147
requirements [Sec. 215.022] .....	144
<b>Shareholder, majority or controlling, in corporation [Sec. 207.051(a)(1)(B)]</b> .....	<b>99</b>
<b>Short-term employment</b>	
chargeback [Sec. 204.022(a-1)(2)] .....	54
leaving unsuitable work [Sec. 207.045(g-1)] .....	94
<b>Sickness disability plan [Sec. 201.082(2)]</b> .....	<b>32</b>
<b>Skills</b>	
enhancement program [Sec. 306.005(a)(1)(B)] .....	223
standards certification [Sec. 308.009(c)] .....	231
training to enhance employability, earnings, and standard of living [Sec. 301.001(b)(2)] .....	149
<b>Skills development fund</b>	
creation of [Sec. 303.003] .....	211
grants issued under [Sec. 303.005] .....	213

program under [Sec. 302.062(g)(2)] .....	204
purpose, definitions .....	210
review of training programs [Sec. 303.004] .....	213
waiver [Sec. 303.002] .....	210
<b>Skills development fund [Sec. 303.003(b-2)]</b> .....	<b>211</b>
<b>Small employer, definition of [Sec. 303.006(a)(10)]</b> .....	<b>214</b>
<b>Sole proprietor, disqualification for benefits [Sec. 207.051]</b> .....	<b>99</b>
<b>Solvency of compensation fund [Sec. 203.028]</b> .....	<b>38</b>
<b>Spanish forms and information [Sec. 301.064(c)]</b> .....	<b>162</b>
<b>Special administration fund</b>	
consists of [Sec. 203.201] .....	43
definition of [Sec. 203.001(3)] .....	35
disposition of money in [Sec. 203.005] .....	36
liability for [Sec. 203.003] .....	35
use of .....	35, 43
<b>Special contributions for governmental employers</b> .....	<b>70</b>
<b>Sponsor, definition of [Sec. 311.002(4)]</b> .....	<b>238</b>
<b>Sport or athletic event or training [Sec. 207.042]</b> .....	<b>92</b>
<b>Spouse, move with [Sec. 207.045(c)]</b> .....	<b>93</b>
<b>Stalking or family violence</b> .....	<b>52, 95</b>
<b>Stalking, definition of</b> .....	<b>54, 96</b>
<b>Standard(s) of</b>	
certification for voluntary workforce training program [Sec. 311.002] .....	238
conduct information [Sec. 301.043] .....	158
job-training programs [Sec. 309.003(a)(1)(C)] .....	233
judicial review [Sec. 212.202] .....	125
suitable work .....	112
<b>State</b>	
agency, definition of [Sec. 207.111(1)] .....	104
and federal cooperation [Sec. 301.063] .....	160
debt [Sec. 203.259] .....	48
definition of [Sec. 201.011(18)] .....	15
election to be reimbursing employer [Sec. 205.041] .....	79
employees, location of service [Sec. 211.002] .....	118
on and off indicator weeks [Sec. 209.022] .....	109
or local child support enforcement agency, definition of [Sec. 207.091(3)] .....	102
political subdivision [Sec. 201.026] .....	17
tax refund for certain employers [Sec. 301.0671] .....	163
unemployment compensation law, definition of [Sec. 209.001(5)] .....	108
<b>State Occupational Information Coordinating Committee</b> .....	<b>178, 200, 205</b>
<b>Statement as evidence [Sec. 213.034]</b> .....	<b>133</b>
<b>Stipend, training</b> .....	<b>231</b>
<b>Stoppage of work, labor dispute [Sec. 207.048]</b> .....	<b>97</b>
<b>Strike, lockout, or labor dispute [Sec. 207.008(b)(1)]</b> .....	<b>84</b>
<b>Student</b>	
between academic terms or years [Sec. 201.069(3)(B)(ii)] .....	27
enrolled full-time at educational institution [Sec. 201.069(3)(B)] .....	27
financial assistance [Sec. 305.026(b)(4)] .....	221
in full-time program combining academic instruction with work experience [Sec. 201.069(2)] .....	27
service of [Sec. 201.069] .....	26
<b>Subpoena</b>	
enforcement of [Sec. 301.072] .....	166
issued by appeal tribunal [Sec. 301.071(a)(4)] .....	166
obeying [Sec. 301.073(a)] .....	167
payment of sheriff or constable fee for service [Sec. 301.071(c)] .....	166
powers of commission [Sec. 301.071] .....	166
<b>Subsidy, child-care for training participant</b> .....	<b>189, 190</b>
<b>Substantial evidence rule [Sec. 212.202]</b> .....	<b>125</b>
<b>Successor employer</b>	



contribution rate for [Sec. 204.085].....	67
liability for predecessor's debt [Sec. 204.086] .....	68
transfer of compensation experience [Sec. 204.083] .....	65
<b>Successor employing units</b>	
surplus credit for.....	69
<b>Suit for collection of contribution, penalty, or interest [Sec. 204.086(b)] .....</b>	<b>68</b>
<b>Suit, cost of [Sec. 213.005].....</b>	<b>128</b>
<b>Suitable employment, definition of [Sec. 207.023(c)].....</b>	<b>88</b>
<b>Suitable work</b>	
determination of .....	84, 112
exceptions [Sec. 209.046].....	112
failure to accept or apply for [Sec. 209.049].....	113
for extended benefits [Sec. 209.044] .....	111
for extended benefits, definition of [Sec. 209.047].....	112
<b>Sunset Act, application of [Sec. 301.008] .....</b>	<b>155</b>
<b>Sunset date, Texas Workforce Commission [Sec. 301.008] .....</b>	<b>155</b>
<b>Supersedes [Sec. 212.205].....</b>	<b>125</b>
<b>Supplemental Education Opportunity Grant program, federal [Sec. 305.026(b)(6)].....</b>	<b>221</b>
<b>Surplus Credit [Sec. 204.0651] .....</b>	<b>62</b>
<b>Surplus Credit Rate [Sec. 204.0652] .....</b>	<b>63</b>
<b>Surplus ratio [Sec. 204.066] .....</b>	<b>63</b>
<b>Surplus, Use of [Sec. 204.065] .....</b>	<b>62</b>
<b>System to monitor employment history of public assistance recipients [Sec. 302.012(a)] .....</b>	<b>194</b>

**T**

<b>TANF Choices program recipients, wage tracking [Sec. 302.0044] .....</b>	<b>188</b>
<b>Tangible evidence of actively seeking work [Sec. 209.043(b)] .....</b>	<b>111</b>
<b>Tax</b>	
assistance [Sec. 301.067].....	162
credit and refund, development and distribution of educational materials [Sec. 301.0671(b)] .....	163
lien.....	135, 136
on experience-rated employers [Sec. 204.041].....	56
refund – application, issuance [Sec. 301.106] .....	171
refund for wages paid to employee receiving financial assistance [Chapter 301, Subchapter H] .....	170
refund voucher [Sec. 301.102].....	170
refund, limitation on conveyance, assignment, or transfer of [Sec. 301.108] .....	172
withholding [Chapter 207, Subchapter F].....	103
<b>Tax rate</b>	
computation date for experience tax rate [Sec. 204.047] .....	59
table [Sec. 204.042] .....	57
table, extension of [Sec. 204.043].....	58
<b>Taxable wages, estimation in lieu of employer report [Sec. 213.056(a)] .....</b>	<b>135</b>
<b>Taxed base period employer - notice to [Sec. 209.085].....</b>	<b>115</b>
<b>Taxed employer, definition of [Sec. 201.011(19)].....</b>	<b>15</b>
<b>Tax-exempt nonprofit organization [Sec. 201.023] .....</b>	<b>16</b>
<b>Technical colleges .....</b>	<b>210, 211, 213, 215, 233</b>
<b>Technological solutions, policy on [Sec. 301.0681].....</b>	<b>164</b>
<b>Technology</b>	
and career education [Sec. 301.0611(2)] .....	160
workforce campaign, statewide [Sec. 302.008] .....	192
<b>Temporary</b>	
assistance for needy families program recipients, wage tracking [Sec. 302.0044] .....	188
assistance for needy families programs .....	199, 206
employee in case of emergency [Sec. 201.063(a)(1)(D)] .....	24
employee of temporary help firm [Sec. 207.045(h)].....	94
employee, definition of [Sec. 201.011(20)] .....	15
help firm [Sec. 201.029] .....	18
help firm, definition of [Sec. 201.011(21)].....	15
restraining order [Sec. 213.052(a)] .....	134

<b>Temporary help [Sec. 201.091(f)]</b> .....	<b>34</b>
<b>Term of service, commissioners [Sec. 301.005]</b> .....	<b>153</b>
<b>Terminally ill spouse [Sec. 207.046(a)(3)]</b> .....	<b>96</b>
<b>Termination of</b>	
child-care services [Sec. 302.0046] .....	188
coverage [Sec. 206.004] .....	80
group account [Sec. 205.022] .....	77
reimbursing election [Sec. 205.003] .....	74
<b>Testifying and attending before the commission [Sec. 301.073(a)]</b> .....	<b>167</b>
<b>Testimony or evidence, documentary or otherwise [Sec. 301.073(a)]</b> .....	<b>167</b>
<b>Testimony, documentary or oral [Sec. 301.071(b)]</b> .....	<b>166</b>
<b>Texans work program</b>	
complaints received [Sec. 308.012(a)(3)] .....	232
created [Sec. 308.003] .....	228
definitions [Sec. 308.002] .....	227
impediments that affect successful operation [Sec. 308.012(a)(2)] .....	232
incentives for employers [Sec. 308.005(d)] .....	229
job descriptions for training participants developed by employer [Sec. 308.005(c)] .....	228
partnership with state [Sec. 308.001] .....	227
powers and duties of commission and division, guidelines for training course approval [Sec. 308.005] .....	228
report, records [Sec. 308.012] .....	232
rights and duties of participating employer [Sec. 308.007] .....	229
rights and duties of participating trainees [Sec. 308.009] .....	231
training courses, approval .....	228
<b>Texans work program [Chapter 308]</b> .....	<b>227</b>
<b>Texas</b>	
Career Opportunity Grant Program [Chapter 305] .....	218
Commission on Alcohol and Drug Abuse [Sec. 306.007(a)(1)(B)] .....	224
Department of Criminal Justice .....	222, 224
Department of Housing and Community Affairs .....	224
Department of Human Services .....	163, 172, 194, 229, 231, 233
Department of Transportation [Sec. 301.063(f)] .....	161
Economic Development and Tourism Office [Sec. 306.007(a)(2)(A)] .....	224
Education Agency .....	160, 175, 237
Engineering Extension Service .....	210, 211
Higher Education Coordinating Board .....	160, 206, 207, 208, 213, 218
Public Finance Authority [Sec. 203.252(a)(1)] .....	44
Real Estate Commission .....	29, 30
Rehabilitation Commission [Sec. 302.021(d)] .....	200
Skill Standards Board .....	228
trade association, definition of [Sec. 301.003(a)(2)] .....	151
Unemployment Compensation Act, publication of [Sec. 301.066] .....	162
Veterans Commission .....	224
Workforce Investment Council [Sec. 301.001(d)(3)] .....	149
Youth Commission .....	222, 223
<b>Texas Back to Work Program</b> .....	<b>242</b>
<b>Texas commission on law enforcement</b> .....	<b>197</b>
<b>Texas Enterprise Fund, grants issued under [Sec. 303.005]</b> .....	<b>213</b>
<b>Texas Fast Start Program [Sec. 302.0032]</b> .....	<b>181</b>
<b>Texas Workforce Commission</b>	
functions of commission and staff [Sec. 301.0015] .....	150
organization of [Chapter 301, Subchapter A] .....	149
purpose, agency goals, definitions [Sec. 301.001] .....	149
<b>Time benefits are paid</b> .....	<b>50</b>
<b>Timeliness of appeal [Sec. 212.054(b)]</b> .....	<b>122</b>
<b>Title of the act [Sec. 201.001]</b> .....	<b>13</b>
<b>Total unemployment</b> .....	<b>33, 97</b>
<b>Trade</b>	
Act of 1974 .....	88, 114, 199, 205
adjustment assistance program .....	199

adjustment program [Sec. 302.007] .....	192
readjustment allowances, effect on extended benefits [Sec. 209.063] .....	114
<b>Trainee</b>	
definition of .....	214, 227
excessive unexcused absences [Sec. 308.011(e)] .....	232
rights and duties, Texans work program [Sec. 308.009] .....	231
<b>Training</b>	
board members and employees, collection and analysis of data [Sec. 302.043(d)] .....	201
Commission members [Sec. 301.0075] .....	154
commission-approved .....	87
definition of [Sec 215.001(9)] .....	143
for economically disadvantaged Texans [Sec. 305.001] .....	218
for workforce development board members, provided by division or third party [Sec. 302.043(b)] .....	201
methods, selected by employer [Sec. 308.007(c)] .....	229
stipend [Sec. 308.011] .....	231
stipend, payment [Sec. 308.011(f)] .....	232
stipend, reduction in [Sec. 308.011(e)] .....	232
under the Trade Act of 1974 .....	88, 114, 199, 205
<b>Training course</b>	
approval under Texans work program .....	228
definition of [Sec. 308.002(7)] .....	227
designed by local participating employer [Sec. 308.004(a)] .....	228
employer's proposed, commission approval required [Sec. 308.004(c)] .....	228
length of [Sec. 308.004(b)] .....	228
<b>Training Stabilization Fund</b> .....	<b>208</b>
<b>Transfer of claim pending before appeal tribunal [Sec. 212.105]</b> .....	<b>123</b>
<b>Transfer of compensation experience [Sec. 204.083]</b> .....	<b>65</b>
<b>Transfer of trade or business</b>	
definition of [Sec. 204.081(5)] .....	64
<b>Transition from training activities to employment [Sec. 309.002(b)]</b> .....	<b>233</b>
<b>Transportation</b>	
assistance [Sec. 302.0036] .....	183
assistance, maximizing federal funds for [Sec. 302.0037] .....	183
services for clients [Sec. 301.063(f)] .....	161
<b>Trial de novo, standard of judicial review [Sec. 212.202]</b> .....	<b>125</b>
<b>Tuition assistance grant</b>	
amount [Sec. 305.021] .....	218
application, eligibility [Sec. 305.026] .....	220
approval of institutions [Sec. 305.023] .....	220
limitations on amount [Sec. 305.022] .....	219
payment [Sec. 305.027] .....	221
qualified education programs [Sec. 305.024] .....	220
<b>U</b>	
<b>Uncollected overissuance, definition of [Sec. 207.111(2)]</b> .....	<b>104</b>
<b>Uncollected overissuances of food stamps [Sec. 207.111]</b> .....	<b>104</b>
<b>Unconscionable act of employer or superior [Sec. 201.012(a)]</b> .....	<b>16</b>
<b>Underserved rural local workforce development areas [Sec. 302.0041(b)(1)]</b> .....	<b>185</b>
<b>Unemployment</b>	
benefits payable under shared work plan [Sec. 215.001(6)] .....	143
benefits, definition of .....	104, 119
claim, redetermination of [Sec. 212.054] .....	122
claim, timeliness for appeal [Sec. 212.054(b)] .....	122
obligation assessment [Sec. 203.105] .....	40
obligation assessment rate [Sec. 203.105(b)] .....	41
total and partial [Sec. 201.091] .....	33
<b>Unemployment compensation</b>	
act [Chapter 201] .....	13
administration fund	
definition of [Sec. 203.001(1)] .....	35

reimbursement of [Sec. 203.154] .....	42
use of [Sec. 203.152].....	42
administration fund [Sec. 203.151].....	41
agreement relating to .....	21, 88
division [Sec. 301.009(a)(2)].....	155
fund [Chapter 203, Subchapter B] .....	36
liability for payroll taxes or contributions for a JOBS program trainee [Sec. 308.007(d)] .....	230
payable under Act of Congress [Sec. 201.061].....	23
program, administration of [Sec. 301.001(a)].....	149
program, shared work [Chapter 215, Subchapter A] .....	142
special administration fund, composition of [Sec. 203.201].....	43
special administration fund, use of [Sec. 203.202] .....	43
<b>Unemployment compensation fund</b>	
administration of [Sec. 203.025] .....	37
assets of [Sec. 203.032(c)].....	39
balance sheet of money [Sec. 301.065(b)(1)] .....	162
ceiling.....	60, 62, 63
disposition of money in [Sec. 203.005] .....	36
extended benefits paid from [Sec. 209.081] .....	114
floor .....	60, 62
issuance of financial obligations [Chapter 203, Subchapter F].....	44
liability for [Sec. 203.003].....	35
limitations of expenditures from [Sec. 203.024(b)] .....	37
management of [Sec. 203.032] .....	39
money available [Sec. 203.031].....	39
payment of benefits from [Sec. 205.018].....	76
refund to federal instrumentality [Sec. 203.029] .....	39
reimbursement from or to under reciprocal arrangement [Sec. 203.030] .....	39
separate accounts [Sec. 203.021].....	36
solvency, reserve [Sec. 203.028] .....	38
treasurer and custodian of [Sec. 203.002].....	35
<b>Unemployment compensation information, definition of.....</b>	<b>168, 169</b>
<b>Unemployment compensation law</b>	
agency that administers another state's or a federal .....	22, 23
of another state [Sec. 201.043(c)].....	20
of Canada [Sec. 209.042(a)(3)] .....	111
state, definition of [Sec. 209.001(5)] .....	108
<b>Unemployment insurance coverage [Chapter 206].....</b>	<b>79</b>
<b>Unemployment insurance, yearly coverage [Sec. 206.001] .....</b>	<b>79</b>
<b>Unexpended balance of benefit account [Sec. 203.027] .....</b>	<b>38</b>
<b>Uniform service regions [Sec. 303.006(b)] .....</b>	<b>214</b>
<b>Uniform, statewide client application for workforce training [Sec. 302.022] .....</b>	<b>200</b>
<b>Uniformed Services Employment and Reemployment Rights Act (USERRA).....</b>	<b>53</b>
<b>United States</b>	
definition of [Sec. 201.011(22)] .....	15
Department of Education.....	220
Department of Housing and Urban Development [Sec. 301.155(d)] .....	174
Department of Labor .....	138, 158
government, service for [Sec. 201.063(a)(4)] .....	24
Office of Management and Budget [Sec. 204.001].....	49
Postal Service [Sec. 201.011(15)].....	15
<b>University, service performed in the employ of [Sec. 201.069(1)] .....</b>	<b>26</b>
<b>Unmet housing needs.....</b>	<b>184</b>
<b>Urgent work-related reason to separate from employment [Sec. 207.046] .....</b>	<b>95</b>
V	
<b>Vacancy, commission member [Sec. 301.005] .....</b>	<b>153</b>
<b>Vacation period or holiday recess [Sec. 207.041(d)] .....</b>	<b>91</b>
<b>Valid claim, definition of [Sec. 201.011(23)] .....</b>	<b>15</b>
<b>Venue for judicial proceeding [Sec.213.009(b)] .....</b>	<b>128</b>

<b>Vessel, service on</b> .....	<b>22, 119</b>
<b>Violation of injunction [Sec. 213.053]</b> .....	<b>134</b>
<b>Violations</b> .....	<b>131</b>
<b>Violations of unemployment act [Sec. 213.052]</b> .....	<b>134</b>
<b>Voluntarily leaving work [Sec. 207.045]</b> .....	<b>93</b>
<b>Voluntary</b>	
contributions [Sec. 204.048] .....	59
quit [Sec. 209.049] .....	113
workforce training for certain students [Chapter 311] .....	237
<b>Voluntary workforce training program</b>	
certification standards [Sec. 311.002].....	238
commission duties, local workforce development boards [Sec. 311.005] .....	240
rulemaking [Sec. 311.004].....	240
<b>Volunteer income tax assistance sites [Sec. 301.067]</b> .....	<b>162</b>
<b>Voucher, tax refund [Sec. 301.102]</b> .....	<b>170</b>

**W**

**Wage(s)**

combination of with employment [Sec. 211.003].....	118
credits .....	51, 82
credits earned from more than one employer [Sec. 205.014] .....	75, 82
credits, qualifying [Sec. 207.021(a)(5)].....	85
definition of.....	32, 33, 81, 82, 83
exceptions to [Sec. 201.082].....	32
general definition of [Sec. 201.081] .....	32
in lieu of notice [Sec. 207.049(1)] .....	98
meaning assigned by Internal Revenue Code [Sec. 301.101] .....	170
paid for service in other states .....	21, 33
prevailing [Sec. 311.003(c)(3)].....	239
self-sufficiency .....	193
severance pay [Sec. 207.049(2)].....	98
substantially less favorable to individual [Sec. 207.008(b)(2)].....	85
supplementation for professional child care training [Sec. 302.006].....	190
tax refund.....	170
tracking of TANF Choices program recipients [Sec. 302.0044].....	188
used to qualify individual for benefits [Sec. 207.004(b)] .....	83
<b>Wage-earning potential of participants [Sec. 311.001(2)(D)].....</b>	<b>238</b>
<b>Wagner-Peyser Act.....</b>	<b>150, 160, 161, 226, 227</b>
<b>Waiting period for benefits.....</b>	<b>86</b>
<b>Waiting week [Sec. 207.021(b)] .....</b>	<b>86</b>
<b>Waiver</b>	
by reimbursing employer [Sec. 205.011].....	74
objective criteria for granting of [Sec. 302.063].....	205
of right to protest claim and chargeback.....	55, 106
of rights [Sec. 208.004] .....	106
of rights to benefits prohibited [Sec. 207.072].....	101
release, or commutation agreement [Sec. 207.071] .....	100
skills development fund [Sec. 303.002].....	210
<b>Warrant(s)</b>	
canceled benefit [Sec. 204.045(b)(1)].....	58
deadline for issuance of replacement [Sec. 210.013].....	117
deadline for payment [Sec. 210.012] .....	117
definition of [Sec. 201.011(24)] .....	15
issued on compensation and special administration funds.....	35
offset against, withholding of [Sec. 213.054] .....	135
replacement [Sec. 210.011] .....	117
<b>Week, definition of [Sec. 201.011(25)].....</b>	<b>15</b>
<b>Weekly extended benefit amount [Sec. 209.061] .....</b>	<b>114</b>
<b>Weekly wage, average .....</b>	<b>81</b>
<b>Welfare benefit plan, self-funded or self-insured employee [Sec. 301.104(3)(C)] .....</b>	<b>171</b>

<b>Wholesaler representative [Sec. 201.070(3)]</b> .....	<b>29</b>
<b>Willful attempt to evade assessment provisions [Sec. 213.033(d)]</b> .....	<b>132</b>
<b>Willful violation of act, rules, regulations [Sec. 214.007]</b> .....	<b>142</b>
<b>William D. Ford Federal Direct Loan Program [Sec. 305.026(b)(5)]</b> .....	<b>221</b>
<b>Withdrawals from unemployment compensation fund [Sec. 203.025]</b> .....	<b>37</b>
<b>Withholding</b>	
from benefits for federal income tax [Sec. 207.101] .....	103
from unemployment benefits for uncollected overissuances of food stamps [Sec. 207.111].....	104
of child support by commission [Sec. 207.093].....	102
tax [Chapter 207, Subchapter F] .....	103
unemployment benefits [Sec. 207.114] .....	104
<b>Witness fees [Sec. 212.003]</b> .....	<b>119</b>
<b>Witnesses, compel the attendance of [Sec. 301.071(a)(4)]</b> .....	<b>166</b>
<b>Work</b>	
and family policies program .....	199, 204
experience [Sec. 201.069(2)] .....	27
opportunity tax credit [Sec. 301.0671] .....	163
refusal [Sec. 207.047] .....	96
registration [Sec. 207.021(a)(1)].....	85
relief or training program [Sec. 201.067(a)(3)] .....	26
stoppage [Sec. 207.048].....	97
supplement program, definition [Sec. 302.005(l)] .....	190
<b>Work customary hours [Sec. 204.022(a-1)]</b> .....	<b>53</b>
<b>Workers' compensation</b>	
insurance coverage [Sec. 303.006(d)(4)] .....	215
laws [Sec. 207.049(2)].....	98
laws of Texas [Sec. 212.208].....	126
<b>Workforce development</b>	
area [Sec. 302.062(e)].....	204
delegation of functions [Sec. 302.023] .....	200
evaluation system, analysis [Sec. 302.083] .....	207
evaluation system, information and data [Sec. 302.082] .....	207
evaluation system, maintenance and operation [Sec. 302.081].....	206
evaluation system, use of.....	208
powers and duties of commission and executive director [Sec. 302.002].....	177
programs, consolidation of [Sec. 302.021] .....	198
<b>Workforce development board(s)</b>	
administration funding [Sec. 302.061].....	203
advisory committee [Sec. 302.013] .....	195
advocate at state and federal levels [Sec. 302.002(a)(8)].....	178
allocation of funds, block grant program [Chapter 302, Subchapter D] .....	203
assessment of capacity to oversee and manage [Sec. 302.048].....	202
block grant funding to [Sec. 302.023] .....	200
block grants, local areas [Sec. 302.062] .....	203
certified.....	200, 203, 226
collaboration with [Sec. 302.064].....	205
commission duties [Sec. 311.005] .....	240
commission evaluation of [Sec. 302.048(d)] .....	203
created under Subchapter F, Chapter 2308, Government Code [Sec. 308.002(4)] .....	227
definition of.....	150, 227
flexibility rating system for commission directives [Sec. 302.047].....	202
funding guidelines and strategies [Sec. 302.064(b)] .....	205
ineligibility to serve on [Sec. 302.043(a)] .....	201
performance measures to evaluate [Sec. 302.048(c)] .....	203
plan regarding lack of service providers [Sec. 302.046].....	202
requirement to participate in outreach activities [Sec. 302.044] .....	201
review of local plans, recommendations [Sec. 302.042].....	201
sanctions plan [Sec. 302.045] .....	201
state-local planning [Sec. 302.041].....	200
training for members [Sec. 302.043] .....	201
waivers [Sec. 302.063] .....	205

<b>Workforce development division</b>	
approval of exception to training course length [Sec. 308.004(b)] .....	228
bond person who handles money or signs checks for [Sec. 302.002(a)(6)] .....	178
certification of child care pilot programs [Sec. 302.005(a)] .....	189
contract with boards for program planning and service delivery [Sec. 302.002(a)(9)] .....	178
definition of.....	177, 227
general provisions [Chapter 302, Subchapter A] .....	177
jurisdiction of [Chapter 302, Subchapter B] .....	198
organization and methods of procedure [Sec. 302.002(a)(3)].....	177
powers and duties to implement Texans Work Program [Sec. 308.005] .....	228
provide ongoing job retention and reemployment assistance [Sec. 302.003] .....	180
provide training and professional development services for staff, boards, and staff of boards [Sec. 302.002(a)(10)].....	178
technical assistance and support for boards .....	178, 179, 228, 229, 240
training for members of boards [Sec. 302.043] .....	201
<b>Workforce development division [Sec. 301.009(a)(1)] .....</b>	<b>155</b>
<b>Workforce Investment Act of 1998 .....</b>	<b>193, 199</b>
<b>Workforce services and block grant programs, integration of [Sec. 302.065] .....</b>	<b>205</b>
<b>Workforce training</b>	
client accessibility [Sec. 302.022] .....	200
state-local planning process [Sec. 302.041].....	200
uniform, statewide client application [Sec. 302.022].....	200
voluntary for certain students [Chapter 311] .....	237







